

**CONCESSION AGREEMENT**

For

**Municipal Solid Waste Management in ULBs in Andhra Pradesh**

**BETWEEN**

\_\_\_\_\_ **Municipal Corporation / \_\_\_\_\_Municipal Council**

**AND**

**Swachha Andhra Corporation (SAC)**

**AND**

\_\_\_\_\_ **(Selected Bidder)**

\_\_\_\_\_ 2017

**CONCESSION AGREEMENT**  
(For Municipal Solid Waste Management)

THIS AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2017 at \_\_\_\_\_ by and between:

- (1) \_\_\_\_\_Municipal Corporation/Municipality/Nagar Panchayat/Municipal Council, having its office at \_\_\_\_\_, \_\_\_\_\_, Andhra Pradesh, India, represented by its Commissioner, Sri \_\_\_\_\_ (hereinafter referred to as “**MC or Municipality or ULB**” which expression shall, unless excluded by or repugnant to the context or meaning thereof, mean and include its administrators, successors and assigns); OF THE FIRST PARTY,

**AND**

- (2) Swachha Andhra Corporation, a company incorporated under the Companies Act 2013, having its office at Flat No.303, Vijayalakshmi Residency, ESI Road, Gunadala, Vijayawada 520004, Andhra Pradesh, India, represented by its authorized person \_\_\_\_\_ (Designation), \_\_\_\_\_ (Name), hereinafter called the ‘**SAC**’, which expression shall, unless excluded by or repugnant to the context or meaning thereof, mean and include its administrators, successors and assigns); OF THE SECOND PARTY,

- (3) \_\_\_\_\_ Company/Partnership Firm/\_\_\_\_\_, incorporated/registered under the \_\_\_\_\_, (VETTING IF NOT A COMPANY)having its registered office at \_\_\_\_\_, represented by its \_\_\_\_\_(Designation) \_\_\_\_\_ (name) (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless excluded by or repugnant to the context or meaning thereof, mean and include its administrators, successors and assigns) of THE THIRD PARTY. (*Note: if the selected bidder is a single entity and not consortium*)

**OR**

(In case of consortium)

\_\_\_\_\_ Company Limited, a company exclusively incorporated under the Companies Act 2013 for implementation of the Project, also known as Special Purpose Vehicle (SPV), having its registered office at \_\_\_\_\_, represented by its \_\_\_\_\_(Designation) \_\_\_\_\_ (name) (hereinafter referred to as “**Concessionaire**”, which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) of THE THIRD PARTY.

The MC/Municipality/ULB, the SAC and the Concessionaire are collectively referred to as the ‘Parties’ and severally as the ‘Party’ as the context requires.

WHEREAS:

A. Background: The Swachh Bharat Mission (SBM) emanates from the vision of the Government articulated in the address of The President of India in his address to the Joint Session of the

Parliament on 9<sup>th</sup> June 2014 - *“We must not tolerate the indignity of homes without toilets and public spaces littered with garbage. For ensuring hygiene, waste management and sanitation across the nation “Swachh Bharat Mission” was launched. This will be our tribute to Mahatma Gandhi on his 150<sup>th</sup> birth anniversary to be celebrated in the year 2019”*. SBM is being implemented by the Ministry of Urban Development (MoUD) and the Ministry of Drinking Water and Sanitation (MoDWS) Government of India for urban and rural areas respectively. Further, the main objectives of the Mission are: Elimination of open defecation, Eradication of Manual Scavenging – Modern and Scientific Municipal Solid Waste Management, To effect behavioral change regarding healthy sanitation practices, Generate awareness about sanitation and its linkage with public health, Capacity Augmentation for ULBs and to create an enabling environment for private sector participation in CAPEX (Capital Expenditure) and OPEX (Operation and Maintenance Expenditure).

B. In line with SBM (Urban) vision, Government of Andhra Pradesh (GoAP) has launched the Swachha Andhra Mission with a goal of achieving clean and healthy sanitation practices by 2019 to provide Swachha Andhra Pradesh. As a part of SBM goals towards disposal of Municipal Solid Waste in modern & scientific methods, GoAP intends to take up solid waste management in the ULBs as listed in the RFP under Public-Private Partnership (PPP) Mode, that have low quantum of waste generation with appropriate technologies and methods for treatment, disposal and management of solid waste. Detailed Project Reports (DPRs) were prepared and made available to the intending parties. Waste Characterization for each of the ULB is available in the DPRs.

C. In pursuance of the said objective, Swachha Andhra Corporation(SAC), a company established by the Government of Andhra Pradesh under the Companies Act 2013, the State nodal agency for the purpose of SBM. The listed ULBs have authorised, through appropriate Resolutions, to undertake bid process for selection of the bidders to implement the Project. While payment of the Processing Fee shall be the obligation of the SAC, the ULB shall be responsible for providing the site, monitoring and supervision of the implementation of the Project by the Selected Bidder as provided herein. Accordingly, SAC has invited Request for Proposal (RFP), containing the terms and conditions for selection of the bidders and implementation of the project, from the competent and eligible parties having adequate technical experience and financial capabilities. After due evaluation of the proposals (bids) received, the Third Party has been selected for award of the Project, and the Letter of Award (LOA) No. \_\_\_\_\_ dated \_\_\_\_\_ was issued containing the terms and conditions for entering into this Agreement for implementation of the Project. The Third Party having consented to the LOA, requested the First Party to enter into the Agreement. Simultaneously, the First and Third Parties entered into a Lease Agreement respecting the Land proposed to be leased for the Project. The Lease Agreement and this Agreement are coterminous.

D. Now therefore, in consideration of the foregoing and respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

# 1. DEFINITIONS AND INTERPRETATION

## A. Definitions

The following terms/expressions beginning with capital letter, unless the content otherwise requires, shall have the meaning as defined hereunder. The terms/expressions not defined hereunder shall have the meaning as explained/described under the relevant provisions in this Agreement.

"**Act**" means the Environment (Protection) Act, 1986 (29 of 1986) as amended up-to-date;

"**Agreement**" means this Agreement including its Appendices and Annexures.

"**Aerobic composting**" means a controlled process involving microbial decomposition of organic matter in the presence of oxygen;

"**Anaerobic digestion**" means a controlled process involving microbial degradation of organic matter in absence of oxygen;

"**Appointed Day**" means the date of signing of this Agreement by the Parties or the date of handing over the Project Site to the Concessionaire, whichever is later;

"**Authority**" shall mean individual Urban Local Body ("ULB");

"**Authorization**" means the permission given by the Andhra Pradesh Pollution Control Board to the Operator of a solid waste management facility for processing and disposal of solid waste;

"**Bidder**" means the Selected Bidder and the Third Party hereto;

"**Bio-degradable waste**" means any organic material that can be degraded by micro-organisms into simpler stable compounds;

"**Bio-methanation**" means a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich gas;

"**City**" means the municipal area under the ULB jurisdiction;

"**Concessionaire**" shall mean the Selected Bidder which enters into this Concession Agreement in pursuance of the LOA issued to and accepted by it and the Second Party hereto;

"**Concession Agreement**" shall mean this agreement entered between the Authority and the Concessionaire pursuant to the LOA;

"**Concession Period**" is as defined herein

"**Combustible waste**" means non-biodegradable, non-recyclable, non-reusable, non-hazardous solid waste having minimum calorific value exceeding 1500 Kcal/kg and excluding chlorinated materials like plastic, wood pulp, etc;

"**Composting**" means a controlled process involving microbial degradation of organic matter;

"**Consortium**" shall mean the entities having submitted the RFP

"**Damages**" shall mean the damages payable by either Party to the other as set forth herein;

"**Disposal**" means final and safe disposal of post processed residual solid waste and inert street sweepings and silt from surface drains on land as specified in Schedule I of the SWM Rules, 2016 and also as per the MSWM Manual 2016 to prevent contamination of ground water, surface water, ambient air and attraction of animals or birds;

"**Document**" or "Documentation" means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form in relation to this Project;

"**Domestic hazardous waste**" means discarded paint drums, pesticide cans, CFL Bulbs, tube lights, expired medicines, broken mercury thermometers, used batteries, used needles and syringes and contaminated gauges, etc., generated at the household level;

"**Facility**" means MSW Waste Management Facility wherein the solid waste management processes namely segregation, recovery, storage, collection, recycling, processing, treatment or safe disposal are carried out;

"**Fine**" means penalty imposed on waste generators or operators of waste processing and disposal facilities for non-compliance of the directions contained in these rules;

"**Form**" means forms appended to the Solid Waste Management Rules, 2016

"**Handling**" includes all activities relating to sorting, segregation, material recovery, collection, secondary storage, shredding, baling crushing, loading, unloading, transportation, processing and disposal of solid waste;

"**Inerts**" means wastes which are not-biodegradable, recyclable or combustible street sweeping or dust and silt removed from surface drains;

"**Leachate**" means the liquid that seeps through solid waste or other medium and has extracts of dissolved or suspended material from it;

"**Letter of Award (LOA)**" means the letter issued by the SAC to the Selected Bidder containing the terms and conditions in conformity with the RFP for entering into this Agreement;

**"Letter of Intent" or "LoI"** means the letter issued by the SAC to the shortlisted Bidder inviting their acceptance for undertaking and executing the Project in conformity with the terms and conditions as set forth in the Agreement;

**"Liquidated Damages"** shall mean loss/losses caused or sustained by any party, due to non-performance of any of its obligations by the other parties or performance or carrying out of any act expressly or impliedly prohibited by the Authority.

**"Local Authority"** shall mean "ULB".

**"Municipal Authority"** shall mean Urban Local Body ("ULB").

**"Non-biodegradable waste"** means any waste that cannot be degraded by micro-organisms into simpler stable compounds;

**"Operation & Maintenance"** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of the Agreement;

**"Operation & Maintenance Period"** means the period commencing from the date of commencement of the operation of the process and ending on the last day of the Concession Period unless terminated earlier;

**"Operator of a Facility"** means primarily the Concessionaire or his authorized agency to undertake all or any operations with the prior approval of the Authority at its discretion. In such case the concessionaire shall continue to be responsible to discharge his obligations as per the Agreement

**"Parties/Party"** means the parties to the Agreement collectively and "Party" shall mean any of the parties to the Agreement individually;

**"Performance Security"** means the guarantee submitted by the Concessionaire for due performance of its obligations by the Concessionaire in accordance with the Agreement.

**"Project"** means all the activities envisaged to be carried out by the Concessionaire in accordance with the Agreement;

**"Processing"** means any scientific processes by which segregated solid waste is handled for the purpose of reuse, recycling or transformation into new products.

**"Request for Proposal (RFP)"** means invitation of bids setting forth technical and commercial terms and conditions, of the bid and includes this document, the Concession Agreement and all the Annexure and appendices attached to RFP; and modifications made thereto and issued by SAC

**"Recycling"** means the process of transforming segregated non-biodegradable solid waste into new material or product or as raw material for producing new products which may or may not be similar to the original products;

**“Residual solid waste”** means and includes the waste and rejects from the solid waste processing facilities which are not suitable for recycling or further processing;

**“Sanitary land filling”** means the final and safe disposal of residual solid waste and inert wastes on land in a facility designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, greenhouse gas emissions, persistent organic pollutants slope instability and erosion;

**"Segregation"** means sorting and separate storage of various components of solid waste namely biodegradable wastes including agriculture and dairy waste, non-biodegradable wastes including recyclable waste, non-recyclable combustible waste, sanitary waste and non-recyclable inert waste, domestic hazardous wastes, and construction and demolition wastes;

**"Selected Bidder"** shall mean the Bidder to whom the LOA has been issued and the Third Party hereto.

**"Service provider"** means the public agencies who provide services like water, sewerage, electricity, telephone, roads, drainage etc.;

**"Solid waste"** means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste, and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities and other entities mentioned in Rule 2 of the SWM Rules, 2016;

**"Sorting"** means separating various components and categories of recyclables such as paper, plastic, cardboards, metal glass, etc. from mixed waste as may be appropriate to facilitate recycling;

**"Specifications and Standards"** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project and any modifications thereof, or additions thereto expressly approved by the Authority;

**"SPV"**(in case of Consortium,) means an exclusive company to be incorporated by Selected Bidder under the provisions of the Companies Act 2013, pursuant to issuance of the LOA, for implementation of the Project as per the Concession Agreement and the Third Party herein.

**"Storage"** means the temporary containment of solid waste after collection at secondary waste depots or any material recovery facilities or bins for onward transportation of the waste to the process or disposal facility; storage would also mean storage space for compost;

**"Taxes"** means any Indian Taxes including Service Tax, Excise duties, Customs duties, Value added tax, Sales tax, Local taxes, Cess and any impost or Surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and

forming part of the Project charged, levied or imposed by any Government Instrumentality, or Municipal Authority but excluding any interest, penalties and other sums in relation thereto imposed on any account what so ever and includes any such duties and impositions in case of imports for setting up and operation of facility;

**"Termination"** means early termination of the Agreement in accordance with the Agreement but shall not, unless the context otherwise requires, include the expiry of the Concession Agreement due to efflux of time in the normal course.

**"Transportation"** means conveyance of solid waste either treated, partly treated or untreated from a location to another location in an environmentally sound manner through specifically designed and covered transport system so as to prevent the foul odour, littering and unsightly conditions;

**"Treatment"** means the method, technique, or process designed to modify, chemical or biological characteristics or composition of any wastes so as to reduce its volume and potential to cause harm;

**"Waste generator"** means and includes anybody that generate solid waste under SWM Rules 2016 and Municipal Rules

## **B. Interpretation**

In the Agreement unless the context otherwise requires:

- i. The singular of any defined term includes the plural and vice versa, and any word or expression defined in the singular has the corresponding meaning used in the plural and vice versa;
- ii. A reference to any gender includes the other gender;
- iii. A reference to any agreement is a reference to that agreement and all annexes, attachments, exhibits, schedules, appendices and the like incorporated therein, as the same may be amended, modified, supplemented, waived, varied, added to, substituted, replaced, renewed or extended, from time to time, in accordance with the terms thereof;
- iv. The terms "include" and "including" shall be deemed to be followed by the words "without limitation", whether or not so followed;
- v. A reference to a "writing" or "written" includes printing, typing, lithography, scanned and other means of reproducing words in a visible form;
- vi. Any date or period set forth in the Agreement shall be such date or period as may be extended pursuant to the terms of this Agreement;
- vii. The terms "hereof", "herein", "hereto", "hereunder" or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Article,
- viii. In case of any inconsistency between the terms mentioned in the Agreement and the literary term, the meaning best construed in furtherance of the objectives of this Agreement shall

prevail.

- ix. Where there is a discrepancy between amount in figures and in words, the latter shall prevail.
- x. Where the context otherwise requires MC includes SAC and vice-versa.

### **C. Precedence**

The documents forming part of this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict between them, be in the order they are set out:

- a) This Agreement
- b) Letter of Award
- c) Letter of Intent
- d) The Bid submitted by the Concessionaire
- e) The RFP (Bid Document)

#### **d) Public Interest**

The Project is in public interest.

#### **e) Essence of time**

Time is the essence of the Agreement in implementation of the Project (construction, operation and maintenance).

## **2. AGREEMENT AND APPENDICES**

The following documents shall be deemed to form and be read and construed as part of this Agreement:

- A. Appendix-1: Scope of Work
- B. Appendix-2: Special Conditions
- C. Appendix-3: Time Frame for Execution of Works
- D. Appendix-4: Other Conditions
- E. Appendix-5: Detailed Project Report
- F. Appendix-6: Terms & Conditions of Consortium and SP
- G. Appendix- 7: Details of the land.

## **3. GRANT OF CONCESSION**

### **3.1. Grant of Concession**

Subject to and in accordance with the terms and conditions set forth in this Agreement the MC hereby grants and authorises the Concessionaire to design, build operate and transfer the Project

and its Facilities and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (“**the Concession**”) and on expiry of the Concession Period to hand over the Project Site to MC with all structures, fixtures in operating condition.

### **3.2 Period of Concession**

The Concession hereby granted for the Project is for a period of 20 (Twenty) years commencing from the Appointed Day. The Concession Period shall comprise of mobilization & construction period that includes the time for securing all the Applicable Permits.

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

### **3.3 Project Site**

As a part of the Concession, for the purpose of implementation of the Project, an extent of Ac. \_\_\_\_ is earmarked in Sy.No. \_\_\_\_ of \_\_\_\_\_ village, \_\_\_\_\_ (M) \_\_\_\_\_, while the ownership and possession of the Site continue to remain with the MC and the Concessionaire is only permitted to use the Project Site for the Project purpose.

A separate Lease Agreement is entered by the First Party and the Third Party leasing the land for the project, containing the terms and conditions that are binding on Concessionaire including the use of the land.

**3.4 Handing over of the Project Site:** Subject to fulfillment of any other conditions precedent, the MC shall handover the Project Site immediately on entering into this Agreement and the Lease Agreement as provided therein. The Concessionaire shall use the site for the purpose for which it is handed over and for no other purpose except with the prior written permission of the MC. The said handing over of the Project Site shall not vest the Concessionaire with any ownership rights or leasehold rights.

### **3.5 Acceptance of Concession**

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform and discharge all of its obligations in accordance with the provisions of the Agreement and the Lease Agreement.

### **3.6 Concessionaire’s Rights over the Site**

(a) Upon the Project Site being handed over, and subject to the provisions of the Agreement, the Concessionaire has the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigations, development, improvements and constructions in the Project Site as may be necessary or appropriate to carry on the activities of the Project in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and as per Standards of Reasonable and Prudent Concessionaire and good industry practices.

b) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Facilities including the Project Site, **save** and except as set forth and permitted under

the Agreements. Assignment of the Project Site including structures in/on/under of the Site for whatever purpose is prohibited. However, the Concessionaire may assign the revenue generated by it for the purpose of raising loans from the Banks or other such lenders.

c) The Concessionaire shall not, without the prior written approval of MC, use the Project Site for any other purpose other than for the purpose of the Project, unless prior written approval is obtained from the MC for any other use.

#### **4. PERFORMANCE GUARANTEE**

a. As per the terms of the RFP, the Concessionaire shall for ensuring due performance of its obligations and discharges its responsibilities in terms of the Agreement during the Concession Period, the Concessionaire has since submitted Performance Security/Guarantee by means of the Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs. \_\_\_\_\_ from \_\_\_\_\_ Bank, \_\_\_\_\_ Branch valid from \_\_\_\_\_ to \_\_\_\_\_ valid for 20 years plus 90 days thereafter i.e. valid from \_\_\_\_\_ to \_\_\_\_\_,

b) Performance Security, inter-alia, is also intended to ensure that the Concessionaire:

i) will implement the SWM activity on a continual basis. The performance of the project shall be considered against a yardstick in the form of quantum of waste handled, processed and treated, power generated/compost generated, and Sanitary landfill(SLF) developed and disposed the inert/s scientifically at the SLF. Failure to achieve 75% of annual waste handled, shall lead to termination of the concession and the Bank Guarantee shall be revoked.

ii) will not dispose of the inerts on any other patch of land other than the location designated for landfilling in the SLF

iii) will not accumulate any excavated material and form heaps for the purpose of clearing the land.

c) If the developer fails to submit the renewed Bank Guarantee (BG) as per above within specified time a penal interest of additional 12% will be levied on the amount of BG to be submitted to ULB and the same shall be paid to ULB within 15 days of notice.

d) If the Concession Agreement is Terminated due to any reason other than Concessionaire's Default, the Performance Security shall, subject to ULB, GoAP's right to receive amounts, if any, due from Concessionaire under the Concession Agreement, be duly discharged and released to the Concessionaire.

d) In the event of the encashment of the Performance Security by ULB pursuant to Encashment Notice issued, the Concessionaire shall within 10 (ten) days of the Encashment Notice, furnish fresh Performance Security to the ULB, failing which the ULB shall be entitled to Terminate the Concession Agreement in accordance with the provisions mentioned herein and in the Concession Agreement.

- e) The ULB shall be entitled to encash the Performance Security fully or partially as the case may be after giving notice of 30 (thirty) days if any Event of Default not being remedied by the Concessionaire despite notice from the ULB.
- f) Whenever any claim against the Concessionaire for payment of sum of money arises out of or under the Concession Agreement, the ULB shall be entitled to recover such sums or any sum then due or which at any time there may become due from the Concessionaire under the Concession Agreement from Performance Security furnished with the ULB.
- g) In case the Performance Security is not sufficient to cover the recoverable amount, the Concessionaire shall pay to the ULB on demand the balance remaining due.
- h) Forfeiture of Performance Security in full or in part may be effected at the discretion of the ULB.
  - i) If the Concessionaire is found guilty of non-performance any of terms and conditions contained in the Concession Agreement in spite of giving notice to do so.
  - ii) If the Concessionaire fails to pay the damages, compensation if any, imposed upon him for breach of performance and compliance of standards as specified in the Concession Agreement.
  - iii) If the Concession Agreement is terminated on account of default of the Concessionaire.
  - iv) If the Concessionaire withdraws/or terminates the Concession Agreement.
  - v) If the Concessionaire conceals material facts or inducing undue influence or indulges in corrupt practices by Bidder, modify the RFP Document by the issuance of an Addendum.

## **5. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by the laws of India. The Court at the place of ULB, shall have sole and exclusive jurisdiction over all matters arising out of or relating to this Agreement.

## **6. 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 authorised 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.

## **7. SURVIVAL**

Termination of this Agreement

- a) shall not relieve the Concessionaire, the MC 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.

## **8. AMENDMENTS AND MODIFICATIONS**

This Agreement and its preamble and Appendices, LOA, Bid Documents 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 the Parties hereto and evidenced in writing.

## **9. 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, recognised international courier, mail, telegram or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the MC:

\_\_\_\_\_  
\_\_\_\_\_

If to the SAC:

\_\_\_\_\_  
\_\_\_\_\_

If to the Concessionaire:

\_\_\_\_\_

Or such address, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- i. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- ii. in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number and copy sent by mail.

## **10. 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.

## **11. 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 and Telugu.

## **12. 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.

## **13. COTERMINATION OF AGREEMENTS**

This Concession Agreement and the Lease Agreement are coterminous.

## **14. COUNTERPARTS**

This Agreement may be executed in three counterparts on the non-judicial stamp paper of appropriate value, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement and shall be registered if required under the Indian Registration Act at the cost and expense of the Concessionaire.

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

### **Witnesses for Parties**

Signature  
Name  
Address  
Mob.No.

### **(1) For and on behalf of the First Party**

Signature:  
Name:  
Designation:  
Common Seal:

Signature  
Name  
Address  
Mob.No.

**(2) For and on behalf of the Second Party**

Signature:  
Name:  
Designation:  
Common Seal:

Signature  
Name  
Address  
Mob.No.

**(3) For and on behalf of the Third Party**

Signature:  
Name:  
Designation:  
Common Seal:

**SCOPE OF WORK  
(As per Section 2 of RFP)**

**1. Sorting & Segregation**

- a) The concessionaire after agreement should prepare and submit a Municipal Solid Waste Management Plan (MSWM), as per their business proposal and technical plan with further inputs, if any from the ULB. The Bidder can also refer and seek inputs from the DPRs available for individual ULBs as required. The plan should adhere to SWM Rules, 2016 and MSWM Manual 2016.
- b) The ULB shall handover \_\_\_\_\_ tonnes of segregated organic waste as per SWM Rules, 2016 and MSWM Manual 2016 at the doorstep of the MSW Management Facility developed by the concessionaire apart from dry waste given to the facility separately. The concessionaire shall set up sorting system flexible enough and convenient for segregation of MSW handed over by the respective ULB at the door of the MSW Management Facility. The concessionaire may adopt a semi-mechanized sorting process.
- c) The responsibility of the concessionaire includes providing adequate number of sorting machines for achieving its daily target of handling waste received everyday.
- d) The concessionaire should plan to optimize the separation of recyclables viz. glass, metal etc. as well other components for processing of received waste.
- e) The concessionaire will be required to provide at site storage facility for various wastes processed.
- f) The concessionaire shall handover any domestic hazardous waste, biomedical, C & D waste if found during sorting / segregation. He shall handover the waste to nearest biomedical waste management facility. The Sanitary Inspector of the ULB should make necessary arrangements to transport the same to the concerned.
- g) The concessionaire shall take necessary steps and processes that would bring in control of odour and leachate in the region.

**2. Technology for Waste Management**

The concessionaire has proposed and shall be setting up the MSW Composting plant. The scope of activities includes:

**Recovery of City-Compost**

- a) The technology option would be to go for generation of compost from aerobic biodegradation of the solid waste at the facility.

b) The concessionaire should take precaution of minimizing flies, rodents and bird menace and fire hazards.

c) The concessionaire should also optimize revenues from other products and recyclables by selling to appropriate vendors. The pre-process and post composting process rejects shall be handled as per SWM Rules, 2016. The concessionaire should explore the possibility of minimizing the quantum of inerts with alternatives. The disposal of the inerts /rejects can be carried out if any balance rejects are not sent for any other applications/uses and accordingly disposed by landfilling in SLF.

d) The end product compost shall meet the standards prescribed under Fertilizer Control (FCO) Order 2009 notified from time to time. In-order to ensure safe application of compost, the specifications for compost quality as per FCO has been delineated in the SWM Rules, 2016, as the concentration limits exceeding the same, are not to be used for food crops.

### **3 Site Development & Facilities**

a) The ULB shall handover the site on lease basis to the concessionaire to implement the SWM facility. The land shall be given on lease basis at Re.1 per sq. M. Per annum.

In case of land parcels required for decentralised projects, they will be provided subject to availability. However, in case of non-availability for whatever reasons, the bidder should go with single parcel land as provided by ULB at the same rate of lease. The land available is given in Appendix-G.

b) The concessionaire should carry out necessary geotechnical surveys for considering the hydrological and flooding potential at sites, in order to mitigate any affect on the land-filling and leachate control

c) The site shall be fenced or hedged and provided with proper gate to monitor incoming vehicles or other modes of transportation.

d) The Concessionaire will provide weighbridge to measure quantity of various components of waste handled at the facility in terms of sorting and segregated materials, compost material, and inerts going out of the site.

e) The concessionaire shall also provide fire protection measures and safety equipment at the facility as well to the workforce.

f) The concessionaire shall provide utilities such as drinking water facilities and sanitary facilities (preferably washing/bathing facilities for workers) and lighting arrangements for easy operations during night hours shall be provided and safety provisions including health inspections of workers at site shall be carried out. Insurance also to be provided to the workers

Also provide proper uniforms and ID cards to the workforce.

g) In order to prevent environmental impacts of the activities the concessionaire as per the SWM Rules 2016 adopt guidelines for development of sanitary land fill as per Schedule-I of the Rules.

h) Concessionaire shall set a soil and ground water baseline situation.

i) Concessionaire shall monitor ground water quality, work zone air quality and ambient air quality monitoring within the site from authorized laboratories/agencies and submit the report on monthly basis or as required to comply to the conditions set by the Andhra Pradesh Pollution Control Board/Central Pollution Control Board from time to time.

j) The concessionaire shall monitor and measure noise levels at the site and interface of the facility with plant boundary and surrounding area, or as required to comply to the conditions set by the Andhra Pradesh Pollution Control Board/Central Pollution Control Board from time to time.

i) The ULB will provide fencing, approach road, water and power connection to the site. The charges for power supply and water supply shall be paid by the concessionaire. Any maintenance of such infrastructure of water and power supply external to the site shall be taken care by the ULB

#### **4 Construct and develop scientific landfill**

a) SLF is the responsibility of the Bidder. Land for SLF will be provided to the Bidder at free of cost.

The concessionaire shall identify suitable patch in consultation with ULB within the land parcel suitable for landfilling.

Developer should also develop Green Belt at the Facility.

b) The concessionaire should plan for initiating the land filling activity within five months from the date of handing over site by ULB or from the date of getting the mandatory permissions from the relevant authorities.

c) The waste sent for SLF shall be compacted using heavy compactors to achieve high density of wastes.

d) After carrying out compaction of inerts, proper earth cover and vegetative cover made.

e) In order to prevent any pollution or contamination due to rains, storm, water drain shall be designed and constructed in such a way that the surface run-off water is diverted from the site and leachates from solid wastes locations do not get mixed in water impounded areas/ water-pools.

#### **5 Operation & Maintenance of infrastructure and equipment**

The concessionaire shall be responsible for construction, operation of site, maintenance of transportation trucks, mechanical lifting arrangements to transfer the bio products into trucks, parking facilities, weighbridge, CCTV, hook loaders, on DBOT basis. The concessionaire should maintain the facility and machinery in order to operate for the concession period.

## **6 Awareness & Extension activities**

- a) The concessionaire shall undertake a mass awareness/ sensitization programme, in surrounding residential/ villages area, so as to ensuring the local people are aware and taken into confidence of the SWM activities.
- b) The concessionaire shall create a sustained system of information, education and communication for SWM through collaborations with expert institutions and civil societies and also disseminate through their own website.
- c) The concessionaire shall device appropriate measures in consultation with expert institutions for SWM and for sale of recycle products in the best possible manner.
- d) The concessionaire can keep a track of the progress of its activities and establish a database and update on a regular basis in-order to optimize its activities
- f) The concessionaire can coordinate with the ULB for successful engagement of this concession.
- g) The concessionaire will involve community participation and discuss with the citizen community in order to ensure a free flow of information.

## **7 Completion & Exit**

At the end of the Concession Period, both the moveable and immovable assets at the MSW Management Facility shall be transferred to the ULB in suitable operating condition without claiming any compensation of whatever in nature.



**SPECIAL CONDITIONS**  
**(As per Section 6 of RFP)**

**1. Increase in the scope of work**

a) Looking to the trend of increase in the City population, the City population would increase by 35-45% within 10 years. The Concessionaire should therefore plan to handle 5% additional Waste each year and also plan to augment the SWM activity during the Concession Period to meet future needs till 2037 on the prevailing terms and conditions applicable during the Concession Period even if it is beyond 5 %.

**2. Payments & Quantification**

- a) The concessionaire will be paid the tipping fee of Rs. \_\_\_\_\_ Per tonne on the quantity of sale of City Compost (Bio Manure).
- b) The concessionaire, compost producer shall have 1<sup>st</sup> priority to sell city compost (organic manure) in open market at reasonable price to farmer. Under such condition, the GoI marketing subsidy Rs. 1500/- will be directly arranged to the bidder as per guidelines and procedures set.
- c) The rates are levelised, until any further orders by government.
- d) The tipping fees have to be released by the SAC on behalf of the ULB within fifteenth day of every month based on the certified quantity of compost sold by the concessionaire. If the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the SAC/ULB responsible for payment thereof to the concessionaire entitled to receive the same. Unless otherwise provided here in such sum shall until payment thereof, unless specifically provided under the relevant heads, carry interest at prevailing lending base rate for medium term loans of State Bank of India per annum plus 5% from the Due Date for payment thereof until the same is paid to or otherwise realized by the concessionaire entitled to the same. Article 13 on 'Interests' should also be applicable in such a case.
- e) The quantity of City compost that is produced and sold at the site will be monitored with the help of online data transfer from weighbridge office and these have to be certified by the ULB.
- f) The compost being sold will be checked for FCO quality after certification of the batch/consignment of produced compost the concessionaire proposes to sell, the quantity will be passed outside the premises
- g) The weight of compost would be checked at the weighbridge and the movement of empty truck from in-gate and compost loaded out of the out-gate would be crosschecked at the

weighbridge for the quantity of compost being sold. The same would be monitored and receipted with CCTV camera, identification of personnel and automated challan facilities.

- h) Service Tax if payable under the law shall be borne by the concessionaire.
- i) The SAC and the concessionaire will deploy an Independent Agency, who will be assigned the group of ULBs (a cluster) or more than one such cluster of ULBs. The IE will report to the SAC the progress of the SWM facility and the SLF as per the Concession Agreement as well as the aspects such as adherence to FCO quality, quantity of production, and compliance to all rules applicable. The payment to Independent Agency shall be shared equally by the SAC and the concessionaire. The fee will be paid initially by the SAC and 50 % of the share of the concessionaire shall be reimbursed to the SAC on or before the 10<sup>th</sup> of each month failing which the amount shall be deducted from out of the tipping fee payable to the concessionaire.
- j) The tipping fee will be directly paid to the operator by the Swachha Andhra Corporation
- k) In case the Concessionaire decides to stop the work during the continuance of Concession period or withdraws from the work without 60 days prior notice or if services are terminated by the ULB on account of Deficiency in Service, the performance security amount shall be forfeited and the Concessionaire shall have no claim on the same.
- l) The Commissioner reserves the right to carry out inspection, as and when required without intimating the Concessionaire, of the various locations where work is in progress. Any shortcoming found during inspection will be intimated to the Concessionaire or his supervisor orally or in written which shall have to be attended immediately by the Concessionaire or his supervisor. The penalties imposed on the Concessionaire from time to time, shall be recovered from the Bill or adjusted against the security deposit. The corporation reserves the right to treat continuous shortcomings as “Deficiency of Service” and terminate the Contract after giving two months’ notice.
- m) In case of termination of contract by ULB due to any reason, in view of ensuring continuous services to its citizens, the Corporation will in such an eventuality, after termination notice is issued & subsequent formalities are completed, the Concessionaire will still forego his security deposit if the termination arose due to Concessionaire’s failure to perform operations satisfactorily.
- n) The Concessionaire shall ensure timely payments to his workforce and meet all the contractual commitments in terms of payments, insurance, safety of its workforce. All statutory payments to the workforce shall be done immediately upon becoming due.

### **3. Use of Proven technology**

- a) The concessionaire should use proven technologies. The Concessionaire shall clearly state the technology he will use for the technology option he proposes and give a brief synopsis of the technology and its operation and maintenance. The technology offered shall be proven and in use within or outside the Country under similar situations and the Concessionaire shall obtain

necessary clearance from the State and/or Central Pollution Control Board as required at his own cost and efforts.

b) The Concessionaire shall have the liberty to upscale the technology during the Concession Period with the prior approval of the ULB and clearance from State Pollution Control Board for deriving larger benefits without causing any harm to the neighborhood, health and environment of the City and without putting any additional burden on the ULB.

c) The Concessionaire shall have to observe all the directions contained in the SWM Rules, 2016 as well as State Laws and Rules as amended from time to time. In the event of any major change in the legal frame work in the Country or the State, necessitating a major change in the SWM created by the Concessionaire following the present law and the Rules, he shall, on being asked by the ULB, comply with the new laws and the Rules at his cost and may ask for reasonable compensation which shall be determined by a technical committee that may be appointed by Government/ Authority.

d) The Concessionaire shall use vehicles; equipment and machinery which meet the standard emission norms prescribed by the competent Authority from time to time.

#### **4. Recording the Wastes handled**

The Concessionaire shall maintain weighbridge (with CCTV Camera and image capture) at site and keep perfect record of the weight of the waste handled and image of the vehicle carrying the segregated/ recoverable components as well as organic manure/compost. The Concessionaire shall also provide a space for the ULB employee as a representative to sit at these sites and monitor the services provided and records maintained by the Concessionaire.

#### **5. Monitoring Mechanism by the ULB**

The Concessionaire is to co-operate in the monitoring mechanism by the ULB as he is expected to perform several tasks shown in the RFP. For ensuring fairness to both sides a monitoring mechanism is devised as under to keep a day to day record and ensure that Concessionaire is performing his duties as per the Concession Agreement.

The Concessionaire shall proposed Internal Performance Monitoring mechanism for effectiveness in project implementation covering all areas of service delivery including efficient redressal of complaints and monitoring the performance of workforce etc.,

The following Monitoring Mechanism is therefore be adopted by the ULB besides the internal monitoring to be done by the Concessionaire. He shall extend full support to the ULB in this regard.

#### **Software and Hardware Infrastructure Facility.**

The Concessionaire shall establish the hardware infrastructure for the online monitoring system including dedicated internet connection. The software for online system will be a common web-based platform provided by SAC. The details and specifications for hardware requirement will be provided by SAC.

## **6. Monitoring by Independent Agency/Sanitary Supervisors/Inspectors**

The SAC and Concessionaire would appoint an independent Agency as a third party to monitor the progress of the project. Also, during the entire project, the ULB Sanitary Supervisors / Inspector will deliver following tasks.

### a) MSW management at site

The corporation will appoint staff to oversee the activity to verify whether the work is being done as expected. He should report each day the areas visited and his observations in the prescribed Performa and submit to his next superior officer.

### b) Verification Machinery & Manpower

The Independent Agency/Sanitary Supervisor/ Inspector shall verify whether the required machinery and manpower are deployed by the concessionaire or there is a shortfall due to any reason.

### c) Recording of weight of Waste Transported

i) Authority/ Municipal Commissioner may designate personnel on a monthly rotation basis to monitor and record the Wastes at the weigh bridge constructed by the Concessionaire. The weigh bridge in-charge shall issue receipt in triplicate in the Performa designed by ULB. One copy shall be retained by weigh bridge in-charge, and other two copies shall be given to the driver of the vehicle with a direction to hand over one copy to the person in charge of the site and keep third copy duly signed by supervisor at site with him to be given to the Concessionaire.

ii) Weighment figures will be compiled on a daily basis both by weigh bridge in-charge and person in-charge separately and reported to Health Officer/ Engineer in-charge as may be designated by the ULB on day to day basis in the prescribed Performa.

### d) Monthly review Meetings

i) Monthly review meeting will be conducted by the Commissioner/Addl. or Deputy Commissioner in-charge of SBM with the Concessionaire or his authorized representative and concerned sanitation officials. He will review the complaints received and their timely disposal and deficiencies noticed during field visits during the week and take stock of situation and give suitable directions for improving performance of the Concessionaire, if found deficient. Minutes of meeting shall be recorded and shared with the Concessionaire or his representative and his acknowledgement shall be obtained. Penalty due, if any, shall be communicated to the Concessionaire.

ii) The ULB shall monitor the performance of the Concessionaire in terms of the Concession Agreement and ensure the proper records are maintained for the work done and being done on a day to day basis so that the Concessionaire's performance is objectively assessed for payment and penalties. Monitoring of weight of the Waste transferred through Private Weigh Bridge.

iii) The Concessionaire is expected to construct weigh bridges at the site which will take some time. The Municipal Commissioner may therefore in the mean time authorize some private reliable computerized weigh bridge operator to weigh and record the weight in the appropriate Performa in presence of Authority's and Concessionaire's representative.

The record of such weigh bridge may be taken into account for payment to the Concessionaire till such time Concessionaire constructs his own way bridges. ULB Representative /officer shall keep vigil to ensure that Weighment records are not tempered with. This arrangement of weighing at a private weigh bridge will be for a maximum of three months. In case weigh bridge is not installed within three months of consent to establish, zero fee shall be paid to concessionaire towards collection and transportation.

## **7. Penalty**

a) Based on the report of the Independent Agency, about any non-execution of the activity for a continuous period of seven days (excluding monsoon period) after due review by ULB, either a penalty may be imposed for the period of delay or may be permitted to rectify the default by completing the shortfall of any quarter in an year in next quarter, noncompliance of the same shall attract penalties as may be imposed by ULB.

b) The concessionaire shall initiate process of establishing land filling facility within 5 months from the date of handing over of the possession of the site. The Inerts shall be handled as per SWM Rules 2016. In case of failure to perform as above, the performance BG will be revoked to the extent of 10%. And the same shall be replenished by the concessionaire in-order to continue the work. Any further delay in non-functioning of the activity would be entire responsibility of the Concessionaire.

c) ULB shall be liable for compensating the Concessionaire for the losses incurred due to non-delivery of segregated organic waste to the plant.

**TIME FRAME FOR EXECUTION OF WORK**  
**(As per Section 5 of RFP)**

- a) The Concessionaire shall adhere to the time frame to start and complete the work in phases as under:
- i) Within one month of getting Consent to Establish, initiate preparatory works
  - ii) Within six months of getting Consent to Establish (from State Pollution Control Board) for setting MSW facility, the Concessionaire shall mobilize man power, financial resources, vehicles, equipment for the execution of the project in terms of the Concession Agreement
- b) The Concessionaire shall carry out various activities simultaneously to ensure completion of the task assigned on time.
- c) In terms of the LOA (Within 7 days of the issue of LoA, **(NOTE -the Selected Bidder/Consortium shall submit to the SAC & ULB) its program in keeping with time frame prescribed to undertake the works in the form of a Pert Chart for his review and take his approval.**) the approved pert chart shall be diligently and strictly followed with a view to complete the works as per work schedule. The progress & planning of works shall be reviewed from time to time and he may modify the same depending upon the exigencies of the work and stage of the works.
- d) Extension of time may be granted by the Authority on genuine grounds only if delay is for the reasons beyond the control of the Concessionaire.

**OTHER CONDITIONS**

**1. OBTAINING CLEARANCES(S.7.1(a) RFP)**

a) Concessionaire shall obtain all necessary permissions and clearances from regulatory bodies required under national/state Laws, Rules, and Regulations for the work. All the expenses on getting such clearances and permissions shall be borne by the Concessionaire. The SAC and ULB shall give required recommendatory letter to get NOCs/Clearances.

b) All required Permits and Clearance shall be obtained as per Applicable Law which includes but not limited to The Environment Protection Act 1986, The Air (Prevention and Control) Pollution 1981 and Water (Prevention and Control) Pollution 1974 as amended from time to time.

c) The projects relating to SWM which would also include scientific disposal of inerts and rejects through scientific land-filling as per SWM Rules 2016 and will require a number of clearances including but not limited to the following:

1. Consent to Establish and Consent to Operate from Andhra Pradesh Pollution Control Board.
2. Authorization from Andhra Pradesh Pollution Control Board for capping.
3. Clearance from Airport Authority of India
4. Clearance from Development Authority

It may be noted that the Airport Authority of India Clearance is required for projects within a radius of 20 KMs.

d) The Concessionaire shall be solely responsible in taking various statutory and non-statutory clearances for the Project from all concerned authorities. although the SAC & ULB shall reasonably assist the selected bidder in procuring the clearances required for the Project.

**2. PRESENCE OF CONCESSIONAIRE OR HIS REPRESENTATIVE AT THE SITE  
(S.7.1(c) RFP)**

On getting the work order, the Concessionaire shall either himself remain available at site of work or arrange for the presence of his accredited representative (legally authorized in writing) at the site of work to receive instructions from the ULB or his authorized representative and ensure prompt compliance of the instructions given.

**3.COMPOST SALE (CL. 1.2.2)**

a) Bidder shall have 1<sup>st</sup> priority to sell city compost (organic manure) in open market at reasonable price to farmer. Under such condition, the GoI marketing subsidy Rs. 1500/- will be directly arranged to the bidder. Alternately, if the bidder chooses to sell the compost to NFCL (a nodal agency), NFCL will buy at the rate of Rs. 2500/tonne.

b) The rates are levelised, until any further orders by government. However, the bidders are free to sale at rate which they can fetch by selling in open market.

#### **4. FRAUD, CONFLICT OF INTEREST**

In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the Concession thereby granted by the SAC, that one or more of the pre-qualification conditions have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the ULB to the Selected Bidder or the Concessionaire, as the case may be, without the ULB being liable in any manner whatsoever to the Selected Bidder or Concessionaire. In such an event, the ULB shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the ULB under the Bidding Documents and/or the Concession Agreement, or otherwise.

##### **a) Conflict of Interest Clause**

A Bidder shall not have a conflict of interest that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified.

A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest with another Bidder; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 26% (twenty six per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder is less than 26% (twenty six per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund, non- banking financial institution licensed by the Reserve Bank of India, or a public financial institution referred to in section 4 A of the Companies Act. Indirect shareholding held through one or more intermediate persons shall be computed as follows: (1) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (2) subject always to sub-clause (1) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (2) if the shareholding of such person in the intermediary is less than 51% (fifty one per cent) of the subscribed and paid up equity shareholding of such intermediary; or

A constituent of such Bidder is also a constituent of another Bidder; or

Such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

Such Bidder has the same legal representative for purposes of this Application as any other Bidder; or

Such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Application of either or each other;

Such Bidder, has participated as a consultant to the ULB in the preparation of any documents, design or technical specifications of the Project.

For purposes of this RFP, "Associate" means, in relation to the Bidder/Consortium

Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

For the purposes of this RFP, "Member" means a member of the consortium

**b). Fraud and Corrupt Practices(S.8 of RFP)**

i) The Bidders and their officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the ULB may reject a Bid, withdraw the LOA, or Terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidders or the Selected Bidder or the Concessionaire, as the case may be, if it determines that the Bidders or the Selected Bidder or the Concessionaire, as the case may be, has directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as mentioned in this RFP in the Bidding Process. In such an event, the ULB shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the ULB under the Bidding Documents and/ or the Concession Agreement, or otherwise.

ii) Without prejudice to the rights and remedies which the ULB may have under the LOA or the Concession Agreement, or otherwise if Bidder(s) or Selected Bidder or Concessionaire, as the case may be, is found by the ULB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as mentioned in this RFP during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder(s) or Selected Bidder or Concessionaire, as the case may be, shall not be eligible to participate in any tender or RFP issued by the ULB during a period of 2 (two) years from the date such Bidder or Selected Bidder or Concessionaire, as the case may be, is found by the ULB to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

iii) For the purposes of this Section, the following terms shall have the meaning as assigned to them:

A) "Corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the ULB/GoAP/Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concessionaire Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the ULB, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process; or(ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the ULB in relation to any matter concerning the Project in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of signing of the Concession Agreement;

B) "Fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

C) "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;

D) "Undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the ULB with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

E) "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## **5. INSURANCE**

The Concessionaire shall at its cost and expense, purchase and maintain all insurances during the construction and operation period as required under law for the time being in force.

## **6. INDEMNITY**

### **1. Concessionaire's Indemnification**

Notwithstanding anything contained in the Agreement:

a) The Concessionaire agrees to indemnify and hold harmless the SAC and MC and its officers and employees (each a "SAC and MC Indemnified Party") promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs and expenses (collectively, "Losses") to which Indemnified Party/ies may become subject, insofar as such losses directly arise out of, in any way relate to, or result from:

- i. any misstatement or any breach of any representation or warranty made by Concessionaire or
- ii. the failure by Concessionaire to fulfil any agreement, covenant or condition contained in this Agreement, including without limitation the breach of any terms and conditions of this Agreement by any employee or agent of the Concessionaire or
- iii. any claim or proceeding by any third party against MC arising out of any act, deed or omission by the Concessionaire.

For the avoidance of doubt, indemnification of losses pursuant to this article shall be made in an amount or amounts sufficient to restore the Indemnified Party/ies to the financial position it would have been in had the Losses not occurred.

b) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

### **2.MC's Indemnification**

In addition to and not in derogation of any other rights and entitlement of the Concessionaire provided in the Agreement, --

a) MC agrees to indemnify and hold harmless the Concessionaire, (Concessionaire's Indemnified Party) promptly upon demand at any time and from time to time, from and against any and all losses, claims, damages, liabilities, costs (and expenses (collectively, "Losses") to which Concessionaire may become subject, insofar as such Losses directly arise out of, in any way relate to, or result from:

- i) any misstatement or any breach of any representation or warranty made by MC. or
- ii) any claim or proceeding by any third party against the Concessionaire arising out of any act, deed or omission by the MC.

- b) For the avoidance of doubt, indemnification of Losses pursuant to this article shall be made in an amount or amounts sufficient to restore each Concessionaire Indemnified Party to the financial position it would have been in had the Losses not occurred.
- c) Any payment made under this Agreement pursuant to an indemnity or claim for breach of any provision of this Agreement shall be net of applicable Taxes.

## **7. FORCE MAJEURE**

### **7.1 F.M. Event**

In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event described hereinafter which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event:

(i) Is beyond the reasonable control of and not arising out of the default or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder,

(ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care,

### **7.2 Non-Political Force Majeure Events**

For the purposes of this Agreement, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i) Acts of God or events beyond the reasonable control of a the Affected Party which could not reasonably have been expected to occur, extreme adverse weather or environmental conditions, lightning, earthquakes, heavy rains, cyclones, tempest, whirlwind, landslides, storms, floods, volcanic eruptions or fire (to the extent originating from a source external to the site or not designed for in construction works);
- ii) Radioactive contamination or ionising radiation;
- iii) fire (to the extent originating from a source external to the site or not designed for in construction works);
- iv) Strikes or boycotts interrupting supplies and services to the Project (other than those involving the Concessionaire or its Employees/Agents or attributable to any act or omission of any of them) for a period exceeding 15 continuous days in a Financial Year, not being an Indirect Political Event set forth in Article 9.3 hereof;
- v) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach

thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the MC; or

- vi) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

### **7.3 Indirect Political Force Majeure Event**

For the purposes of this Agreement, Indirect Political Events shall mean one or more of the following acts or events:

- i) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, blockade, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism;
- ii) Industry wide or state wide or India wide strikes or industrial action for a period exceeding 60 (sixty) continuous days in a Financial Year; or
- iii) Any public agitation for a period exceeding 60 (sixty) continuous days in a Financial Year.

### **7.4 Political Force Majeure Event**

For the purposes of this Agreement, Political Events shall mean one or more of the following acts or events.

- i) Expropriation or compulsory confiscation, nationalisation or requisition of the Project, Project Assets, or rights of the Concessionaire under law.
- ii) The unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid reasons any consent or approval required by the Concessionaire to perform its obligations under the Concession Agreement by the concerned authorities provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to maintenance or renewal of such consent or permits.
- iii) Any change in law except laws relating to taxation.

### **7.5 Effect of Force Majeure**

#### **a) Before the Appointed Day**

Upon occurrence of any Force Majeure Event before Appointed Day, the following shall apply:

- i. There shall be no Termination of the Agreement.
- ii. The Project Completion date shall be extended by the period of which such Force Majeure event shall subsist during construction period subject Article 9.3 above; and

iii. The parties shall bear their respective costs and losses, if any, arising out of such Force Majeure Event unless otherwise provided in the Agreement.

b) **Effect of Force Majeure after the Appointed Day**

Upon occurrence of any Force Majeure Event after the Appointed Day, the following shall apply:

- i. There shall be no Termination of this Agreement.
- ii. The dates set forth for completion of the construction shall be extended by the period for which such Force Majeure Event shall subsist;

c) **Allocation of costs during the subsistence of Force Majeure**

Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof. Neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto and the insurance proceeds shall be utilised for the purpose by the parties.

**7.6 Termination Notice**

- (a) If the Force Majeure Event subsists for a period of 120 (One hundred twenty) days or more within a continuous period of 365 (three hundred sixty five) days, either of the affected Parties may in its sole discretion terminate this Agreement by giving 60 (Sixty) days Termination Notice in writing to the other Party without being liable to the other Party in any manner whatsoever provided each such Force Majeure event shall be more than seven (7) continuous days for the purpose counting 120 days
- (b) If any Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub Article (a), it shall issue Termination Notice setting out;
  - i. in sufficient detail the underlying Force Majeure Event;
  - ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

**7.7 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 the Project Facilities are handed back to MC by the Concessionaire on the Termination Date free from all encumbrances.

**7.8 Dispute in existence of Force Majeure Event**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution

procedure as hereinafter specified, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

### **7.9 Duty to Report**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- i) the Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material affect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession.
- ii) Any notice pursuant to this Article shall include full particulars of:
  - (a) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 9 with evidence in support thereof;
  - (b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession;
  - (c) The measure which the affected Party is taking, or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (d) Any other information relevant to the Affected Party's Claim.
- iii) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required under this Article and such other information as the other party may reasonably request the Affected Party to provide.

### **7.10 Excuse from performance of obligations**

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

- a) The suspension of performance shall be no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

- c) When the Affected Party is able to resume performance of its obligations under this Concession, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.
- d) Concessionaire shall not be relieved of any obligations or payments due to MC that arose or accrued prior to the Force Majeure Event. Also, the Concessionaire shall continue to pay the lease amount even for the period of subsistence of the FM Event, unless and otherwise such payment is either waived or deferred or otherwise by the MC with or without any conditions.

## **8. CHANGE IN LAW**

### **a) Change in Law - Effect**

In the event of Change in Law causing Material Adverse Effect on the Project or the rights and obligations of the Concessionaire and consequently leading to Material Breach of any of the provisions of the Agreement by the Concessionaire, then only either at the instance of the MC or at the instance of the Concessionaire, the Agreement may be terminated subject to the provisions of the Agreement. Therefore change in law under the normal circumstances shall not be a ground for Termination and for whatever reason shall not include any change in the tax laws or such change in law, has solely an economic impact on the Project.

Provided, prior to such request for termination, the parties shall consult each other in good faith for a period of 180 days to mitigate the material adverse impact of the Change in Law. In case during this period, the operation is halted, then the Agreement period shall be extended by such period subject to provisions of Article 10.2.

b) In the event the Parties are unable to agree to changes to the Agreement to mitigate the impact of the Change in Law during the 180-day period, either party may refer the matter to dispute resolution in which case the Termination Notice shall stand suspended until such matter has been resolved.

However, in case of such termination, the MC shall not be liable to pay any compensation of whatever nature and extent to the Concessionaire or any such change in law will take care of compensation to the affected parties.

c) On such termination and within 7 (seven) days, the Concessionaire shall hand over the Project Site

## **9. RAISING OF LOANS**

**(NOTE; PL. GO THROUGH THE CONTENTS CAREFULLY AND FOR YOU TO VET AS YOU CONSIDER APPROPRIATE)**

1. (a) The Concessionaire shall be entitled to raise loans and/or financial facilities from Lenders for the Project implementation and for this purpose the Concessionaire may, if required

by such Lenders assign all or any part of its Concession rights with the prior approval of the MC and for the said purpose mortgage, charge, hypothecate or otherwise encumber all or any of the other assets of the Concessionaire in or pertaining to the said Project, as and when required. MC shall consent to the assignment or mortgage by the Concessionaire of its License rights, rights and obligations under this Agreement to such of the financial institutions approved or recognized by RBI or other organizations under Indian Law, in connection with the availing of required funds for the construction, operation and maintenance of the Project. While sanctioning the loan or other financial facilities the lender shall ensure itself as an obligation that the loans and financial facilities provided by it are utilized for the purpose of Project and none else.

(b) Loans and mortgages or encumbrances so created by the Concessionaire shall not extend beyond the Concession Period and the liabilities shall be discharged and settled by Concessionaire before expiry or sooner determination of the Termination of the Agreement.

(c) Ownership and Title of the Project Site shall always remain with MC; and

d) There shall be no financial assistance for implementation, operation and maintenance of the Project from the MC.

## 2. Substitution of Concessionaire

(a) Where the Concessionaire has assigned its Concession rights, and interest in the Project to, and in favour of, the Lenders pursuant to and in accordance with the provisions of this Agreement by way of security in respect of financing by the Lenders under the Financing Documents and pursuant to their rights, the Lenders may be entitled to substitute the Concessionaire by a Selectee in the following events and manner specified.

(b) Upon occurrence of a financial default, the Lender may issue a notice to the Concessionaire along with particulars thereof, and send a copy to MC for its information and record. Upon issue of a notice of financial default, the Lenders may, without prejudice to any of their/its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in consultation with MC subject to the following provisions.

(c) Upon occurrence of a Concessionaire Event of Default under this Agreement, MC shall by a notice inform the Lenders of such default.

- i. In the event that the Lender makes a representation to MC within the period specified in the said intimation stating that it intends to substitute the Concessionaire by a Selectee, the Lender shall be entitled to undertake the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Article. In the event that the Lender fails to make such a representation to MC within the period specified, MC shall be entitled to terminate the Agreement in accordance with the provisions of the Agreement.
- ii. To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfill the eligibility criteria that were laid down in the RFP Document for qualifying Bidders during Bidding Process. Provided that the Lenders may represent to MC that all or any of such criteria may be waived in the interest of the Project, and if MC determines that

such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.

- iii. The decision of the Lender and MC in selection of the Selectee shall be final and binding on the Concessionaire. The Concessionaire irrevocably waives any right to challenge the actions of the Lender or MC taken pursuant to this Agreement including the transfer/novation of the Agreement,
- iv. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets comprised in the Project or its shares. It is hereby acknowledged by the Concessionaire that the rights of the Lenders/Lenders' representative and MC are irrevocable and shall not be contested in any proceedings before any court and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain MC or the Lenders/Lenders' representative from effecting or causing the transfer by substitution and endorsement of the Project as requested by Lender. For the avoidance of doubt, the Lenders shall not be entitled to operate and maintain the Project.
- v. In the event that no Selectee acceptable to MC is selected and/ or recommended by the Lender, MC may terminate the Agreement in accordance with this Article

## **10. TERMINATION**

**(NOTE; PL. GO THROUGH THE CONTENTS CAREFULLY AND FOR YOU TO VET AS YOU CONSIDER APPROPRIATE)**

### **1.Termination due to Event of Default**

Non-performance of any act or non-discharges of any of its obligations as per the Agreement by any of the Parties shall be default on the part of such Party.

#### a) Termination for Concessionaire Event of Default

- i. Without prejudice to any other right or remedy which MC may have under this Agreement, upon the occurrence of a Concessionaire Event of Default, MC shall be entitled to terminate this Agreement in the manner as set out below.
- ii. Upon occurrence of a Concessionaire Event of Default under this Agreement, MC shall by a notice inform the Lender's' representative of its intention to issue a Termination Notice to the Concessionaire and grant sixty (60) days time to the Lenders to make a representation. The intimation to Lenders shall not prejudice any rights of MC against the Concessionaire.
- iii. If MC decides to terminate this Agreement pursuant to preceding Cl. (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 60 (sixty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to MC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default if any (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 60 days, or if the Concessionaire's Proposal to rectify is in the opinion of MC not sufficient to cure the

Event of Default, the MC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Guarantee without any liability of whatever nature to pay compensation to the Concessionaire.

- iv. If the Concessionaire's Proposal to Rectify is submitted within the period stipulated thereof, the Concessionaire shall have further period of 60 days to remedy / cure the underlying Event of Default ("Cure Period"). If, however the Concessionaire fails to remedy / cure the underlying Event of Default to the satisfaction of MC within such further period allowed, MC shall be entitled to terminate this Agreement, by issue of Termination Notice without any liability of whatever nature to pay any compensation to the Concessionaire and to appropriate the Performance Security.

b) Termination for MC Event of Default

- i. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon the occurrence of MC Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Concessionaire decides to terminate this Agreement pursuant to preceding Article (i) it shall in the first instance issue Preliminary Notice of 60 (sixty) days to MC. Within 60 days of receipt of Preliminary Notice, MC shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default ("MC Proposal to Rectify"). In case of non-submission of MC Proposal to rectify within the period stipulated therefore, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If MC Proposal to rectify is forwarded to the Concessionaire within the period stipulated there for, MC shall have further period of 30 days to remedy / cure the underlying Event of Default. If, however MC fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

c) Termination Notice

If a Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub Article (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 60 days from the date of Termination Notice;
- iii. the estimated termination payment including the details of computation thereof; and,
- iv. any other relevant information.

d) Obligations 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 Facilities;
  - ii. the termination payment, if any, payable by MC in accordance with the other provisions is paid to the Concessionaire on the Termination Date; and
  - iii. the Project Facilities are handed back to MC as instructed by MC, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the MC.
- e) Termination Payments
- i. Prior to commencement of sales
    - a. If the Agreement is terminated due to Concessionaire Event of Default, the Concessionaire shall not be entitled to receive any termination payment from MC and the Performance Security shall be invoked by the MC.
    - b. If the Agreement is terminated due to MC Event of Default, the Concessionaire shall receive from MC, termination payment equal to the Book Value of the Project Facilities with the Performance Security. subject to recovery of any dues to MC.
  - ii. After commencement of Operations
    - a. If the Agreement is terminated due to Concessionaire Event of Default, the Concessionaire shall not be entitled to receive any termination payment from MC and the Performance Security shall be invoked by the MC
    - b. If the Agreement is terminated due to MC Event of Default, the Concessionaire shall receive from MC, Termination Payment equal to the Book Value of the Project Facilities with the Performance Security.

Provided that MC shall be entitled to deduct from the Termination Payment any amount due and recoverable under this Agreement by MC, from the Concessionaire as on the Termination Date besides from out of the Performance Security.
  - iii. Payment Obligations:
    - a. The Termination Payment pursuant under this Article shall be payable to the Concessionaire by MC within 60 (sixty) days of demand being made by the Concessionaire with the necessary particulars. If MC fails to pay Termination Payment in full within the said period of 60 days, the amount remaining unpaid shall be paid along with interest @ SBI Lending Rate for Medium Term Loans plus 5% (five percent) from the Termination Date till payment and such delay shall not exceed 30 (thirty) days.

f) Rights of the MC on Termination

Upon Termination of this Agreement for any reason whatsoever, MC 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 forthwith;
- ii. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project Facilities;

Notwithstanding anything contained in this Agreement, MC 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 of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire/ contractor in connection with the Project, and the hand back of the Project Facilities and Project Site by the Concessionaire to MC shall be free from any such obligation.

Notwithstanding anything contained in this Agreement, MC shall have the right to appoint any entity to take up the obligations of the Concessionaire under this Agreement. It is, however, clarified that such substitute entity shall be appointed after taking into consideration the rights of the lenders of the Concessionaire under this Agreement.

g) Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the termination payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## 2. Termination for Convenience

Either Party may terminate the Agreement with an advance notice of 180 days.

If the Agreement is terminated by MC for whatever reason including ensuring continuous services to its citizens, the MC shall pay 100% of the depreciated value (as per Income tax provisions) of the plant and equipment to the Concessionaire. In such an eventuality, after termination notice is issued & subsequent formalities are completed, the Concessionaire is obligated to immediately transfer the plant and equipment ownership to MC without delay.

b) If the Agreement is terminated by the Concessionaire, unless the MC proposes to retain the plant and machinery in which case the Book value of the both immovable and movable assets after depreciation as per the valuation of the registered valuator registered with in Income Tax Department shall be paid by MC to the Concessionaire, otherwise the Concessionaire may take away the moveable assets viz. those other than the immoveable assets like structures and fixtures. In such case, the Performance Guarantee shall be forfeited.

## 11. DISPUTE RESOLUTION

## **a) Amicable Settlement**

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including validity, interpretation, rights and obligations between the Parties and so notified in writing by either Party to the other (the “Dispute”) in the first instance shall be attempted to be resolved amicably through mutual discussions. If the Dispute is not amicably settled within 15 (fifteen) days of such reference, either Party may refer the dispute to arbitration. in accordance with the provisions of this Article.

## **b) Arbitration**

i) Any Dispute, which is not resolved amicably as provided above shall be finally decided by reference to arbitration. Such arbitration will be subject to the provisions of the Arbitration and Conciliation Act 1996. The place and seat of such arbitration will be at Amaravati (Guntur District –headquarters of Government of AP) or as may be mutually selected as the case may be, and the language of arbitration proceedings will be English.

ii) There may be a single arbitrator as mutually selected by the Parties. Otherwise, there shall be three arbitrators of whom each Party shall select one and the third arbitrator shall be selected by both Arbitrators.

iii) The arbitrators shall issue a reasoned award.

iv) The Concessionaire and MC undertake to carry out any decision or award of the arbitrators (the “Award”) without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

v) The Concessionaire and MC agree that an Award may be enforced against the other Party their respective assets wherever situated.

vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.

vii) The cost of arbitration shall be shared equally by the Parties or shall be paid as the Arbitrators may award.

## **12. REPRESENTATIONS AND WARRANTIES**

### **1. Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to MC that:

- a) it is duly organised, 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 authorise the execution, delivery and performance of this Agreement;
- d) it has the financial standing and capacity to undertake the Project;
- e) this Agreement constitutes its legal, valid and binding obligation 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 outcome 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 MC 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 MC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire;
- k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to MC 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 rights to implement the Project.
- 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 Project Site and the information provided by the MC, 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, such examination/ review having included but not limited to the following:
  - i. the form and nature of the Project Site, including the sub-surface conditions,

- ii. the hydrological and climatic conditions,
  - iii. the extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
  - iv. the means of access to the Project Site
- n) 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 MC shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **2 Representations and Warranties**

MC represents and warrants to the Concessionaire that:

- a) MC has the full power and authority to grant the Concession or secured relevant authority under the Andhra Pradesh Municipal Corporations Act. ;
- b) MC has taken all the necessary action to authorise the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes MC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d) There are no suits or other legal proceedings pending or threatened against MC in respect of the Project Site.

## **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.

## **13.ASSIGNMENT AND CHARGES**

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

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Unless otherwise provided here in such sum shall until payment thereof, unless specifically provided under the relevant heads, carry interest at prevailing lending base rate for medium term loans of State Bank of India per annum plus 5% 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 authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

**DETAILED PROJECT REPORT**

**TERMS & CONDITIONS OF CONSORTIUM AND SPV**

**3. Joint and Several Liabilities(S.7.1(d) RFP)**

In case of SPV having been formed by a consortium, the Lead Member shall sign the Concession Agreement, receive all payment, take responsibility of executing work as per the Concession Agreement and offer all guarantees etc. All members of Consortium shall be jointly and severally responsible for performance of the work in terms of RFP and Concessionaire Agreement. The constituents of partnership/ joint venture/ Consortium of the Concessionaire shall not be changed without the express written permission of the ULB.

The Letter of Association of members of consortium is attached.

**(NOTE; AFTER ISSUE OF LOAN, THIS WILL BE FINALISED BASED ON THE LETTER OF ASSOCIATION, DETAILS OF THE MEMBERS, THEIR ROLES AND RESPONSIBILITIES ETC.,)**

**DETAILS OF LAND**