

**DEVELOPMENT OF MUNICIPAL SOLID WASTE
SANITARY LANDFILL FACILITIES ON DFBOT BASIS**

**Volume 3 – Draft Concession
Agreement**

CONCESSION AGREEMENT

Between

**MUNICIPAL CORPORATION OF SHIMLA
(SHIMLA MUNICIPAL)**

acting through its authorised officer on this behalf

and

(Concessionaire)

and

(Successful Bidder)

for

MUNICIPAL SOLID WASTE MANAGEMENT SANITARY LANDFILL PROJECT

CONCESSION AGREEMENT

This Concession Agreement (hereinafter referred to as "Agreement") mutually agreed and entered into on this ___ day of ___ Two Thousand Twelve at _____

AMONGST

Shimla Municipal Corporation (MCS), a municipal corporation established under the Himachal Pradesh Corporations Act, 1976, and having its office at _____, Shimla (India) acting through its Commissioner (hereinafter referred to as "Concessions Authority" / "MCS" which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors) of the FIRST PART.

AND

M/s. _____, a company incorporated under the Companies Act 1956, having its registered office at _____ (hereinafter referred to as "Concessionaire", which expression shall unless repugnant to the context or meaning thereof, mean and include its associate / group companies, successors and assigns), through Mr. _____, duly authorized in this behalf by way of a Board Resolution dated _____, of the SECOND PART.

AND

M/s. _____, a company incorporated under the Companies Act 1956 having its registered office at _____ (hereinafter referred to as "Successful Bidder" pursuant to RFP dated _____, which expression shall unless repugnant to the context or meaning thereof, mean and include its associate / group companies, successors and assigns), through Mr. _____, duly authorized in this behalf by way of a Board Resolution dated _____, of the THIRD PART

MCS, Concessionaire and Successful Bidder are hereinafter referred to individually as the "Party" and collectively as the "Parties".

WHEREAS

- A. MCS is the Municipal Corporation for Shimla, responsible for providing municipal and allied civic services, which encompasses the cleaning, collection, transportation, processing and disposal of Municipal Solid Waste generated in the city. MCS currently processes the collected Municipal Solid Waste at Bhariyal and the inert is disposed of via open dumping.
- B. The Ministry of Environment and Forests (MoEF) under the aegis of Government of India (GOI) has formulated the Municipal Solid Wastes

Municipal Solid Waste Sanitary Landfill Project for Shimla

(Management and Handling) Rules, 2000 (MSW Rules) which makes it mandatory for every civic body to implement a scientific Solid Waste Management System through which Municipal Solid Waste is duly processed and only the inorganic wastes and Processing residues are disposed in an Engineered Sanitary Landfill (as hereinafter defined).

- C. MCS is desirous of disposal of inert waste generated at the Municipal Solid Waste processing plant at Bhariyal under a Municipal Solid Waste Sanitary Landfill Project.
- D. Municipal Solid Waste Sanitary Landfill Management consists of design, finance, development, construction, operation and maintenance of Municipal Solid Waste Landfill Facility, more particularly the scope of such work described in Schedule 1.
- E. For the purpose of the operation of this Agreement, design, finance, development, construction, operation and maintenance of Municipal Solid Waste Sanitary Landfill Facility is hereinafter referred to as "Sanitary Landfill" or "SLF".
- F. MCS had invited competitive proposals from eligible bidders for implementing the SLF and in response thereto MCS received proposals from several entities including the Successful Bidder for implementing SLF.
- G. MCS after evaluating the aforesaid proposals and after obtaining necessary clearances had accepted the proposal submitted by the Successful Bidder and issued Letter of Intent dated _____(LoI) to M/s. _____ for SLF (copy enclosed as Annexure-1).
- H. Upon receipt of the LoI as above, the Successful Bidder has incorporated a special purpose vehicle (SPV) in the name and style of _____ through which the Project is to be implemented and is the Concessionaire for the purpose of this Agreement.
- I. MCS agrees and undertakes to pay to the Concessionaire a Tipping Fee calculated in accordance with Schedule 3 of this Agreement.
- J. The Parties hereto are required to enter into this Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

ARTICLE - 1

1.1. Definitions

In this agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder.

“Access Road” means the motorable and well maintained approach road (30 ft wide) for access to the Site from the main road and the intended route of which is indicated on the Site plan annexed as Schedule 1 hereto.

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

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure event in accordance with Article 8.1.

“Agreement” shall mean this agreement, including its Schedules & Annexure and includes any amendments made thereto in accordance with the provisions hereof.

“Applicable Law” shall mean all laws, acts, ordinances, rules, regulations, orders, notification & guidelines in force and effect, including MSW Rules, as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the period of subsistence of this Agreement and applicable to the SLF / the Concessionaire.

“Applicable Approvals” shall mean all clearances, licenses, permits, authorization, no objections, consents and approvals to be obtained or procured by the Concessionaire under Applicable Law, in connection with the SLF during the period of subsistence of this Agreement.

“Appointed Date” shall mean the date of this Agreement.

“Approvals Date for SLF-1” shall mean the date on which all necessary approvals to construct the first part of the SLF have been obtained by the Concessionaire.

“Approvals Date for SLF-2” shall mean the date on which all necessary approvals to commence trial operations of the SLF have been obtained by the Concessionaire.

“Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 of India and the Rules thereunder and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Biodegradable waste” shall mean the waste that can be degraded by microorganisms.

“Biomedical Waste” shall have the meaning ascribed to it under the Biomedical Wastes (Management and Handling) Rules, 1998.

“Book Value” shall mean value of all assets as per the statement of accounts of the Concessionaire wherein the said assets are related to the SLF, net or accumulated depreciation computed on straight line method basis in accordance with the rates specified in Companies Act, 1956 and as determined by an independent firm of chartered accountants mutually agreed upon.

“Construction & Demolition / C & D Debris and Silt Waste” means Solid Waste, resulting from construction, remodeling, repair, renovation or demolition of structures or from land clearing activities or trenching or desilting activities. “Structures” for the purposes of this definition means buildings of all types (both residential and non residential), utilities, infrastructure facilities and any other type of man made structure. C & D debris include, but are not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, drywall, plumbing fixtures, roofing, waterproofing material and other roof coverings asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing non-hazardous materials, pipes, steel, aluminum and other non-hazardous metals used in construction of structures.

“Change in Law” shall have the meaning ascribed thereto in Article 8.11.

“CPOD” shall mean the date of commencement of commercial operations of the SLF, which shall be the date on which the Independent Engineer has issued the full and final SLF Readiness Certificate.

“Composting” shall mean a controlled process or such other processes involving microbial decomposition of organic matter.

“Concession” shall have the meaning ascribed thereto in Article 2.1.

“Concession Period” shall have the meaning ascribed thereto in Article 2.3.

“Concessionaire” shall mean party entering into this Agreement to implement the SLF and includes its successors and permitted assigns expressly approved by MCS.

“Consent Conditions” shall mean the conditions imposed by the Himachal Pradesh State Pollution Control Board while according Consent to establish/operate the SLF under the various rules, notifications, regulation, acts etc

“Construction Requirements” shall mean the SLF Construction Requirements to be compliant with the provisions of this Agreement, as detailed under Schedule 13, and with the provisions of MSW Rules, 2000.

“Construction Works” shall mean all works required to be carried out by the Concessionaire, pursuant to the Construction Requirements and O & M Requirements.

“Contractor” shall mean any person with whom the Concessionaire has entered into / may enter into any material contract in relation with the Construction Works and O & M Requirements.

“Debt Due” means the aggregate of the following sums expressed in Rupees outstanding and payable to the Lenders under the Financing Documents:

- (i) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the "principal") which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the MCS; and
- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-clause (i) above up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders.
- (iii) Notwithstanding anything contained in (i) and (ii) above, Debt Due shall relate to the project investment duly assessed by MCS.

“Drawings” shall mean all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Construction Requirements and O&M Requirements.

“Development” means the conceptualization, installation/ construction, financing, commissioning of assets, operation and maintenance by the Concessionaire for the performance of its obligations as stipulated under this agreement.

“Disposal facility” means a facility designated for the disposal of the waste as per the MSW Rules 2000

“Effective Date” is the date on which all the requirements of Conditions Precedent for SLF as per Article 2.6 have been met.

“Emergency” shall mean conditions or situation that is likely to endanger the safety of the individuals working in the SLF or which poses an immediate threat of material damage to any part of the SLF.

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

“Engineered Sanitary Landfill” shall mean the area of the Landfill Facility, designed with protective measures against pollution of ground water, surface water and air fugitive dust, wind blown litter, bad odor, fire hazard, bird menace, pests or rodents, greenhouse gas emissions, slope instability and erosion, and utilities for disposal of waste.

“Event of Default” shall mean the meaning ascribed thereto in Article 9.

“Fee” means the fees and the charges payable by MCS to the Concessionaire in accordance with this Agreement.

“Financing Documents” shall mean collectively the documents / loan agreements evidencing Lenders’ commitment to finance the SLF and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the plant or any part thereof, for securing the debt provided.

“Financial Year” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 8.

“GOI” shall mean the Government of India.

“GOHP” shall mean the State Government of Himachal Pradesh.

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

“**Government Agency**” shall mean GOI, GOHP, MCS or any State government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state or local, having jurisdiction over the Concessionaire, the SLF or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“**Hand Over of SLF**” shall have the meaning ascribed thereto in Article 10.

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

“**HPSPCB**” shall mean Himachal Pradesh State Pollution Control Board.

“**Independent Engineer**” shall mean a reputed Person / Firm duly appointed in accordance with Article 4 who is the nodal person for supervision and monitoring of compliance by the Concessionaire with the Construction Requirements and O & M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in the Schedule 6 of this Agreement.

“**Landfilling**” shall mean the disposal of the Residual Inert Matter and excluded wastes at the Engineered Sanitary Landfill site in accordance with the terms of this Agreement.

“**Landfill Facility**” shall mean the present site of landfilling for disposal of Solid Waste or the Engineered Sanitary Landfill to be duly designed, engineered, and constructed in accordance with the provisions specified thereto.

“**Land Licence Agreement**” means the agreement pursuant to which Site shall be Licenced out to the Concessionaire for setting up the SLF, the draft of which is provided as Schedule 4 to this Agreement.

“Landfill Life” or “Active Operations Period” of each cell of sanitary landfill shall mean the period commencing from CPOD till each cell of the Engineered Sanitary Landfill is completely filled with waste and a final cover designed in accordance with the MSW Rules, is laid on the Engineered Sanitary Landfill.

“Landfill Waste” is the waste that shall be landfilled as per the MSW Rules 2000.

“Lenders” shall mean any developmental / public financial institutions or Nationalized / Scheduled banks who have provided Loans or other similar cash and/or non-cash facilities to the Concessionaire for financing any part of the SLF as evidenced by the Financing Documents.

“Material Adverse Effect” shall mean an event affecting (a) the ability of the Concessionaire to exercise any of its rights to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement and / or (b) the legality, validity, binding nature or enforceability of this Agreement such that it impacts individually the net asset, financial results, financial positions or cash flows from operations of the Concessionaire in an amount greater than 5% of the gross assets of the Concessionaire.

“Material Breach” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the SLF and which such Party shall have failed to cure.

“MCS Area” shall mean the jurisdictional area of the MCS as amended from time to time.

“MSW Rules” or “MSW Rules, 2000” shall mean the Municipal Solid Waste (Management and Handling) Rules, 2000 and includes any amendments thereto.

“Municipal Solid Waste” or “MSW” shall have the meaning as ascribed to it in the MSW Rules and excludes industrial hazardous wastes and treated and untreated bio-medical wastes.

“SLF” means the Waste Processing and Landfill Facility/ Project.

“MSW Supply Area” means the area under municipal jurisdiction of MCS and shall also include such areas as may be included by MCS from time to time.

“MSW Quantity” means an aggregate of MSW recorded at the Receipt Point (s) per day in accordance with this Agreement.

“Maximum MSW Quantity” means MSW per day, which is the maximum quantity of MSW that the SLF can presently process and would mean any revised maximum increased capacity that is notified by MCS during the term of this Agreement.

“O & M Requirements” shall mean the requirements as to operation and maintenance of the SLF set forth in Schedules 2, 8, 9 and 10.

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

“Performance Security” shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Article 5.1.

“Person” shall mean (unless otherwise specified or required by the context) any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or government body or any other legal entity.

“Post Closure Period” shall mean the period commencing from the day immediately following the Landfill Life /Active Operations Period and till fifteen years from the said day.

“Preliminary Notice” shall mean the notice of intended termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying event of default.

“Processing” shall mean the process by which Municipal Solid Waste is transformed into new or recycled products including processes like Composting, vermi composting, biomethanation, Refuse Derived Fuel (RDF)/ Pelletisation with or without power generation or any other suitable means as applicable under the MSW Rules.

“MCS” shall mean Shimla Municipal Corporation, established under the provisions of the Himachal Pradesh Municipal Corporations Act, 1994

“Residual Inert Matter” shall mean the waste matter obtained after Processing of the MSW by waste Processing facilities within the SLF.

“Rupees” or “Rs.” refers to the lawful currency of the Republic of India.

“Receipt Point” or “Receipt Points” means the place(s) within the Site(s) for Processing and disposal of waste, specified in writing and marked on a layout

plan on or before the CPOD, at which location the waste collected from the WPLF Supply Area, shall be required to be weighed in accordance with the terms of this Agreement.

“Recyclable waste” shall mean non biodegradable waste containing recoverable resources that can be recycled

“Rejected Waste” means such components of a consignment of Municipal Waste received by the Concessionaire that are not in conformance with the MSW Rules, 2000.

“Serious Default” shall arise if the Total Penalty Payable by the Concessionaire in a given month exceeds 25% of the average monthly Tipping Fee collected / paid during the preceding 12 months in any Financial Year or 20% of the cumulative annual payments to be made to the Concessionaire in any Financial Year. For the first year, the average monthly tipping fee collected/ paid during the first three months shall be considered.

“Successful Bidder” shall mean the bidder who has been selected by MCS through competitive bidding process for implementing this SLF or part thereof and to whom the Letter of Intent datedhas been issued.

“Site(s)” shall mean the land located at Bhariyal, subject to obtaining approvals from appropriate authorities and/ or any other suitable site identified and handed over to the Concessionaire by MCS (more fully described in Schedule 1) for the purpose of planning, designing, financing, constructing, operating and maintaining the SLF during the Concession Period.

“Solid Waste” means wastes generated from commercial, agricultural, industrial and domestic activities that are in either solid or semi-solid form generated in the MCS area but shall not include the industrial hazardous wastes, treated and untreated bio-medical wastes and any other wastes excluded as per the MSW Rules.

“Substitution Agreement” shall mean an agreement entered into between the Parties and the Lender(s), in order to protect the interests of Lender(s) in the probable event of default by the Concessionaire or MCS (leading to termination of the Concession Agreement), by granting Lender(s) various rights including but not limited to the substitution of the Concessionaire with a party nominated by the Lender(s), broadly under similar terms and conditions as applicable to the Concessionaire.

“Tax” shall mean and includes all taxes, fees, cess, levies that may be payable by the Concessionaire under Applicable Laws.

“Term” means the time period of 25 years commencing from the CPOD and will also include such successive time period/s by which the Concession granted in this Agreement may be renewed / extended as provided in Article 2.4.

“Termination” shall mean early termination of this Agreement pursuant to termination notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“Termination Date” shall mean the date specified in the Termination Notice as the date on which Termination occurs / comes into effect.

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

“Termination Payment” means the payments payable pursuant to Article 9.2(f) of this Agreement.

“Tests” shall mean the tests to be carried out in accordance with the Construction Requirements and the O & M Requirements and generally conform to the nature of construction and operation as per standard practice.

“Tipping Fee” shall mean the amounts payable by the MCS to the Concessionaire in accordance with Schedule 3.

“Transfer Station” shall mean a facility where the collected waste is compacted and transferred to a larger vehicle so as to increase the efficiency of the transportation of MSW to the Processing Facility.

“Utilities” shall mean electricity, water or any other services, provisions of which is imperative for the performance of the obligations of the Concessionaire.

“WCTO” means the Waste Collection and Transportation Operations.

“WPF” Municipal Solid Waste Processing Facility

“SLF” means the Municipal Solid Waste Sanitary Landfill Facility.

“SLF Readiness Certificate” shall mean the full and final certificate or a part certificate issued by the Independent Engineer certifying, inter alia, that:

1. the Concessionaire has constructed all the facilities within the SLF so as to enable receipt of inert/ reject waste from Processing plant or MCS.

2. the Concessionaire has obtained all approvals necessary to commence commercial operation of SLF.

1.2. Interpretation

- (a) The words, phrases and expressions defined hereinabove in Article 1.1 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article 1.1 or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be:
- (b) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modifications or re-enactment or consolidation applies to, or is capable of being applied to any transaction entered into herein under;
- (c) References to applicable laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (d) All words in singular shall be deemed to connote their respective plurals and vice - versa, unless the context suggests otherwise.
- (e) The words "include" and "including" are to be construed without limitation.
- (f) The headings of the Articles in this Agreement are merely for purposes of conveniences and shall have no bearing on the interpretation of this Agreement.
- (g) The Schedules and Annexure to this Agreement form an integral part of this Agreement and shall be interpreted accordingly;
- (h) Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at that time of such reference;

- (i) Reference to recitals, articles, sub articles or schedules in this agreement shall except where the context otherwise requires be deemed to be reference to recitals, sub articles, clauses and schedules of this agreement;
- (j) Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this agreement from or by any other party or by Independent engineer shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such party or Independent engineer in his behalf and not otherwise
- (k) Any references to day, month, or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (l) Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and dates.
- (m) Any of these terms is used in error in place of another, then the Agreement shall be interpreted by substituting the correct term in place of the erroneous term.

ARTICLE 2

CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set out in this Agreement, MCS hereby grants to the Concessionaire the Concession to undertake the Sanitary Landfill (SLF) construction and operation (the **Concession**) and the Concessionaire hereby accepts the grant of Concession comprising of the exclusive right and authority, during the Term, to investigate, study, design, engineer, procure, finance, set up, construct, operate and maintain the facilities under the SLF and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements granted under this Agreement on an exclusive basis during the Concession Period, and to carryout the following activities in the MCS Area as defined in **Schedule 1** hereto along with their periodicity:

- (a) to receive inert / reject waste at the Receipt Point of the SLF.
- (b) to inspect the inert residual MSW and to identify Rejected Waste as per the provisions of Article 5.8, and refuse to accept the Rejected Waste at source.

- (c) to develop the sanitary landfill during the term of the SLF.
- (d) to dispose the Residual Inert Matter in the landfill.
- (e) to receive all fiscal incentives and commercial benefits accruing in respect of or on account of the SLF including the CDM benefits and also benefit from sale of all by products / recyclables.

2.2 Rights Associated with the Grant of Concession

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

- (a) to design, engineer, finance, procure, set up, construct, install, commission, operate and maintain the SLF.
- (b) to borrow or raise money or funding required for the due implementation, operation and maintenance of the SLF.
- (c) to use, appropriate, process residual inert waste delivered at the Receipt Point as per the provisions of this Agreement.
- (d) to avail any subsidies or concessions from Central/ State governments or any other multi-lateral funding agencies for setting up or maintaining the SLF.
- (e) to store, use, appropriate, market and sell subject to payment of taxes as may be applicable or dispose all the products obtained during the treatment and disposal of inert waste (electricity, methane, RDF, compost, Residual Inert Waste and recyclables and any other non-objectionable products) and to further retain and appropriate any revenues generated from the sale of such products.
- (f) to obtain electricity and water connections against payment of the amounts as may be prescribed, required for enabling the set up and construction of the SLF.
- (g) to exclusively hold, possess and control the Site (without the right to own or alienate through sale or sub-letting or leasing, with or without consideration) in accordance with the terms of the Concession Agreement and Land Licence Agreement, for the purposes of the due

implementation of this SLF, in accordance with the terms of this Agreement.

- (h) to receive the Tipping Fee as quoted in the Schedule 3 subject to deductions in accordance with other provisions in this Agreement.

2.3 Concession Period

The Concession is granted to the Concessionaire for a term of **Twenty (20) years** starting with CPOD (the Concession Period) and shall terminate upon the expiry of the Term, if not extended by mutual consent of the Parties or upon earlier Termination of this Agreement.

2.4 Extension of Concession

MCS may agree to extend the Concession after the expiry of the initial Term, for an additional period as may be mutually agreed to and on such terms and conditions as mutually agreed upon. The Land Licence Agreement shall be co-terminus with any such extension.

2.5 Acceptance of Concession

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

2.6 Conditions Precedent for SLF

This Agreement and the Concession granted herein by MCS to Concessionaire are valid and binding from the date of execution of this Agreement provided however, the obligations of Parties under this Agreement would become effective and binding, only upon the satisfaction of the following Conditions Precedent i.e. from the Effective Date:

- i) Conditions Precedent for the MCS
 - a) MCS, at its own cost and expense, vests with the Concessionaire the complete and lawful right and vacant possession of the Site, in accordance with the provisions of Land Licence Agreement, as stipulated in Schedule 4 on an as is where is basis, along with the necessary right of way through the Access Road for accessing the Site.

- b) MCS to facilitate the Concessionaire in getting the necessary statutory approvals for the Project which come under the purview of MCS or where MCS may provide such assistance.
- c) MCS shall nominate its representative not below the rank of an Executive Engineer for the Steering Group as described under Article 4.4

ii) Conditions Precedent for the Concessionaire

- a) Concessionaire shall furnish the necessary Bank Guarantee for Rs. **1.0 Crore** has been proposed in the format as specified under Schedule 7.
- b) Concessionaire shall nominate its representative for the Steering Group as described under Article 4.7

2.7 Non - compliance with Conditions Precedent

It is agreed that, if the above Conditions Precedent on the part of either MCS or the Concessionaire are not met within three (3) months from the Appointed Date, then the affected party shall have the option to either (i) extend the time period for satisfaction of the Conditions Precedent by another three (3) months or (ii) terminate this Agreement, in which event the compensation to be paid shall be as follows:- (a) in the event that the MCS has not met the requirements under Article 2.6 then MCS shall pay to the Concessionaire, as a pre-agreed compensation for such default, the total costs incurred by the Concessionaire for the SLF from the date of award of the LoI (as per a certificate of costs to be issued by an independent Chartered Accountant jointly accepted by MCS and Concessionaire) and also return the Performance Bank Guarantee within 45 days from the date of such Termination, (b) in the event that the Concessionaire has not met the requirements under Article 2.6, then the MCS may enforce the Performance Bank Guarantee and also acquire the assets created under the SLF.

ARTICLE 3

PROJECT SITE

3.1 Handover of Site

- a) MCS shall within 15 days from the Appointed Date handover to the Concessionaire on as is where is basis the vacant and peaceful

physical possession of the Sites free from all Encumbrances for the purpose of implementing the Waste processing and land fill and the Transfer Stations.

- b) Upon the Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Site as may be necessary or appropriate to implement the SLF and provide the SLF in accordance with the provisions of this Agreement.

3.2 Rights, Title and use of the Site

- a. The Concessionaire shall have the right to the use of the Site in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- b. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Site.
- c. The Concessionaire shall not, without the prior written approval of MCS, use the facilities of the Site for any purpose other than to fulfil its obligations under this Agreement and for purposes incidental or ancillary thereto.
- d. The Concessionaire shall allow access to and use of the Site for laying / installing / maintaining telegraph lines, electric lines or for such other public purposes as MCS may specify, provided these do not interfere with the Concessionaire's work.
- e. MCS herewith permits the Concessionaire to use the space available in any area related to the Site and other infrastructures to display messages and such other mechanisms for Information, Education and Communication (IEC) activities without any charges payable to MCS.
- f. The Landfill Facility shall be and continue to be the property of MCS.

3.3 Peaceful Possession

MCS hereby represents and warrants that:

- a) The MCS has full powers to hold, and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Site, have no liability regarding any compensation payment on account of land acquisition or rehabilitation / resettlement of any persons affected thereby.
- b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of
 - the Site from Appointed Date till the end of the Concession Period, and
 - the area on which the Landfill Facility has been created during the Post Closure Period.

In the event the Concessionaire is obstructed by any person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, restraint, appointment of receiver or liquidator being initiated by any person claiming to have any interest in charge on the Site or any part thereof, MCS shall, as called upon by the Concessionaire, defend such claims and proceedings at its costs and also keep the Concessionaire indemnified against all consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable permits

The Concessionaire shall obtain and maintain the applicable permits in such sequence as is consistent with the requirements of the SLF including any prior permission that may be required from the HP State Environment Protection & Pollution Control Board and/or the Airport Authority of India (AAI) for the Landfilling Facility. The MCS shall provide all necessary co-operation / assistance for obtaining the permits. The Concessionaire shall be responsible and shall comply with the terms and conditions subject to which applicable permits have been issued.

ARTICLE 4

INDEPENDENT ENGINEER (IE), THIRD PARTY CERTIFIER & STEERING GROUP

4.1 Appointment of Independent Engineer

MCS shall within 15 days of constitution of the Steering Group, as defined below, forward to the Steering Group a list consisting of the names accompanied by their respective profile in brief of at least five (5) Persons who are eligible and willing to act as Independent Engineer for the Project.

Within 15 days of receipt of the panel forwarded by MCS, the Steering Group shall appoint one of the Persons named in such panel as the Independent Engineer for each of the pre CPOD and post CPOD stage. The Steering Group shall collectively finalize the fees and other terms of appointment of the Independent Engineer. The scope of work of the Independent Engineer shall be as per the scope set out in Schedule 6.

4.2 Independent Engineer to act as Third Party Certifier

The Independent Engineer, as appointed hereinabove, shall function as Third party Certifier responsible for certifying payments to the Concessionaire.

4.3 Fees of Independent Engineer

All fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively "the Remuneration") shall be paid by MCS. The same shall be recovered by MCS from the monthly amount payable to the concessionaire. MCS shall make the payment to the Independent Engineer within ten working days of receipt of invoice from the Independent Engineer.

4.4 Constitution of Steering Group

MCS shall through an office order, constitute a Steering Group comprising a representative each of the MCS and Concessionaire within 60 days of this Agreement.

4.5 Functions of Steering Group

The Steering Group shall hold meetings atleast once in every fortnight to review the progress during the Implementation Period of the SLF and every six months during the operations period. The Steering Group shall carry out such functions and exercise such powers as are prescribed/ conferred under this Agreement.

The Steering Group may terminate the services of the Independent Engineer at any time and appoint another in its place, in the following circumstances:

- (i) If the Steering Group has reason to believe that the Independent Engineer has not discharged its duties in a fair, appropriate and diligent manner;
- (ii) if the Steering Group decides not to renew the term of the Independent Engineer;

- (iii) if, in accordance with the terms of its appointment the Independent Engineer resigns or notifies its intention not to continue as the Independent Engineer;
- (iv) any other circumstance which in the opinion of the Steering Group warrants replacement of the Independent Engineer.

Replacement Requirements

Subject to the attendant circumstances and unless the Parties otherwise agree, the procedure laid down in Article 4.1 shall, as far as possible, be adhered to for replacement of the Independent Engineer, and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Construction Requirements and/or O&M Requirements

ARTICLE 5

CONCESSIONAIRE'S OBLIGATIONS

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

5.1 Performance Bank Guarantee (PBG)

- (a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the SLF, deliver to MCS, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank in the form as set out in Schedule 7, ("Performance Security") for a **sum of Rs. 1.0 Crores only**.
- (b) The PBG shall be kept valid throughout the term of the Agreement. The renewal of the PBG as and when required is to be done by the Concessionaire at least one month prior to the date of expiry of the existing BG, failing which, MCS would be entitled to invoke the PBG.

Provided that if the Agreement is terminated due to any event other than that arising from a fault of the Concessionaire, the BG subsisting as on the date of Termination shall, subject to MCS's right to receive amounts at prevailing time if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire within 30 days from the date of Termination.

5.2 Financing Arrangement

The Concessionaire shall at its cost, expenses and risk make financing arrangements to meet the costs of the SLF and to meet all of its obligations

under this Agreement, in a timely manner. The financial closure shall be achieved within 3 months of this Agreement.

The Concessionaire shall make best endeavours to obtain Carbon Credits for the SLF. MCS will provide such reasonable assistance to secure financing for the SLF and to secure Carbon Credits. MCS shall make best endeavors to enable the Concessionaire to obtain any grants or subsidies or such other assistance from government or any multi-lateral funding agencies.

5.3 Implementation of SLF

- i. During the Implementation Period, the Concessionaire shall furnish to the Steering Group monthly reports on actual progress of the works and furnish any other relevant information as may be required by the Steering Group and/or the Commissioner, MCS.
- ii. The Concessionaire shall, in consultation with the Independent Engineer finalize an implementation schedule for the Project in accordance with the Waste landfill Requirements.
- iii. The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/ capability after providing prior written intimation to the Steering Group. However, in either case the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- iv. The Concessionaire shall, prior to commencement of construction of the SLF:
 - i. Have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the SLF, to interact with the Independent Engineer / MCS and to be responsible for all necessary exchange of information required pursuant to this Agreement.
 - ii. Provide all reasonable facilities as may be required for the Independent Engineer and Steering Group, at the Project locations during their visits.
- v. For the purposes of determining that Construction Works are being undertaken in accordance with the requirements, the Concessionaire shall with due diligence carry out all necessary and periodical tests in the presence of the Independent Engineer.

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The Concessionaire shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated in the test results and submit to the Independent Engineer for necessary documentation.

- vi. All tests related to the SLF shall be conducted in accordance with best industry practices. The Independent Engineer as advised by the Steering Group shall issue SLF Readiness Certificate in accordance with the applicable Construction Requirements and O&M Requirements.
- vii. The SLF shall be deemed to be completed and ready to receive Municipal Solid Waste inerts only when the part or full and final SLF Readiness Certificate is issued by the Independent Engineer as advised by the Steering Group in accordance with the provisions thereof.
 - i. The implementation of the SLF shall be conducted in two stages namely construction and preparation of the landfill to receive the Solid Waste (hereinafter referred to as ("First Part of SLF")) and Operation of the Sanitary Landfill facility (hereinafter referred to as ("Second Part of the SLF")). The implementation period for the First Part of the SLF is twelve (12) months from the Approvals Date for SLF-1 or fifteen (15) months from the date of signing this agreement, whichever is earlier. Upon completion of the First Part of the SLF, the Independent Engineer as advised by the Steering Group shall issue SLF Readiness Certificate Part 1 thereby permitting the Concessionaire to commence operations at the Site by receiving the inerts from the WPF ., and
 - ii. the implementation period for the Second Part of the SLF is three (3) months from the Approvals Date for SLF-2 or eighteen (18) months from the date of signing this Agreement, whichever is earlier. Upon completion of the Second Part of the SLF, the Independent Engineer as advised by the Steering Group shall issue SLF Readiness Certificate Part 2 thereby permitting the Concessionaire to commence full operations at the Site.

On the day of issue of the SLF Readiness Certificate Part 2, the Independent Engineer as advised by the Steering Group shall issue the full and final SLF Readiness Certificate. In the event of any delay in the implementation periods mentioned here above, MCS shall have the right to extend the implementation periods as it deems fit. Such extensions will be granted in writing to the Concessionaire upon receipt of written request for such extensions by the MCS, from the Concessionaire. However, if the delay is

solely attributable to the Concessionaire, MCS shall have the right to terminate this Agreement in accordance with the provisions of this Agreement.

- viii. The Concessionaire shall be deemed to be in Material Breach of O & M Requirements if MCS has determined that due to breach of its obligations by the Concessionaire for reasons solely attributable to the Concessionaire and after providing just and fair opportunity to the Concessionaire to explain itself,
- i. there has been continuous failure / delay for more than one month in carrying out scheduled / planned maintenance or the scheduled /planned maintenance has not been carried out for more than one month in accordance with the O & M Requirements as evidenced by events of significance that resulted in prolonged interruptions of waste processing,
 - ii. the maintenance of the SLF or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O & M Requirements, required in line with the nature of activity, and
 - iii. there has been a serious or persistent let up in adhering to the O & M Requirements and thereby the SLF or any part thereof is not safe for operations.

5.4 Insurance

The Concessionaire shall at its cost and expenses, purchase and maintain by due re-instatement or otherwise, during the Concession Period all insurance in respect of the SLF in accordance with the Good Industry Practice. The Concessionaire shall maintain records of such Insurance and the same shall be produced before MCS officials whenever requested for.

5.5 Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project/Landfill Facility or any part thereof which may have been damaged or destroyed. The Concessionaire shall, if mandated under the Financing Documents, designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the

Project. The Concessionaire shall carry out such repair, renovation, restoration or reinstatement in such manner that the Landfill Facility after such repair, renovation, restoration or re-instatement be in the same condition as it were prior to such damage or destruction; normal wear and tear excepted.

Notwithstanding anything contained above, whenever a damage or breakdown occurs, the Concessionaire shall forthwith undertake repair work from own sources and not wait for the Insurance Claim to be realized.

5.6 Environmental Compliance

The Concessionaire shall, at all times, ensure that all aspects of the SLF and processes employed in the construction, operation and maintenance thereof shall conform with the laws pertaining to environment, health, safety and labour aspects including rules such as MSW Rules, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances from the Himachal Pradesh State Pollution Control Board or any other similarly empowered Government Agency and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Landfill Facility.

The Concessionaire shall be responsible for the SLF to be compliant with the Applicable Laws, regulations, guidelines, etc., and ensure that there is no damage to the environment due to the development and operation of the facilities. The Concessionaire shall be liable to meet any expenses / compensation to be paid due to pollution / environmental damage or remediation caused by the SLF attributable to the failure of the Concessionaire in meeting its obligations.

5.7 Land Use

The Concessionaire shall ensure optimum utilization of the Site(s) and shall not use the same for any purpose unconnected with or which is not incidental to the SLF or related activities, unless otherwise permitted under this Agreement. However, it may be noted that the Concessionaire shall not be allowed to construct any residential units / dwellings within the Site(s).

5.8 Weighing, Acceptance and Rejection of Municipal Solid Waste

- a) The Concessionaire shall weigh the incoming Municipal Solid Waste at the Receipt Point of SLF in the manner as set out in the O & M Requirements which shall be witnessed and certified by the representative of the Independent Engineer.

- b) The Concessionaire hereby undertakes to accept all Municipal Solid Waste as per provisions of this agreement and except as provided under Article (c) below.
- c) In case the Municipal Solid Waste contains Hazardous Waste and / or Biomedical Waste as defined under the Hazardous Waste (Management and Handling) Rules, 1989 and the Biomedical Waste (Management & Handling) Rules, 1998, the Concessionaire shall decline to accept such non Municipal Solid Waste, and may cause the same to be unloaded in a separate area for inspection by the Independent Engineer. In such case, the Independent Engineer or his/her representative shall inspect and certify whether the particular lot of Municipal Solid Waste is fit for being accepted by the Concessionaire. In case the Independent Engineer or his/her representative certifies that the said waste is fit for acceptance by the Concessionaire, then the concessionaire shall accept the waste without being penalized.
- d) In case the Rejected Waste is identified by the Independent Engineer at the Project Site after the acceptance by the concessionaire, the Concessionaire shall transfer the Rejected Waste to the appropriate waste Processing location at its own cost.

5.9 Sale / Distribution of Compost / Manure & Energy and Other Recyclables

- a) The Concessionaire may adopt such processes and methods as it considers necessary or expedient for further processing of inerts/ waste received at the SLF subject to meeting the standards for products specified by the Government.
- b) The Concessionaire shall be free to sell or otherwise dispose off the recyclables, compost or organic manure, energy (power) and / or other materials recovered after processing such waste, at the SLF at such price and to such persons and using such marketing and selling arrangements and strategies as it may deem appropriate subject to meeting the O & M Requirements.

5.10 Landfilling

- a) The Concessionaire shall carry out landfilling, including carrying out of relevant tests, in accordance with O & M Requirements. The landfill has to be planned to have separate cells to accommodate mixed waste from the Present Sites for disposal.
- b) If during the term of Agreement, the available Site falls short of the actual Landfill requirements due to reasons not attributable to the inefficiency of

the concessionaire, then, the Concessionaire shall duly inform MCS of such additional land requirement for landfill for the balance of the Concession Period at least twelve months prior to the exhaustion of the existing land and MCS shall procure and hand over the additional land required to the Concessionaire without any additional commercial liability to the Concessionaire.

- c) In case, the shortage is caused due to operational inefficiency of the concessionaire, then he shall arrange to procure suitable extent of land at his cost with no liability to MCS

5.11 Supply Stoppage

The Concessionaire shall, not less than 120 days prior to the expected expiry of Landfill Life intimate the Independent Engineer and MCS of the same, whereupon the Parties along with the Independent Engineer shall mutually agree upon a date on which supply of Residual Inert Matter to the Landfill Facility shall be stopped ("Waste Supply Stoppage Date").

5.12 General Obligations:

The Concessionaire shall at its own cost and expense:

- a) Investigate, study, design, construct / renovate, set up, operate and maintain the SLF in accordance with the provisions hereof;
- b) Ensure to obtain all Applicable Permits as required by or under the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- c) Comply with Applicable Law governing the operations of Municipal Solid Waste collection, transportation, processing and disposal at all times during the Concession Period;
- d) Ensure and procure that any contract relating to the SLF, entered into by the Concessionaire for implementing the SLF in accordance with this Agreement contains provisions that would entitle Lenders or a nominee of MCS to step into such contract/s at MCS's discretion, in place and substitution of the Concessionaire;
- (e) sell or otherwise dispose off, without landfilling all recyclables in a manner which is not detrimental to the environment;
- (f) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the SLF;

- (g) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the SLF and hereby indemnifies MCS against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall MCS be treated as employer in this regard;
- (h) Make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;
- (i) Be responsible for all the health, security environment and safety aspects of the SLF at all times during the Concession Period.
- (j) Ensure that the SLF remain free from all encroachments and should support MCS in whatever manner possible to remove the encroachments, if any.
- (k) Upon receipt of a request thereof, afford access of the SLF to the authorized representatives of MCS for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- (l) Pay all applicable taxes, duties, salaries and wages including statutory benefits such as Provident Fund, Gratuity and such other payments and outgoings including utility charges relating to the SLF.
- (m) Submit proof of statutory payments to employees of SLF, such as Provident Fund, annually upon demand by the MCS. All payments to the employees of SLF shall be made by the Concessionaire through cheques or through bank accounts. If there are any arrears to employees of SLF for more than 3 months for which the Concessionaire is responsible, the same shall be deducted/paid from the Tipping Fee payable to the Concessionaire as per Article 7 hereinbelow and the Concessionaire in that case shall be paid only the balance by the MCS.
- (n) Agrees and undertakes to pay MCS the annual lease rent for the lands that will be provided for the Project at the rate to be fixed by GOHP, which will be based on the guidelines issued by the Supreme Court of India from time to time.
- (o) The Concessionaire shall maintain and keep in force a Public Liability Insurance as per The Public Liability Insurance Act, 1991, for the entire period of Concession Agreement and Post Closure Period.

- (p) The Concessionaire, for the purposes of the Financing Documents, shall intimate to the Lenders by such notice as required under the Financing Documents:
- i. Of the happening of an Event of Default on the part of the MCS or Concessionaire;
 - ii. Of the Termination of this Agreement by the MCS or by the Concessionaire;
 - iii. Of the occurrence, continuance and cessation of any Force Majeure cause;
 - iv. Of any other breach or default on the part of the MCS / Concessionaire under this Agreement,

5.13 No Breach of Obligations

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

- (a) Force Majeure Event, subject to Article 8;
- (b) An Event of Default attributable to MCS;
- (c) Compliance with the written instructions given by MCS or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (d) Any repair or maintenance work being undertaken in any part of the SLF that requires suspension of the operations of the SLF. The period for any such repairs shall not exceed 15 (fifteen) days in a year.
- (e) Closure of the SLF in full or part thereof with the approval of the MCS.
- (f) Orders of any court having competent jurisdiction, unless being caused by mismanagement from the concessionaire.

5.14 Minimum Share holding:

The aggregate equity shareholding of the Successful Bidder/Lead Member in the case of Consortium, as the case may be, in the issued and paid up capital of Concessionaire shall not be less than 51% during the period of construction and 10 years following the CPOD and 26% during the

remaining term and the Successful Bidder shall not effect any change to this condition without the prior approval of MCS.

5.15 Maintenance of Records

The Concessionaire shall maintain records of the quantum (measured in Metric Tonnes) of waste supplied to the Sanitary Landfill Facility, waste processed, if any, rejects disposed to the Landfill Facility, duly counter checked by the Independent Engineer or his representative and provide monthly, quarterly and annual reports of the same to the Steering Group along with any other details sought by MCS for documentation.

The Concessionaire shall also maintain proper records of sale of products and carbon credits and receipts from such sales and provide a State of such sales and receipts for information to the MCS on a quarterly basis.

5.16 Service Levels

The Concessionaire shall ensure compliance to the Service Level benchmarks as provided in the Schedule 12 and in conformance with the guidelines of the Ministry of Urban Development, Government of India.

5.17 Drawings

(a) Preparation of Drawings

- i. The Concessionaire may, subject to the Construction Requirements, adopt with or without modifications the Drawings made available by MCS or adopt its own Drawings. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- ii. If the Concessionaire proposes any modifications to the Drawings made available by MCS or submits alternate Drawings or drawings in respect of any item for which no Drawings are made available by MCS, the same shall be subject to review by the Independent Engineer as hereinafter provided in Clause (b) below.

(b) Review of Drawings

- i. The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit a copy of each of the

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Drawings to the Independent Engineer and Steering Group. The list of drawings is as per Schedule -13

- ii. By forwarding the Drawings to the Independent Engineer and Steering Group pursuant to the preceding sub-clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirements.
- iii. Within 15 days of receipt of the Drawings, the Independent Engineer shall review the same taking into account, inter alia, comments of Steering Group, if any, thereon, and convey its comments/observations to the Concessionaire on the conformity of Drawings with Construction Requirements. If the comments/observations of the Independent Engineer indicate that the Drawings are not in conformity with the Construction Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Independent Engineer for further review. The Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalizing the Drawings.
- iv. If, within the period stipulated in the preceding sub-clause (iii), the Independent Engineer does not respond to the Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the implementation of the Project on the basis of such Drawings submitted by it to the Independent Engineer, and intimate the same to the Steering Group. The same should be highlighted in the periodic reporting by the Concessionaire.
- v. Notwithstanding any review or failure to review by or the comments/observations of the Independent Engineer or Steering Group, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- vi. The Concessionaire shall be responsible for delays in meeting the Construction Requirements caused by reason of any Drawings not being in conformity with the Construction Requirements, and shall not be entitled to seek any relief in that regard from MCS.
- vii. The Concessionaire shall, in consultation with the Independent Engineer finalize an implementation schedule for the Project in accordance with the Construction Requirements.

- viii. Within 90 (ninety) days of issue of Readiness Certificate or Provisional Readiness Certificate, as the case may be, the Concessionaire shall furnish to the Steering Group three copies of "as built" Drawings of the Construction Works which have been completed as on COD, in a manner as set out in Construction Requirements.

ARTICLE 6

MCS's OBLIGATIONS

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

6.1 Specific Obligations

- (a) MCS shall pay the Fee to the Concessionaire, on a monthly basis equivalent to the amount calculated as per provisions of Article 7.1.
- (b) MCS shall do whatever is in its power to declare and maintain, or cause to declare and maintain, a No-development zone around the Site in accordance with Applicable Laws.
- (c) MCS shall ensure that, during the Concession Period, the Concession granted to the Concessionaire shall be exclusive to the Concessionaire and MCS shall not allow any other person/company/ies or authority/ies to set-up, develop and/or operate any other SLF or other technologies which utilise the processing rejects without giving the right of first refusal to the Concessionaire.
- (d) MCS shall endeavour to provide the Concessionaire appropriate areas to utilize as inspection area, transfer stations or equipment sheds within its geographic limits or any other area mutually agreed to by MCS and Concessionaire.
- (e) MCS shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from MCS under this Agreement, in connection with implementation of the SLF and the performance of its obligations, subject to the Concessionaire meeting all its obligations. Provided, where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by MCS in the form as set out in Schedule 5, within fifteen (15) days from receipt of request from the Concessionaire, subject to the condition that the request applications carry complete and correct details required to be submitted.

- (f) MCS may facilitate the Concessionaire, wherever feasible, in obtaining finances from the financial institutions for the SLF by way of providing such information and/or documents as may be compulsorily insisted upon by the Lenders.

Provided, however, that nothing contained above shall be construed to mean MCS shall provide guarantee for loan or otherwise allow Concessionaire to mortgage MCS's properties for the loan.

- (g) MCS agrees, for the purposes of the Financing Documents, to intimate to the Lenders by such notice as required under the Financing Documents:
- (a) Of the happening of an Event of Default on the part of the MCS or Concessionaire;
 - (b) Of the Termination of this Agreement by the MCS or by the Concessionaire;
 - (c) Of the occurrence, continuance and cessation of any Force Majeure cause;
 - (d) Of any other breach or default on the part of the Concessionaire under this Agreement,
- (h) If during the Term of Agreement, the available Site falls short of the actual Landfill requirements, then, upon request from the Concessionaire for additional land and subject to recommendation by the Independent Engineer, MCS shall provide additional land at the cost of MCS for development of landfill within 12 months of receiving such request from the Concessionaire without any additional liability to the Concessionaire only if the requirement has arisen as a result of change in characteristics of the waste from the city. The concessionaire would bear the cost if deficiency in the sanitary landfill area is caused due to the inefficiency of the concessionaire operations.
- (i) In case the Concession Agreement is terminated due to any event other than a Concessionaire Event of Default, the PBG if subsisting as on the Termination Date shall, subject to MCS's right to receive amount at prevailing time if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire within 30 days from the Termination Date.
- (j) Upon notification by the Concessionaire on the details of the Habitual Defaulters, the MCS shall acknowledge receipt and initiate appropriate steps including but not limited to disconnection of power, water and/or stoppage of such other civic amenities and services in order to compel such Habitual Defaulters to pay the dues promptly.

6.2 General Obligations

MCS shall:

- (a) where appropriate provide necessary support to the Concessionaire in securing Applicable Permits;
- (b) observe and comply with all obligations set forth in this Agreement.
- (c) ensure timely payments to the Concessionaire.

ARTICLE 7

TIPPING FEE AND POST CLOSURE PAYMENTS

7.1 Tipping Fee

- (a) Subject to the provisions of this Agreement and RFP dated 8-11-2012, and in consideration of the Concessionaire undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, MCS agrees and undertakes to pay the Concessionaire a Tipping Fee calculated in accordance with Schedule 3, subject to any deduction (s) as allowed under the terms of this Agreement.
- (b) The Concessionaire shall weigh the Waste received at the Processing site and get it duly certified by the Third Party Certifier or his representative in the manner as set out in the O&M Requirements.
- (c) The Concessionaire shall, on the 7th day of every month or in case the 7th day of a Month being a holiday then on the following working day of such Month, submit to the Third Party Certifier a consolidated statement ("Tipping Fee Statement") providing the following details, in the manner as set out in Schedule 3 who in turn shall certify the same within three days of submission.
 - (i) Total quantity of Inert waste received and weighed at the SLF Receipt Point during the previous Month;
 - (ii) Quantity and percentage of Residual Inert waste (Landfill Waste supplied by MCS/ designated operator as percentage of total waste received by processing facility) on each day of the previous Month along with proof of certification of the same by the Independent Engineer
 - (iii) Aggregate quantity of Landfill Waste for the previous Month: and
 - (iv) Amount of Tipping Fee for the previous Month calculated in accordance with Schedule 3.
 - vi) Percentage of biodegradable in landfill material
 - vii) Penalties if any, computed as per Schedule 9

7.2 Mechanism of Payment

7.2.1 Payments during Term of Concession

- (a) Monthly payments: MCS shall, within 30 days from the date of receipt of the Tipping Fee Statement duly certified by the Third Party Certifier and adjusted for penalties/ deductions by MCS,
- (i) Pay to the Concessionaire, an amount equal to 98% of the total amounts payable to the Concessionaire in accordance with Article 7.1 as stated in such Tipping Fee Statement till two years prior to the end of the Term of Concession.
 - (ii) Pay to the Concessionaire, an amount equal to 95% of the total amounts payable to the Concessionaire in accordance with Article 7.1 as stated in such Tipping Fee Statement during the last two years of the Term of Concession.
 - (iii) Transfer the unpaid amounts as per Articles 7.2.1 (a) (i) & (ii) above into a separate bank account named "Post Closure Performance Account" for meeting the Post Closure Performance expenses of the Municipal Solid Waste Sanitary Landfill Project. The payment of such amount to the Concessionaire shall be in accordance with Article (b) below.

(b) Payment from Post Closure Performance Account:

- i. The amount accumulated in the Post Closure Performance Account shall be payable to Concessionaire against submission of a separate bank guarantee of equivalent amount that should be kept valid throughout the term of the Concession and Post Closure Period for meeting the Post Closure Performance related expenses. This amount would be granted to the Concessionaire in half yearly instalments against the submission of Bank Guarantee as above. MCS shall ensure that such amount is paid to the Concessionaire within 30 days on receipt of the requisite Bank Guarantee.
- ii. In case, the Concessionaire fails to renew within one month prior to the expiry of any of the Bank Guarantees, such guarantee would be encashed and the amount would be deposited in the "Post Closure Performance Account".
- iii. The Concessionaire shall have the option of submitting a single bank guarantee of requisite value in lieu of the Bank guarantee(s) previously submitted by him.
- iv. Within 30 days from the Appointed Date, the Parties shall open a special account designated as Post Closure Performance Account for making the payments as set out in Article 7.2 (a).

7.2.2 Payments during Post Closure Monitoring

- i. MCS shall not be liable to make any further payments to the Concessionaire during Post-Closure Period except as stated in Article 7.2.1 (b) above.
- ii. The Bank Guarantee(s) subsisting with MCS as per Article 7.2.1 at the end of the Term shall serve as protective measure to ensure that Concessionaire remains bound by all his obligations during Post Closure Period. The Bank Guarantees shall be kept valid throughout the Post Closure Period; however, the value of the same may be reduced at a rate of 5% per year. To further clarify, the amount that can be reduced every year shall be equal to 5% of the initial value of the Bank Guarantee (value at the end of Concession Term). However, under no circumstances, the value of Bank Guarantees subsisting with MCS shall fall below 25% of the initial value of Bank Guarantee.
- iii. It may be specifically noted that if any amount in Post Closure Performance Account is utilized as per provision of Article 10.3, then such amount shall be first adjusted before allowing yearly admissible reduction in the value of Bank Guarantee.
- iv. The remaining value of Bank Guarantees and amount accumulated in Post Closure Performance Account, if any, shall be promptly released by MCS within six months of issuance of Post Closure Completion Certificate by the Independent Engineer.

7.3 Terms of Payment

- a. Any delay in making payment in accordance with Article 7.2 above, shall without prejudice to any other consequences under this Agreement, entitle payment of simple interest on the amount in default @ 12% per annum calculated for the duration of delay.
- b. All payments to the Concessionaire shall be made by way of cheque/draft by MCS.
- c. All payments to MCS shall be made by way of cheque/draft payable in favour of "The Commissioner, Shimla Municipal Corporation" payable at Shimla.

ARTICLE 8

FORCE MAJEURE

8.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure: Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 8.2, 8.3 and 8.4 respectively, if it affects the performance of the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this

Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

8.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing, radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors, or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the SLF for a continuous period of 72 (seventy two) hours and an aggregate period exceeding 14 (fourteen) days in an Accounting year, and not being an Indirect Political Event set forth in Article 8.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor.
- (d) any judgment or order of any court, competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Government;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a Site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

8.3 Indirect Political Event

An indirect Political Event shall mean one or more of the following acts or events:

Municipal Solid Waste Sanitary Landfill Project for Shimla

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 72 (seventy two) hours and exceeding an aggregate period of 14 (fourteen) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of waste by the Concessionaire for a continuous period of 7 (seven) days.
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

8.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of the Article 8.11;
- (b) Compulsory acquisition in national interest or expropriation of any Assets of the SLF or rights of the Concessionaire or of the Contractors;
- (c) Unlawful or unauthorized or without jurisdiction revocation of or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Agreement and the SLF Agreements; 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 grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

8.5 Duty to report Force Majeure Event

- 8.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall, by notice, report such occurrence to the other Party forthwith. Any notice pursuant hereto 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 8 with evidence in support thereof;
 - (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (c) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
 - (d) Any other information relevant to the Affected Party's claim.
- 8.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 8.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 8.5.1, and, such other information as the other Party may reasonably request the Affected Party to provide.

8.6 Effect of Force Majeure Event on the Concession

At any time after the Approvals Date for SLF, if any Force Majeure Event occurs before CPOD, the Concession Period and the CPOD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

8.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (One Hundred and Eighty) days or more within a continuous period of 365 (Three Hundred and Sixty Five) days, either Party may in its discretion terminate this Agreement

by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save, as provided in this Article 8, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (Fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

8.8 Termination Payment for Force Majeure Event

- 8.8.1. If Termination is on account of a Non-Political Event, the MCS shall make a Termination Payment to the Concessionaire of an amount equal to 90% (Ninety percent) of the Debt Due less Proceeds of Insurance Cover received for assets under Concessionaire's ownership. Provided that in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from MCS further sum equal to 90% of amount of such claims not admitted. In no case, shall the total payment exceed ninety percent of the total value of the project assets as determined by an Independent Valuer appointed jointly by MCS and the concessionaire.
- 8.8.2. If Termination is on account of an Indirect Political Event, the MCS shall make a Termination Payment to the Concessionaire of an amount equal to:
- (a) Debt Due less Insurance Cover for assets under Concessionaire's ownership; provided that in the event such insurance claims or any part thereof are not admitted and paid, the Concessionaire shall be entitled to receive from MCS further sum equal to 90% of amount of such claims not admitted; and
 - (b) 110% (One hundred and Ten percent) of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during three years commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in Wholesale Price Index (WPI) during such year, and the adjusted amount so arrived shall be reduced year over year by 7.5% (seven and half percent) per annum.
 - (c) In no case, shall the total payment exceed 110% (One hundred and Ten percent) of the total value of the project assets as determined by an Independent Valuer appointed jointly by MCS and the concessionaire.

- 8.8.3. If Termination is on account of a Political Event, the MCS shall make a Termination Payment to the Concessionaire of an amount that would be payable under Article 9.2 as if it were a MCS Event of Default.

8.9 Dispute resolution

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; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

8.10 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a 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 of 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 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 Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

8.11 Change in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date, having an adverse bearing on the performance of obligations of Parties under this Agreement:
 - (i) The enactment of any new Indian law;
 - (ii) The repeal, modification or re-enactment of any existing Indian law.
 - (iii) A change in the interpretation or application of any Indian law by a court of record
 - (iv) Any order, decision or direction of a court of record.

Provided that Change in Law shall not include:

- (i) Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
 - (ii) Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
 - (iii) Any change in the rates of the Taxes.
- (b) Subject to Change in Law resulting in Materials Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of change in law on the SLF, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, MCS shall subsequently reimburse to the Concessionaire 75% of such Additional Costs, provided such Additional Cost was incurred in a manner as may be mutually agreed upon by Parties.
- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify MCS/the Independent Engineer of the following:
- (i) The Nature and the impact of Change in Law on the SLF
 - (ii) Insufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost.
 - (iv) The relief sought by the Concessionaire
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding sub-Article, Steering Group shall, along with the Independent Engineer, hold discussions and take all such steps as may be necessary including determination by the Independent Engineer/MCS of the quantum of the Additional Cost to be borne and paid by MCS.
- (e) MCS shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties.

ARTICLE 9

EVENTS OF DEFAULT AND TERMINATION

9.1 Event of Default

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

(a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire (“Concessionaire Event of Default”) unless such event has occurred as a result of one or more reasons set out in **Article 5.11**:

- (i) The Concessionaire has failed to operate the SLF for a continuous period of fourteen days;
- (ii) The Concessionaire has committed a Serious Default
- (iii) Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading.
- (iv) The Concessionaire creates any Encumbrance on the Project Site in favour of any person save and except as otherwise expressly permitted in this Agreement.
- (v) The aggregate equity shareholding of the Successful Bidder, Lead Member/Lead Partner, in the case of Consortium falls below the minimum prescribed under Article 5.14.
- (vi) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied within 60 days or any extension granted thereof after the receipt of notice from MCS;
- (vii) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire’s company.
- (viii) The Concessionaire is ordered to be wound up by a Court of competent jurisdiction except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement, and provided that: (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement; (ii) the amalgamated or

reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Concessionaire as at Commencement Date; and (iii) the Agreement remains in full force and effect.

- (ix) The Concessionaire suspends or abandons the operations of the SLF without the prior consent of the MCS, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such suspension/ abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations under (b) below by the MCS thereby forcing the Concessionaire suspending the operations of the SLF.
- (x) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Affect on the Project and such attachment continues for a period exceeding 45 days.
- (xi) The Concessionaire unlawfully repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement.
- (xii) The joint partnership/ Consortium agreement with the Technical member is dissolved before the minimum duration specified in the Tender and the lead member has not substituted with a equally competent or better Technical partner. Such substitution can only be done with the written permission of MCS.

(b) MCS Event of Default

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

- (i) MCS is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (Sixty) days of receipt of notice thereof issued by the Concessionaire;
- (ii) MCS has failed to fulfill the conditions set out in **Article 2.6**;
- (iii) MCS has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

- (iv) MCS or any Governmental Agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and has failed to cure the same within 60 days of notice thereof by the Concessionaire.
- (v) MCS has failed without reasonable grounds to make any payments due to Concessionaire and more than 30 days have elapsed from the due date for such payments.

9.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which MCS may have in respect thereof under this Agreement upon the occurrence of a Concessionaire Event of Default, MCS shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement in the manner as set out under **Article 9.2 (a) (ii)** and **Article 9.2 (a) (iii)**.

Provided however that upon the occurrence of a Concessionaire Event of Default as specified under **Article 9.1 (a) (iii)**, MCS may terminate this Agreement by issue of Termination Notice in the manner set out under **Article 9.2(c)**.

- (ii) If MCS decides to terminate this Agreement pursuant to preceding Article 9.2 (a)(i) it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to MCS in sufficient detail and if applicable, the manner in which inter alia it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). The same shall be reasonably considered by the MCS. In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days or any extension granted thereof by the MCS, MCS shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) In case the Concessionaire submits a Proposal to Rectify within the period stipulated as per Article 9.2 (a) (ii) above, the Concessionaire shall have a further period of ninety (90) days or any extension granted therefor by the MCS to remedy / cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, MCS shall be entitled to terminate this

Agreement, by issue of Termination Notice and to appropriate the Performance Security, if subsisting.

(b) Termination for MCS Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of MCS 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 9.2 (b)(i) it shall in the first instance issue Preliminary Notice to MCS. Within 30 days of receipt of Preliminary Notice, if applicable, MCS shall forward to the Concessionaire its proposal to remedy/ cure the underlying event of Default (the "MCS Proposal to Rectify"). In case of non submission of MCS Proposal to rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) In case MCS Proposal to Rectify is forwarded to the Concessionaire within the period stipulated in Article 9.2 (b) (ii), MCS shall have further period of 30 days to remedy/cure the underlying Event of Default. If, however MCS 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 90 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) Obligation of Parties

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

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the SLF; i.e. the Concessionaire shall continue to receive waste, process and dispose them of while MCS shall continue to pay the applicable Tipping Fee for the respective waste quantity.
- (ii) the termination payment, if any, payable by MCS in accordance with the following sub-article (f) is paid to the Concessionaire on the Termination Date; and,
- (iii) the Site is handed over back to MCS and Lenders as per provision of **Article 10** by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to MCS.

(e) **Withdrawal of Termination Notice**

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

(f) **Termination Payments**

- i) Upon Termination of this Agreement on account of Event of Default of either MCS or the Concessionaire as the case may be. The termination payment shall be made as per the following formula. This amount shall be further reduced by the total insurance claims received by the concessionaire to arrive at the maximum termination payment.

MCS Event of Default:

Termination payment: 120% (one hundred twenty percent) of Valuation of project less insurance proceeds

Concessionaire Event of Default:

Termination payment: 70% (seventy percent) of Valuation of project less insurance proceeds

*Project assets shall mean those assets that the Concessionaire has deployed for the project facility as approved by the Independent Engineer /designated authority of the MCS. It would exclude all assets which can be taken away by the Concessionaire. For Eg. Shed for equipments, stationary bins etc would be project assets, whereas assets like vehicles which can be utilized by the developer even if the project facility is shut down would not be qualified as Project assets.

The valuation shall be carried out by an independent firm of valuers, registered with the Indian Institute of Valuers. The cost of Valuers firms shall be equally borne by both MCS and the Concessionaire

- ii) Upon Termination by the MCS on account of occurrence of a Concessionaire Event of Default during the Concession Period, the MCS shall pay to the Lenders the Debt Due as on the date of termination subject to a maximum of the termination payment
- iii) MCS reserves the right to pay on a pro rata basis over the balance period of the concession period along with a simple interest of 12%.

9.3 Right of MCS on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, MCS shall upon making the Termination Payment, if any, to the Concessionaire and in accordance with the provisions of the Financing Documents have the power and authority to:
 - (i) enter upon and take possession and control of the SLF forthwith free from any Encumbrances;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/dealing with the SLF or permit as required for pending resolution of any issues to a limited number of representatives of Concessionaire.
- (b) Notwithstanding anything contained in this Agreement, MCS shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the SLF, and the handover of the SLF by the Concessionaire to MCS shall be free from any such obligation.

9.4 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.

ARTICLE 10

HANDOVER OF SLF

10.1 Ownership during the Term of Concession

Without prejudice and subject to the Concession, the ownership of SLF, including all improvements made therein by the Concessionaire, during the term of the Concession shall at all times remain as mentioned below:

- a. that of the Site shall remain with MCS
- b. that of all immovable and movable assets including equipment and machinery and vehicles shall remain with the Concessionaire and in accordance with the Financing Documents and first prior charge to Lenders' privileges

10.2 Concessionaire's Obligations

- (i) The Concessionaire shall, on the date of expiry of the Agreement Term, hand back peaceful possession of the SLF to MCS free of cost and in normal operating condition.
- (ii) At least 12 months before the expiry of the Term of Agreement a joint inspection of the SLF shall be undertaken by the Independent Engineer/MCS and the Concessionaire. The Concessionaire shall promptly assist MCS in preparing the necessary documentation for the proper handing over of the SLF to MCS at least three months prior to the expiry of Agreement Term.

- (iii) At least 12 months before the expected expiry of the Landfill Life, the Concessionaire and the Independent Engineer shall, discuss and jointly prepare the Post Closure Operating Plan for maintenance of the Landfill Facility, under the provisions of the prevailing statutory regulations (“Post Closure Maintenance Plan”).
- (iv) The Concessionaire shall, after expiry of the Active Operations Period maintain the Landfill Facility in accordance with the Post Closure Maintenance Plan.
- (v) Upon the expiry of the Post Closure Monitoring Period, the Concessionaire shall hand back peaceful possession of the Landfill Facility to MCS free of cost and in reasonable condition
- (vi) The Concessionaire shall before handing over to MCS, attend to all maintenance works/ replacement/ refurbishment/ reconditioning of broken down equipment, replenish the inventory of spares, tools and tackles required for one year of trouble free operation.
- (vii) The Concessionaire shall train, at no extra fee, a select team of the MCS’s staff for operating the SLF in any emergency and for eventual taking over SLF after the Concession Period. Such training shall be for at least three months, and refresher training shall be for at least two weeks.

10.3 MCS’s Obligations

MCS shall, subject to MCS’s right to encash the Bank Guarantees, deduct amounts from the Post Closure Performance Account towards

- (i) carrying out works/ jobs listed under **Article 10.2**, which have not been carried out by the Concessionaire
- (ii) any outstanding dues, which may have accrued in respect of the SLF during the Concession Period,

duly discharge and release to the Concessionaire the amounts in the Post Closure Performance Account.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Article (b) below.
- (b) Either Party may require such Dispute to be referred to the Commissioner, MCS (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably settle the dispute within 15 (fifteen) days of such meeting between the Parties. Either Party may refer the Dispute to arbitration in accordance with the provisions of **Article 11.2** below.

11.2 Arbitration

(a) Procedure

Subject to the provisions of **Article 11.1**, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration and Conciliation Act, 1996.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Shimla but by agreement of the Parties, the arbitration hearing, if required, may be held elsewhere.

(c) Language

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

(d) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall, be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Conciliation Act, 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.

11.3 Performance during Dispute

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

ARTICLE 12

REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to MCS that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the SLF;
- (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 default with respect to any order of any Government Agency which may result in Materials 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) 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 SLF, and the information provided by MCS, 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.
- (k) 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 MCS shall not be liable for the same in any manner whatsoever to the Concessionaire.

12.2 Representations and Warranties of MCS

MCS represents and warrants to the Concessionaire that:

- (a) it is duly incorporated under the laws of India and has the power to conduct its business as presently conducted and to enter into this Agreement;
- (b) that it has full power, capacity and authority to execute, deliver and perform this Agreement and has taken all necessary sanctions and approvals and followed all the procedures required to authorize the execution, delivery and performance of this Agreement.

- (c) nothing in this Agreement conflicts with its constitutional authority, mandate, or any law or any other agreement, understanding or arrangement or any judgment, decree or order or any statute, rule or regulation applicable to it.
- (d) all approvals and permissions necessary for the execution of this Agreement have been obtained and the required procedure for the due execution of this Agreement has been adhered to and further that this Agreement will be valid, legal and binding against it under the Indian Law.

12.3 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.

ARTICLE 13

MISCELLANEOUS

13.1 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 with prior consent of both MCS & Lenders.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Site except with prior consent in writing of MCS.
- (c) Restraint set forth in Articles 13.1 (a) and (b) above shall not apply to:
 - (i) Liens/Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire:
 - (ii) Pledges/hypothecation of goods/stocks/moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the SLF ;
 - (iii) Assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

13.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing prime lending rate of Reserve Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without Prejudice to any other right or remedy that may be available under this Agreement and otherwise under law, the Party entitled to receive such amount shall also have the right to set off the entire amount(s) against any payment due from it to the other Party.

Provided the stipulation regarding interest for delayed payments contained in this Article 13.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

13.3 Governing Law and Jurisdiction

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

13.4 Waiver

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

13.5 Survival

Termination of this Agreement

- (a) Shall not relieve the Concessionaire or MCS 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.

13.6 Amendments

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

13.7 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 Registered Post with Acknowledgement Due, Hand delivery, recognized international courier, E-mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to MCS:

The Commissioner,
_____Municipal Corporation (MCS)

Telephone:

Facsimile:

If to the Concessionaire:

Telephone:

Facsimile:

If to Successful Bidder

Telephone:

Facsimile:

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

- (i) in the case of any communication made by letter, when delivered by Registered Post with Acknowledgement Due, Hand delivery, recognized international courier, E-mail, (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

13.8 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.

13.9 No Partnership

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

13.10 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 or Hindi language.

13.11 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.

13.12 Counterparts

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

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

For and on behalf of MCS by

1.

2.

For and on behalf of Concessionaire

1.

2.

For and on behalf of Successful Bidder

1.

2.

SCHEDULE-1

DETAILS OF SCOPE OF WORK, SITE & SITE PLAN

(to be attached later)

SCHEDULE- 2

**SCOPE, DESIGN, DEVELOPMENT, OPERATIONS AND MAINTENANCE
REQUIREMENTS OF SLF**

(To be submitted by the Concessionaire)

SCHEDULE-3

FEES

(to be filled up upon award of the contract)

Fees payable = Price payable x Total weight of MSW in a month - Penalties applicable

Base Indices:

(To be filled in at the time of agreement)

- W₀ - All India average Consumer Price index for industrial workers as published by the labour bureau, Ministry of Labour, Government of India (Base year is 2001 = 100).The index number is as applicable for the week ending first Saturday of the month. One month prior to the date of tendering
- HSD₀ - Wholesale Price index for High Speed Diesel Oil (Base = 2004 – 2005= 100) as published by the, Ministry of Commerce and Industry, Government of India. The index number is as applicable for the week ending first Saturday of the month. One month prior to the date of tendering
- WPI₀ - Wholesale Price index for All Commodities (Base = 2004 – 2005= 100) as published by the, Ministry of Commerce and Industry, Government of India. The index number is as applicable for the week ending first Saturday of the month. One month prior to the date of tendering

SCHEDULE- 4

LAND LICENCE AGREEMENT

(On Rs.200.00 Stamp Paper)

FORMAT OF LAND LICENCE AGREEMENT

This LICENCE AGREEMENT (hereinafter referred to as the Licence Agreement/Agreement) is made on the _____ day of _____ in the year Two Thousand and Eleven at <name here>

AMONGST

<Name here> Municipal Corporation, a Municipal Corporation established under the Municipal Corporation Act 1956 and having its offices at <Location here>, acting through its Commissioner (hereinafter referred to as "the Licensor" which expression shall wherein the context or subject implies include its successors) of the FIRST PART

AND

M/s -----, a company incorporated under the Company's Act 1956, having its registered office at -----, -----, India (hereinafter referred to as "Licensee" which expression shall unless it be repugnant to the subject or context be deemed to include its successors and permitted assigns), through Mr. -----, duly authorized in this behalf by way of a Board Resolution dated -----, of the SECOND PART

AND

M/s. _____, a company incorporated under the Companies Act 1956 having its registered office at _____ (hereinafter referred to as "Successful Bidder" pursuant to RFP dated -----, which expression shall unless repugnant to the context or meaning thereof, mean and include its associate / group companies, successors and assigns), through Mr. -----, duly authorized in this behalf by way of a Board Resolution dated -----, of the THIRD PART

Licensor, Licensee and Successful Bidder are hereinafter referred to individually as the "Party" and collectively as the "Parties".

WHEREAS

Municipal Solid Waste Sanitary Landfill Project for Shimla

- A. The <name here> Municipal Corporation is desirous of improving its Municipal Solid Waste Management and disposal capabilities in order to enable the due discharge of its functions under the MSW Rules, 2000 and for that purpose has approved the establishment of a Municipal Solid Waste Sanitary Landfill Project ("Project") by the Licensee at Bhariyal and has entered into a Concession Agreement dated : _____ with M/s ---- -----, the Concessionaire ("Concession Agreement"), on the same date as this Licence Agreement, under which it has authorized the Licensee to implement the Project.
- B. The SHIMLA MUNICIPAL Corporation in order to enable the due implementation of the Project and to discharge its obligations under the Concession Agreement is hereby providing the Licensee (the Concessionaire under the Concession Agreement), by way of this Licence Agreement ("this Agreement"), the Demised Premises (more particularly delineated in Schedule-1 hereto and shown in the Site map attached thereto) for the purposes of implementing the Project and constructing, operating and maintaining the integrated waste Processing plant on the Demised Premises, on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

NOW THIS INDENTURE OF LICENCE WITNESSETH AS FOLLOWS:

1. This Agreement shall be co-terminus with the Concession Agreement (including the initial Term and any extension thereof) and is to be read, for any interpretation, together with the provisions of the Concession Agreement.
2. The capitalized terms that are used but not defined in this Agreement shall have the same meaning as given to them in the Concession Agreement.
3. In consideration of the Licensee undertaking to implement the Project in accordance with the provisions of the Concession Agreement and undertaking to pay the Licence payment stipulated in Article 4 below; the Licensor hereby demises unto the Licensee, all the land admeasuring Square Meters (together with any physical structures existing thereon) which is described, delineated and shown in the Schedule-1 hereto (the "Demised Premises"), to hold the said Demised Premises, without interruption or interference together with the full and free right and liberty of way and passage and other rights in relation thereto, for as long as the Concession Agreement does not lapse due to expiry of its Term or is not terminated earlier in accordance with the provisions thereof. The term of this Agreement shall be co-terminus with the Concession Agreement. The Licensor hereby agrees and authorizes the construction, operation and maintenance of the plant and each of the

project Facilities on the Demised Premises in accordance with the terms of the Concession Agreement.

4. In consideration of the transfer of the Demised Premises under this Agreement, the Licensor shall, effective from CPOD, receive a rent of Rupee XXX (Rs. Only) per square meter per annum (Licence Payment), or such other rental rate as may be fixed by the Licensor/GoHP, on or before the 10th day of the first calendar month in each year provided however, the Licence Payment can be paid in advance for such period of time as the Licensee may deem fit. The Licensor undertakes and assures the Licensee that the Licence Payment for the Demised Premises shall remain fixed for the entire period that this Agreement remains valid and binding.
5. The Demised Premises are being vested with the Licensee, under this Agreement, free from any Encumbrances (other than the existing physical structures thereon which has been inspected by the Licensee and agreed to be taken over in accordance with the terms of the Concession Agreement), whether legal or physical in nature. At any time during the term of this Agreement if the Licensee discovers any Encumbrances upon or under the Demised Premises which materially and/or adversely affect its rights in relation to the Demised Premises/the Project, it shall notify the Licensor, which shall, within twenty one (21) days from the receipt of the notice, either remove or cause to be removed such Encumbrances at its own cost. In the event that the Licensor fails to remove such Encumbrances within twenty one (21) days from the notice thereof, the Licensee may remove or cause to be removed such Encumbrance.
6. The Demised Premises are being vested with the Licensee, under this Agreement only for the purposes of the Project including for the purposes of developing, establishing, designing, constructing, operating and maintaining the Project facilities as per the Concession Agreement, which the Licensor is desirous of being constructed, operated and maintained on the Demised Premises for the purposes of enabling the Processing of Municipal Waste in accordance with the Concession Agreement. The Licensor hereby authorizes and consents to the receipt of consignments of Municipal Waste rejects, the storage and Processing of Municipal Waste and Residual Inert Matter as well as to the receipt and storage of any waste (including Excluded Waste and Rejected Waste) that may have been received by the Licensee in any consignment of Municipal Waste.
7. The Licensor hereby authorizes the Licensee, to construct, erect, own, operate and maintain any superstructure, facility or any movable or immovable structures constituting the Plant (including each of the Project Facilities) on the Demised Premises and for that purpose also remove, renovate, use or demolish any structures that may be existing on the

Demised Premises as of the date of this Agreement. The Licensor hereby agrees and acknowledges that it shall not own or have any rights to any superstructure, facility or any moveable or immovable structures constituting the Plant that are constructed or erected or placed on the Demised Premises and further that the same shall be owned by the Licensee. The Licensor hereby agrees that the construction, operation and maintenance of the Plant at the Demised Premises and the receipt, storage and Processing of Municipal Waste at the Demised Premises is being undertaken pursuant to the Concession Agreement granted by it and for the purposes of enabling the Licensor to discharge its functions of managing, processing and disposing Municipal Waste.

8. The Licensee by virtue of a No Objection Certificate from the MCS shall have the right to, without requiring any prior permission of the Licensor, vest with the Lenders the power to take over the control, possession and all rights and interests in relation to the facilities situated on the Demised Premises by appointing a person, the substitute entity, to replace the Confirming Party and undertake the construction, operation and maintenance of the Plant upon the occurrence of an event of default by the Confirming Party / Licensor as detailed in the Concession Agreement, as the case may be, under any of the Financing Agreements. The Licensor shall novate this Agreement in favour of the substitute entity and the Licensor on the terms and conditions of this Agreement as existing at the time of such novation.
9. The Licensor hereby authorizes the Licensee to create any Encumbrance over the Plant constructed on the Demised Premises (excepting the land) and this Agreement in favour of the Lenders to enable financing of the construction, operation and maintenance of the Project. The Licensor agrees that it shall enter into such agreement as may be required by the Lenders to enable financing of the Project and creation of the Encumbrance required by the Lenders. Without prejudice to the terms of this Agreement, the Licensor shall be governed by the terms of any agreement that the Lenders may have entered into with the Licensor in respect of the Encumbrance over the Project Facilities (other than the land constituting the Site which shall not be mortgaged), any assets of the Project and this Agreement, created in favour of the Lenders.
10. The Licensor hereby covenants and assures the Licensee that to the best of its knowledge and belief:
 - a) All the land comprising the Site is of non-agricultural status and is permitted and duly authorized and earmarked for purposes of establishment, construction, operation and maintenance of the Plant and the Project Facilities, and that it shall obtain any additional

- Applicable Approvals that may be required for the development, construction, operation and maintenance of the Project Facilities;
- b) The Site is free from any encroachment or Encumbrances whatsoever and is not subject to any acquisition or other legal proceedings by any authority, body or government nor is any claim of any third party subsisting in respect thereof or relating thereto;
 - c) Licensor controls the land constituting the Demised Premises and it shall, in that capacity, defend or satisfy all actions or claims against the use of the Demised Premises for the Project;
 - d) It shall not demand or in any manner claim or seek to recover the Licence Payment prior to the CPOD or increase the Licence Payment due and payable by the Licensee under the provisions of this Agreement;
 - e) It shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demised Premises and all rights in relation thereto, including the creation of security interest on the facilities in the Demised Premises in favour of the Lenders in accordance with the provisions of the Concession Agreement;
 - f) It shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation: (i) to the construction, operation and maintenance of the Plant; (ii) the implementation of the Project by the Licensee and (iii) the possession, control and use, by the Licensee of the Demised Premises and the Plant;
 - g) It shall enter into appropriate further documentation or additional writings as the Licensee or the Lenders may reasonably require to give effect to the provisions of this Agreement and the Financing Agreement;
 - h) There are no litigation, claim, demand or any proceedings (whether administrative, legal or quasi judicial) pending before any authority in respect of the Demised Premises or its use for the purposes of managing, Processing and disposing MSW; and
 - i) The Licensee shall have lawful and uninterrupted, possession, control and use of the Demised Premises.

11. The Licensee hereby covenants with the Licensor as follows:

- a) That it shall implement the Project in accordance with the Concession Agreement; and
- b) That it shall observe and perform all terms, covenants, conditions and stipulations of this Agreement.
- c) That it shall use the Demised Premises only for the purposes stated herein or in the Concession Agreement and for no other purpose.
- d) That it shall not create or cause to be created on the Demised Premises any Encumbrance in any manner except what has been explicitly stated herein and shall keep the Licensor indemnified at all time during the

term of this Agreement against any such Encumbrance that may be arising out of the actions and/or omissions of the Licensee except what has been permitted under this Agreement.

12. Licensor has possession and control of all the land constituting the Site and has the requisite right and authority to Licence the same to Licensee for the Term for the purposes of the Project on the terms and conditions of this Agreement and further that Licensee shall have full, free and uninterrupted peaceful vacant possession, enjoyment/ occupation and use of the Demised Premises throughout the Term, without any obstruction, interference or disturbance or claim whatsoever from the Licensor or from any person claiming through under or in trust for Licensor or from any third person whosoever. Licensor shall keep the Licensee fully indemnified and harmless against any claims or demands from any person claiming right, title or interest to or in the Demised Premises or any part thereof or challenging the validity of the usage of the Demised Premises for the Project or challenging the validity of this Agreement, as also against any actions, proceedings, damages, losses and expenses caused to Licensee as a result or in consequence of such claims or demands as aforesaid.
- 13 (a) Subject to Sub-Articles (b) and (c) below, no assignment of this Agreement or any rights or duties hereunder shall be made in whole or in part by any party without the written consent of the other party and in the event of any assignment the assignee shall assume the duties and liabilities of the assignor.
- (b) it is hereby specifically agreed that the Licensee shall, in the event of forming a limited company either as subsidiary company or jointly along with any other company or otherwise, be at liberty to assign and transfer the Plant, the Demised Premises and this Agreement or the rights and benefits hereof or duties hereunder to such newly formed limited company or in favour of such subsidiary company of the Licensee subject however to obtaining formal consent from the Licensor in writing, which consent shall not be withheld by Licensor. Any assignment by the Licensee shall be subject to the condition that the assignee shall assume the duties and liabilities of the Licensee.
- (c) The Licensor hereby agrees that the Licensee shall not require any prior approval of the Licensor for creating any Encumbrance, right, title, or interest over the facilities Demised Premises (excepting land) and the Project Facilities and other assets of the Project, under its possession as per Article 10.1 of the Concession Agreement, in enforcement of their security upon the happening of an Event of Default there under/the Concession Agreement on the part of the Licensee.

Municipal Solid Waste Sanitary Landfill Project for Shimla

14. The Licensor hereby assures and represents to the Licensee that the vesting of the Demised Premises under this Agreement shall be irrevocable for as long as the Concession Agreement remains in force or till such time as the landfill capacity of the site is saturated and all the contractual obligations are met with, whichever is earlier and the Licensor shall not terminate this Agreement except upon the expiry or early termination of the Concession Agreement or saturation of the landfill capacity of the site and all the contractual obligations are met with, whichever is earlier. The Parties hereby agree that on the expiry or termination of the Concession Agreement, the Demised Premises shall be handed back to the Licensor in accordance with the provisions of the Concession Agreement and that this Agreement shall terminate only on the handing over of the plant and the Site to the Licensor in accordance with the terms of the Concession Agreement.

15. Any disputes and/or differences arising between the Parties, in relation to or under this Agreement will be resolved through arbitration in accordance with Article 11 of the Concession Agreement as per provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be Indian law.

16. The Licensor hereby recognizes that this is a commercial act being undertaken by the Licensee and that it hereby unconditionally and irrevocably waives any right of immunity, sovereign or otherwise from legal proceedings that may be initiated to enforce any provisions of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE AFFIXED THEREIN AND SEALED TO THIS LICENCE AGREEMENT THE DAY AND YEAR FIRST HEREINABOVE WRITTEN:

SIGNED, SEALED AND DELIVERED
IN THE NAME AND ON BEHALF OF
THE LICENSOR THROUGH:

SIGNED, SEALED AND DELIVERED
BY LICENSEE THROUGH ITS
AUTHORISED SIGNATORY IN
PRESENCE OF:

SIGNED, SEALED AND DELIVERED
BY SUCCESSFUL BIDDER
THROUGH ITS AUTHORISED
SIGNATORY IN THE
PRESENCE OF:

SIGNED, SEALED AND DELIVERED
BY CONFIRMING PARTY
THROUGH ITS AUTHORISED
SIGNATORY IN THE
PRESENCE OF:

SCHEDULE- 5

AUTHORISATION

(to be filled up upon award of the contract to the Successful Bidder)

SCHEDULE- 6

SCOPE OF WORK OF INDEPENDENT ENGINEER (to be filled up jointly by the Successful Bidder and MCS)

- a. The Independent Engineer shall discharge his duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- b. The scope of work of the Independent Engineer shall be to review and oversee the (i) design and construction works of the Project Facilities in coordination with the activities covered in the scope of Construction Supervisor; and (ii) operations and maintenance of the Project.
- c. Broadly, the role of the Independent Engineer is set out in the following paragraphs.
 - (i) Independently review, monitor and wherever required by the Agreement the approval by the Construction Supervisor of the design, construction, operation and maintenance of the Project Facilities to ensure compliance by the Concessionaire with the Development Plan, Drawings, Construction Requirements and O&M Requirements
 - (ii) The role of Independent engineer shall cover the collection and transportation, including, door to door collection, source segregation, road sweeping, drain cleaning, customer complaint and redressal etc and checking of organic content in residue inert for landfill as well as all activities related to the treatment and disposal facilities. Therefore he shall suggest any actions which have a bearing on the Operation and maintenance of the SLF
 - (iii) Verification and random checks of weighment and testing of the MSW at the Processing and Landfill Site.
 - (iv) Verify and submit a monthly report to ULB on compliance by the Concessionaire with the requirement of the agreement and with Applicable Laws.
 - (v) Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,

SCHEDULE- 7

**FORMAT OF PERFORMANCE BANK GUARANTEE (PBG)
(UNCONDITIONAL)**

To

The Commissioner
SHIMLA MUNICIPAL Corporation
Shimla

WHEREAS _____ [Name and Address of Concessionaire] (hereinafter called the Concessionaire) has undertaken in pursuance of Contract No. _____ dated _____ to execute the work of Municipal Solid Waste Sanitary Landfill Project for Shimla(hereinafter called the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Concessionaire shall furnish you with a Bank Guarantee by a nationalized bank for the sum specified therein as security for compliance with his obligations in accordance with the Concession Agreement;

AND WHEREAS we have agreed to give the Concessionaire such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Concessionaire, up to a total of Rs. [amount of Guarantee] _____ [in words], such sum being payable in Indian Rupees in which the Concession price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument any sum or sums within the limits of _____ [amount of Guarantee] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Concessionaire before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Concession Agreement or of the Works to be performed there under or of any of the Concession documents which may be made between you and the Concessionaire shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

The guarantee shall be valid until 180 days of the contract completion/termination date or specified otherwise in Letter of Intent (LoI)/Concession Agreement.

Municipal Solid Waste Sanitary Landfill Project for Shimla

SIGNATURE AND SEAL OF THE GUARANTOR:

NAME OF BANK: _____

ADDRESS: _____

DATE: _____

**SCHEDULE - 8
(DELETED)
(to be submitted by Bidder)**

**SCHEDULE - 9
TECHNICAL SCHEME FOR SANITARY LANDFILL AND LEACHATE
MANAGEMENT
(to be submitted by Bidder)**

**SCHEDULE - 10
OPERATION AND MAINTENANCE MANUAL FOR THE SANITARY
LANDFILL INCLUDING LIST OF SPARES REQUIRED FOR EACH YEAR
(to be submitted by Bidder)**

**SCHEDULE - 11
APPROACH AND METHODOLOGY FOR CONSTRUCTION OF THE SLF
FACILITY
(to be submitted by Bidder)**

Municipal Solid Waste Sanitary Landfill Project for Shimla

**SCHEDULE - 12
SERVICE LEVEL**

This table illustrates the service level conditions and the penalties on failure to achieve the service levels. The operating plan defines the key result areas as requested in the Concession agreement, RFP and the bidders submission, whichever is more stringent

<u>Sl. No.</u>	<u>Function</u>	<u>Service Level</u>	<u>Default</u>	<u>Penalty</u>	<u>Service Indicators Periodicity for computing unit of Default</u>
1	Mechanical availability of the Sanitary landfill Bidder to indicate system availability in hours of operation/month	The Concessionaire shall ensure that the plant availability at the facility on all working days is in accordance with the MSW Rules.	Equipment break hours in respect of material handling equipment, pollution control equipments, Leachate Treatment facility as notified by the authorized personnel of the Corporation or Independent Engineer (Excluding the scheduled preventive maintenance closure of the plant).	Penalty of 1% of fee for every 1% reduction in system availability	Unit of Default is percentage hours of non availability of machines in a month
2	Proper disposal of waste	The concessionaire to ensure that the reject waste	proof of proper disposal of waste by topographical	Penalty of 1% of fee for every 1%	% reduction in dry

Municipal Solid Waste Sanitary Landfill Project for Shimla

		has been properly compacted	surveys of the landfill to confirm that waste has been properly compacted. A compaction/density indicator might also be useful.	reduction in compaction	density of landfilled waste
2	Methane levels in the landfill	The methane levels at the landfill site shall be maintained below the levels specified in the MSW Rules 2000.	Failure to adhere the MSW Rules and failure to rectify the same within 7 days of intimation to the Concessionaire during the Concession Period.	Rs.25,000/- per Default in addition to any other penalties charged by Pollution Control Board. If the Default is repeated within 30 days of the first Default, the Penalty will be double.	Per incident
3	Upkeep and maintenance of records.	The Concessionaire shall maintain records of receipt of waste and such other details as prescribed by the Corporation in the Concession Agreement.	Failure to furnish updated daily records to the authorized personnel of the corporation within 48 hours of notice to the Concessionaire.	Rs.1,000/- per Default and double subsequently if it recurs within 30 days.	Monthly
4	Leachate management	The Concessionaire shall maintain the leachate	Failure to comply with the stipulations	Rs.20,000/- per Default and double subsequentl	As per Consent Conditions

Municipal Solid Waste Sanitary Landfill Project for Shimla

		treatment plant and discharge at standards as specified under the Schedule IV of MSW Rules 2000 or the Consent Conditions.	of Pollution Control Board.	y if it recurs within 30 days, in addition to any other penalties specified by the Pollution Control Board	
5	Safety in Operations	The Concessionaire shall comply with the relevant regulations regarding Occupational Safety and Health.	Failure to comply with the stipulations	Rs.10,000/- per incident plus any other charges related to the mitigation of the problems caused, apart from any liability under the Workmen's Compensation Act and/or other labour laws	Per Incident
6	Submission of Statutory documents	The Concessionaire has to furnish all documents / reports to the Statutory agencies within the stipulated time	Failure to comply with the stipulations	Rs.10,000/- per incident plus any other penalty levied by the statutory body	Per incident
7	Training of O & M staff of MCS	The Concessionaire has to train the designated O & M staff of MCS at frequency indicated in	Failure to comply with the stipulations	Rs.10,000/- per incident plus training cost incurred independently by MCS	Per incident

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	the Tender			
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- Note: 1) The penalty as prescribed herein shall be initiated by the Corporation upon furnishing such notice to the Concessionaire as per the applicable rules of the Corporation.
- 2) The Corporation reserves the right to set off the penalty amount from the amount payable by the Corporation to the Concessionaire.
 - 3) In case of any disputes on the applicability or computation of the penalty, the Concessionaire shall raise such dispute within 7 days of the receipt of the notice as given in (1) herein above by furnishing the reasoning of the dispute in writing to the Secretary or the authorized official of the Corporation.
 - 4) The costs related to subsequent re-inspection/ third party tests to check compliance after the default has occurred shall be incurred by the Concessionaire.
 - 5) MCS shall have the right to claim from the Concessionaire 110% of the actual cost incurred by it in correcting / remedying a default in the scope of the Concessionaire, if the Concessionaire is not able to rectify the same within reasonable time and if the said rectification is done after due notice is given to the Concessionaire. This shall be in addition to any penalty payable by the Concessionaire as per the relevant penalty clause.
 - 6) It shall be noted that if the Total Penalty Payable by the Concessionaire in a given month exceeds 25% of the average monthly Tipping Fee collected / paid during the preceding 12 months in any Financial Year or exceeds 20% of the cumulative annual payments to be made to the Concessionaire in any Financial Year, it shall be considered a Serious Default by the Concessionaire and the MCS may invoke appropriate action as it may deem fit. Provided, however, that for the first year, the penalty shall be computed on the basis of the average monthly tipping fee for the preceding three months.

Schedule 13

List of Construction drawings

The following drawings are required to be submitted as a minimum. The list is not exhaustive and may be modified by the Independent Engineer. These drawing along with their design and backup calculations should be approved by MCS prior to the commencement of construction

Sl No	Particulars	
1.	Master Plan of SLF site	
2.	Project contour plan	

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3	Project Levels layout of various phases	
4	Sealing system details	
5	Leachate collection system layout plan	
6	Cross section through SLF showing Retaining wall / embankment	
7	Longitudinal Section through SLF	
8	Details of capping	
9	Gas capture system details	
10	Leachate pumping system	
11	Leachate holding tank	
12	Storm water collection system	
13	Quarantine tank	
14	Monsoon storage shed	
15	Office and lab details	
16	Weighbridge, Security and others	
17	Roads and drains	
18	Retaining wall and culverts	

Annexure-1

Letter of Intent