

**AGREEMENT**

**between**

**Municipal Corporation of Delhi**

**and**

\_\_\_\_\_ **Limited**

**for**

**Collection, Segregation, Transportation, and Disposal of  
Municipal Solid Waste  
in  
CITY ZONE**

## TABLE OF CONTENTS

ARTICLE	CONTENTS	PAGE
<b>1</b>	<b>DEFINITIONS AND INTERPRETATION</b>	<b>3</b>
1.1	Definitions	3
1.2	Interpretation	9
<b>2</b>	<b>CONCESSION</b>	<b>11</b>
2.1	Grant of Concession	11
2.2	Concession Period	11
2.3	Acceptance of Concession	11
2.4	Exclusivity of the Concession	12
<b>3</b>	<b>HANDOVER OF EXISTING PROJECT FACILITIES</b>	<b>12</b>
3.1	Handover of Existing Project Facilities	12
3.2	Rights and Use of the Project Facilities	12
3.3	Peaceful Possession	13
<b>4</b>	<b>INDEPENDENT ENGINEER</b>	<b>14</b>
4.1	Procedure for Appointment	14
4.2	Payments to Independent Engineer	15
4.3	Replacement of Independent Engineer	15
4.4	Special Condition	15
<b>5</b>	<b>CONCESSIONAIRE'S OBLIGATIONS</b>	<b>16</b>
5.1	Performance Security	16
5.2	Project development charges	16
5.3	Financing Arrangement	17
5.4	Operations Plan	17
5.5	Collection, Segregation, Transportation and Delivery of MSW	18
5.6	Project Implementation	18
5.7	Operation and Maintenance	20
5.8	Insurance	23
5.9	Application of Insurance Proceeds	23
5.10	Uninsurable risks	23
5.11	Environmental Compliance	24
5.12	Land Use	24
5.13	Maintenance of records	24
5.14	Weighment of MSW	24
5.15	Sale/Distribution of Recyclables Substances	24
5.16	Shareholding	25
5.17	Applicable permits	25
5.18	Vehicle Tracking & Monitoring System	25
5.19	General Obligations	26
5.20	No Breach of Obligations	28
5.21	Advertisements	28
<b>6</b>	<b>MCD's OBLIGATIONS</b>	<b>28</b>
6.1	Specific Obligations	28

ARTICLE	CONTENTS	PAGE
6.2	General Obligations	29
6.3	Obligation for Payment of Compensation for change in location of Lamdfill Site	30
<b>7</b>	<b>TIPPING FEE</b>	<b>31</b>
7.1	Tipping Fee	31
7.2	Mechanism of Payment	32
<b>8</b>	<b>FORCE MAJEURE AND CHANGE IN LAW</b>	<b>34</b>
8.1	Force Majeure Event	34
8.2	Notice of Force Majeure Event	36
8.3	Performance of Obligations	37
8.4	Termination due to Force Majeure Event	38
8.5	Liability due to Other Losses, Damages etc.	40
8.6	Change in Law	40
<b>9</b>	<b>EVENTS OF DEFAULT &amp; TERMINATION</b>	<b>42</b>
9.1	Events of Default	42
9.2	Termination due to Event of Default	45
9.3	Rights of MCD on Termination	48
9.4	Accrued Rights of Parties	49
<b>10</b>	<b>HANDBACK AND TRANSFER REQUIREMENTS</b>	<b>49</b>
10.1	Ownership	49
10.2	Concessionaire's Obligations	50
10.3	MCD's Obligations	50
<b>11</b>	<b>DISPUTE RESOLUTION</b>	<b>51</b>
11.1	Amicable Resolution	51
11.2	Arbitration	52
<b>12</b>	<b>REPRESENTATIONS &amp; WARRANTIES</b>	<b>53</b>
12.1	Representations & Warranties of the Concessionaire	53
12.2	Representations & Warranties of MCD	55
12.3	Obligation to Notify Change	55
<b>13</b>	<b>MISCELLANEOUS</b>	<b>55</b>
13.1	Assignments & Charges	55
13.2	Interest & Right of Set off	56
13.3	Governing Law & Jurisdiction	57
13.4	Waiver	57
13.5	Survival	57
13.6	Amendments	58
13.7	Notices	58
13.8	Severability	59
13.9	No Partnership	59
13.10	Language	59
13.11	Exclusion of Implied Warranties etc.	59
13.12	Waiver of Sovereign Immunity	60
13.13	Counterparts	60

SCHEDULE	NAME	PAGE
A.	Concession Area Details - City Zone	62
B.	Construction Requirements of the Existing Project Facilities	63
C.	Design Requirements of the New Project Facilities	71
D.	List of Existing Project Facilities	75
E.	Description of the Facility Site	76
F.	Independent Engineer - Scope of Work	77
G.	Landfill Site	84
H.	List of New Project Facilities	85
I.	Operation and Maintenance Requirements	86
J.	List of Recyclable Substance and Hazardous Wastes	107
K.	Substitution Agreement	110
L.	Tipping Fee Rate	121
M	Workshop Site	122
N	Performance Security	123
O	Format of Operations Plan	126
P	Format of reports	128
Q	Applicable permits	130
R	Letter of authorization	131
S	Awareness Campaign	132

**CONCESSION AGREEMENT**

This **CONCESSION AGREEMENT** entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ (Month), Two Thousand and ----- at Delhi;

**BETWEEN**

Municipal Corporation of Delhi, a body corporate constituted under the Delhi Municipal Corporation Act, 1957 and having its office at \_\_\_\_\_ (hereinafter referred to as “**MCD**” which expression shall unless excluded by or repugnant to the context, be deemed to include its successors and assigns);

**AND**

\_\_\_\_\_ Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as “**the Concessionaire**” which expression shall unless excluded by or repugnant to the context, be deemed to include its permitted successors and permitted assigns),

**WHEREAS:**

- A. MCD is the municipal corporation for the National Capital Territory of Delhi responsible for providing municipal and civic services for the benefit of the public residing within such territory, which includes the collection, segregation, transportation and disposal of Municipal Solid Waste generated in the city. MCD currently disposes the collected Municipal Solid Waste at designated dumping sites, which are, however, inadequate to handle the increasing quantity of waste generated in the city.
- B. The Ministry of Environment and Forests (MoEF), GoI, has formulated the Municipal Solid Wastes (Management and Handling) Rules, 2000 ("MSW Rules"), which makes it mandatory for every Municipal Authority (as defined in the MSW Rules) to implement a scientific solid waste management system wherein Municipal Solid Waste is collected, transported and processed and the residual

inert/non-biodegradable waste matter is disposed in accordance with the said rules.

- C. MCD is desirous of improving the solid waste management services in the National Capital Territory of Delhi. For meeting the aforesaid objective, pursuant to Section 201 of the DMC Act, MCD upon receipt of authorisation by MCD Council Resolution No. ----- decided to invite private sector participation on Design, Procure, Renovate, Operate, Maintain, and Transfer (DPROMT) basis, to carry out the functions of collection, segregation, transportation and delivery of Municipal Solid Waste.
- D. MCD along with other agencies has carried out project development work, including technical studies and establishment of feasibility of the Project.
- E. MCD invited competitive proposals from eligible persons for implementing the Project and in response thereto, MCD received proposals from several persons including the Concessionaire/the Consortium (as hereinafter defined) for implementing the Project,
- F. MCD after evaluating the aforesaid proposals, accepted the proposal submitted by the Concessionaire/the Consortium and issued Letter of Acceptance dated ----- (LOA) to the Concessionaire/the Consortium.
- G. In accordance with the terms of the proposal submitted by the Consortium, the Consortium has incorporated the Concessionaire as a special purpose vehicle to implement the Project and MCD has agreed to grant to the Concessionaire, the Concession (as hereinafter defined).<sup>1</sup>
- H. The Parties hereto are required to enter into a Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

**ARTICLE 1**

---

<sup>1</sup> Retain if appropriate.

## DEFINITIONS AND INTERPRETATION

### 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:

“**Affected Party**” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 8.

“**Agreement**” means this Agreement including schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions hereof.

“**Applicable Law**” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/Concessionaire.

“**Applicable Permits**” means all clearances, permits, authorisations, consents and approvals required to be obtained and maintained by the Concessionaire under Applicable Laws, in connection with the Project, a list of which is given in Schedule Q.

“**Appointed Date**” means the date of this Agreement.

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“**Awareness Campaign**” shall have the meaning ascribed to it in Schedule S.

“**Biodegradable Substance**” shall have the meaning as ascribed to it under the MSW Rules.

“**Book Value**” means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP.

**“Change in Law”** shall have the meaning ascribed to it in Article 8.6.

**“COD”** means the commercial operations date of the Project which shall be the date on which the Independent Consultant has issued the Provisional Readiness Certificate or Readiness Certificate in accordance with the provisions of Article 5.6 (c).

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

**“Concession Area”** means the zones/areas specified in the zone map/s issued by MCD and set out in Schedule A.

**“Concession Period”** shall have the meaning ascribed to it Article 2.2.

**“Concessionaire”** means M/s. XXXX and includes its successors and permitted assigns expressly approved by MCD.

**“Consortium”** means the consortium consisting of (i) AAAA (ii) BBBB and (iii) CCCC formed/acting pursuant to the Memorandum of Understanding dated ----- entered into by them, for the purpose of submitting their proposal for undertaking the Project and in the event of their being accepted by MCD, to implement the Project through a special purpose vehicle company formed and incorporated by them in India.<sup>2</sup>

**“Construction Requirements”** shall mean the requirements as to construction of the Waste Storage Depots, Facility Site and Workshop Site as set out in Schedule B.

**“Construction Works”** means all modifications, works and things required to be undertaken by the Concessionaire, pursuant to the Construction Requirements.

**“Contractor”** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation with the Project.

**“Design Requirements”** shall mean the requirements as to the design of the New Project Facilities as set out in Schedule C.

**“DMC Act”** means the Delhi Municipal Corporation Act, 1957 and includes any amendment thereto or replacement or re-enactment thereof, as in force from time to time.

---

<sup>2</sup> Retain if applicable



**“Emergency”** means a condition or situation that is likely to endanger the security of individuals on or about the Workshop Site, Facility Site or Landfill Site or which poses an immediate threat of material damage to the Project Facilities.

**“Encumbrance”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Workshop Site, Facility Site, Landfill Site or other Project Facilities.

**“Event of Default”** shall have the meaning ascribed there to in Article 9.

**“Existing Project Facilities”** shall mean collectively the facilities set out in Schedule D to be constructed, renovated or modified by the Concessionaire in accordance with the Construction Requirements, for implementing the Project in accordance with this Agreement.

**“Facility Site”** means the land admeasuring 1-2 acres in Survey numbers --, -- ---, located in Okhla, Maa anandmai Marg, Central Zone more particularly described in Schedule E, provided by MCD to the Concessionaire for the purposes of final segregation of Municipal Solid Waste or any other activity for implementing the Project in accordance with this Agreement.

**“Financing Documents”** means collectively the documents evidencing Lenders' commitment to finance the debt component of cost of the Project.

**“Force Majuere”** or **“Force Majeure Event”** shall have the meaning ascribed thereto in Article 8.

**“Good Industry Practice”** means 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 from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project.

**“GoI”** means the Government of India.

**“GoNCTD”** means the Government of the National Capital Territory of Delhi.

**“Government Agency”** means GoI, GoNCTD, MCD 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, Concession Area, Workshop Site, Facility Site, Landfill Site or any part thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

**“Handback and Transfer Requirements”** shall have the meaning ascribed thereto in Article 10.

**“Hazardous Wastes”** shall have the meaning ascribed to it in the Hazardous Wastes (Management and Handling) Rules, 1989 and includes the materials specified in Schedule J.

**“IGAAP”** means the Indian generally accepted accounting principles consistently applied.

**“Implementation Period”** means the period from the Appointed Date to COD.

**“Independent Consultant ”** means a reputed Person being a firm, company or a body corporate appointed in accordance with Article 4 for supervising and monitoring compliance by the Concessionaire with the Design Requirements, Construction Requirements and O&M Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule F.

**“Landfill Site”** means the land admeasuring ----- acres in Survey numbers \_\_\_\_, located in SLF Okhla, Okhla, Central Delhi more particularly described in Schedule G, designated by MCD for the purpose of delivering segregated Municipal Solid Waste during the Operations Period.

**“Lenders”** means financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the debt component of the cost of the Project.

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

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

**“Municipal Solid Waste” or “MSW”** shall have the meaning ascribed thereto in the MSW Rules.

**“MSW Rules”** shall mean the Municipal Solid Wastes (Management and Handling) Rules, 2000 made pursuant to the provisions of the Environment (Protection) Act, 1986 and includes any amendment thereto as in force from time to time.

**“New Project Facilities”** shall mean collectively the facilities set out in Schedule H, to be provided by the Concessionaire for implementing the Project in accordance with this Agreement.

**“Non-Bio degradable Substance”** shall mean all substances other than the Bio-degradable Substance but shall not include construction debris, Hazardous Wastes and Recyclable Substances.

**“O&M Requirements”** means the requirements as to operation and maintenance of the Project set forth in Schedule I.

**“Operations Period”** means the period commencing from COD and ending at the expiry/termination of the Concession/ Agreement.

**“Operations Plan”** shall have the meaning ascribed to it in Article 5.4;

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

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

**“Person”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

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

**“Project”** shall mean the collection, segregation, transportation and delivery of MSW and design, financing, procurement, construction, operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

**“Project Facilities”** means collectively the Existing Project Facilities and the New Project Facilities.

**“Provisional Readiness Certificate”** means the Readiness Certificate issued by Independent Consultant pending completion of the Punch List items in accordance with Article 5.6 (c).

**“Punch List”** shall have the meaning ascribed thereto in Article 5.6 (c).

**“Readiness Certificate”** means the certificate issued by Independent Consultant certifying, inter alia, that the Concessionaire has renovated, modified, constructed or provided all Project Facilities in accordance with this Agreement for implementing the Project.

**“Recyclable Substances”** shall mean collectively the substances listed in Schedule J.

**“Remuneration”** shall have the meaning ascribed to it in Article 4.2.

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

**“Scheduled Project Completion Date”** means \_\_\_\_\_<sup>3</sup>.

**“Substitution Agreement”** means the agreement substantially in the form set out at Schedule K to be entered into amongst MCD, Lenders and the Concessionaire.

**“Tax”** means and includes all taxes, fees, cesses, levies that may be payable by the Concessionaire under the Applicable Law.

**“Termination”** means 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 the expiry of this Agreement due to efflux of time in the normal course.

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

---

<sup>3</sup> 12 months from the date of this Agreement.

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

**“Tests”** means the tests to be carried out in accordance with the Design Requirements, Construction Requirements or O&M Requirements and “Testing” and “Tested” shall be construed accordingly.

**“Tipping Fee”** means the amounts payable by MCD to the Concessionaire in accordance with Article 7.

**“Tipping Fee Rate”** means the amounts payable per tonne of MSW as set out in Schedule L.

**“Tipping Fee Statement”** shall have the meaning ascribed thereto in Article 7.1.

**“Vehicle Tracking & Monitoring System”** shall mean the hardware and software of the equipments/ technology required to be installed by the MCD to facilitate MCD to track the movement of vehicles carrying MSW.

**“Waste Inspection Area”** shall have the meaning ascribed to it in Schedule I.

**“Waste Storage Depots”** shall mean receptacles conforming to Construction Requirements, utilized by the Concessionaire to deliver segregated Municipal Solid Waste, prior to transfer of the same to the Landfill Site.

**“Workshop Site”<sup>4</sup>** shall mean the land admeasuring ----- acres in Survey numbers \_ , \_ , located in ----- village, more particularly described in Schedule M provided by MCD to the Concessionaire for the purpose of segregation of MSW and/or parking, repairing and refueling of vehicles used by the Concessionaire during the Operations Period.

## 1.2 Interpretation

In this Agreement, unless the context otherwise requires,

---

<sup>4</sup> Any reference to “Workshop Site” to be treated as null and void for City Zone as Workshop Site is NOT part of Existing Project Facilities

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation;
- f. any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g. the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- 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 the time of such reference;
- i. references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- j. any agreement, consent, approval, authorisation, notice, communication, information or report required under or

pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party in this behalf and not otherwise;

- k. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;

## **ARTICLE 2**

### **CONCESSION**

#### **2.1 Grant of Concession**

Subject to and in accordance with the terms, conditions and covenants set forth in this Agreement, MCD hereby grants and authorises the Concessionaire to (i) collect Municipal Solid Waste from Persons generating such waste within the Concession Area from the street corner bins and Waste Storage Depots, in accordance with Applicable Laws and to segregate, transport and deliver segregated waste at the Landfill Site (ii) investigate, study, design, engineer, procure, finance, modify, construct, operate, maintain and transfer the Project Facilities and (iii) exercise and/or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (“the Concession”).

#### **2.2 Concession Period**

The Concession hereby granted is for a period of nine (9) years from the Appointed Date or until termination thereof in accordance with the terms of this Agreement. (“**Concession Period**”).

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

#### **2.3 Acceptance of the Concession**

In consideration of the rights, privileges and benefits conferred upon the Concessionaire by MCD and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession

and agrees and undertakes to implement the Project and perform/discharge all its obligations in accordance with the provisions hereof.

#### **2.4 Exclusivity of the Concession**

The Concessionaire shall be the sole and exclusive person entitled to undertake the Project in the Concession Area and MCD agrees that no agreement or arrangement permitting such activities by any other party shall be entered into by MCD during the Concession Period.

### **ARTICLE 3**

#### **HANDOVER OF EXISTING PROJECT FACILITIES**

##### **3.1 Handover of Existing Project Facilities**

- a) MCD shall within a period of 15 days from the Appointed Date, allow necessary access to the Concessionaire in respect of the Existing Project Facilities, for enabling the Concessionaire to carry out renovation, structural changes or modifications thereto in accordance with the Construction Requirements.
- b) Upon the Concessionaire being granted access to the Existing Project Facilities pursuant to the preceding sub-article (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon and renovate or modify the same at its costs in accordance with the Construction Requirements and carry out such investigation, development and improvements in the Existing Project Facilities and arrange for procuring and providing the New Project Facilities, as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.
- c) MCD shall upon occurrence of COD, handover to the Concessionaire vacant and peaceful physical possession of Existing Project Facilities, free from Encumbrance, for the purpose of the Project.



### **3.2 Rights, Title and Use of Project Facilities**

- (a) The Concessionaire shall have the right to the use of Project Facilities in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into or 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 Project Facilities, save and except as set forth and permitted under this Agreement.
- (c) The Concessionaire shall not, without the prior written approval of MCD, use the Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (d) The Concessionaire shall allow access to and use of the Facility Site and Workshop Site for laying/installing/ maintaining telegraph lines, electric lines or for such other public purposes as MCD may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that MCD shall, in the event of any physical damage to the Project Facilities on account thereof, ensure that the Project Facilities are promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/suffer any liability on account thereof.

### **3.3 Peaceful Possession**

MCD hereby warrants that:

- (a) The Facility Site, Workshop Site, Waste Storage Depots and Landfill Site
  - (i) have been acquired through the due process of law; or
  - (ii) belongs to or has been leased to or is vested in MCD,

and that MCD has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, have no liability regarding any compensation payment on account of land acquisition or rehabilitation/resettlement of any Persons affected thereby.

- (b) The Workshop Site is in a condition suitable for immediate use by the Concessionaire.
- (c) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Existing Project Facilities during the Operations Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Existing Project Facilities or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Existing Project Facilities or any part thereof, MCD shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

## **ARTICLE 4**

### **INDEPENDENT CONSULTANT**

#### **4.1 Procedure for Appointment**

- (a) MCD shall prior to the execution of this Agreement, call for financial bids from at least five (5) Persons, requiring them to quote the annual fee payable to them and thereafter select and take necessary steps to appoint the Person quoting the lowest annual fee to act as Independent Consultant for the Project. MCD shall endeavour to complete the process of appointment of the Independent Consultant within 30 days hereof. The scope of work of the Independent Consultant is set out in Schedule F.

- (b) The initial term of the Independent Consultant shall extend upto 3 years, which term may be renewed/extended for a period not exceeding 2 years at a time.

#### **4.2 Payments to Independent Consultant**

All fees, costs, charges and expenses payable to the Independent Consultant in accordance with the terms of its appointment (collectively "the Remuneration") shall be shared and borne by the Parties equally. The Concessionaire shall within 7 days of receipt of demand from MCD pay/reimburse to MCD from time to time its share of the Remuneration.

#### **4.3 Replacement of the Independent Consultant**

- (a) The Parties may replace the Independent Consultant for the time being in any of the following circumstances :
  - (i) If MCD or the Concessionaire has reason to believe that the Independent Consultant has not discharged its duties in a fair, appropriate and diligent manner;
  - (ii) if the Parties decide not to renew the term of the Independent Consultant;
  - (iii) if, in accordance with the terms of its appointment the Independent Consultant resigns or notifies its intention not to continue as the Independent Consultant;
  - (iv) any other circumstance which in the opinion of the Parties warrants replacement of the Independent Consultant.
- (b) 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 Consultant, and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Construction Requirements and O&M Requirements.

#### **4.4 Special Condition**

No Person appointed as Independent Consultant shall during his tenure of appointment as Independent Consultant, be appointed in any capacity outside this Agreement, either by MCD or by the Concessionaire.

## 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 Security

- (a) The Concessionaire shall, for the due and punctual performance of its obligations relating to the Project, deliver to MCD, simultaneous with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to MCD, ("Performance Security") for a sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Only)<sup>5</sup>.
- (b) The Performance Security shall be kept valid for a period of 48 months from the Appointed Date and shall be substantially in the format provided in the Schedule N.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to MCD's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

#### 5.2 Project Development Charges

The Concessionaire shall, simultaneous with the execution of this Agreement, pay to MCD a non-adjustable, non-refundable

---

<sup>5</sup> This shall be 20 lakhs for City, SPZ and KB Zone and 50 lakhs for Central, South & West Zone.

project development charge of Rs. 3, 00, 000/- (Rupees Three lakhs only), which is payable by MCD to Infrastructure Development Finance Company Limited, simultaneous with the execution of this Agreement.

### **5.3 Financing Arrangement**

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

### **5.4 Operations Plan**

- (i) The Concessionaire shall within 15 days from the appointment of the Independent Consultant pursuant to Article 4.1, submit to the Independent Consultant and MCD a plan (“the Operations Plan”) in conformity with the O&M Requirements, in the format provided in Schedule O hereto.
- (ii) Within 15 days of receipt of the Operations Plan, the Independent Consultant shall review the same taking into account, inter alia, comments of MCD, if any, thereon, and convey its comments/observations to the Concessionaire on the Operation Plan, including the need, if any, to modify the same. If the comments/observations of the Independent Consultant require the Operations Plan to be modified, the Concessionaire shall suitably modify the Operations Plan and resubmit to Independent Consultant for further review. The Independent Consultant shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Operations Plan, which shall be taken into account by the Concessionaire while finalising the Operations Plan.
- (iii) If, within the period stipulated in the preceding clause (ii), the Independent Consultant does not respond to the Operations Plan submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Operations Plan submitted by it to the Independent Consultant.
- (iv) Notwithstanding any review or failure to review by the Concessionaire or the comments/observations of the Independent Consultant or MCD, the Concessionaire shall be

solely responsible for the adequacy of the Operations Plan and the conformity thereof with the O&M Requirements and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.

## **5.5 Collection, Segregation, Transportation and Delivery of MSW**

The Concessionaire shall during the Operations Period in accordance with the O&M Requirements:

- a. collect MSW from Persons generating such waste in the Concession Area;
- b. segregate collected MSW into Bio-degradable Substances and Non Biodegradable Substances using such processes and methods as it may deem expedient;
- c. transport and deliver the MSW collected and segregated, at the Landfill Site.

## **5.6 Project Implementation**

- (a) New Project Facilities
  - i) The Concessionaire shall procure the New Project Facilities in accordance with Design Requirements.
  - ii) The Concessionaire shall operate and maintain the New Project Facilities during the Operations Period in accordance with the O&M Requirements.
- (b) Construction Works
  - (i) Unless otherwise permitted by MCD, no Construction Works shall begin until the Independent Consultant is in place and has assumed charge.
  - (ii) The Concessionaire shall adhere to the Construction Requirements and achieve COD on or before the Scheduled Project Completion Date.
  - (iii) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case,

the Concessionaire shall remain solely responsible to meet the Construction Requirements.

- (iv) The Concessionaire shall, during the Implementation Period:
  - a) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Consultant/MCD and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - b) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Consultant,,at the Landfill Site. Such site office shall have work stations including computers for four (4) persons, heating and cooling equipment and toilet facilities. All charges in respect of maintenance of the site office, electricity and power charges shall be borne by the Concessionaire.
- (c) Readiness Certificate and Provisional Readiness Certificate
  - i) The Concessionaire shall carry out all necessary and periodical Tests under the supervision of the Independent Consultant, for the purposes of determining that the New Project Facilities and Construction Works respectively are being undertaken in accordance with the Design Requirements and Construction Requirements respectively. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
  - ii) If the Tests are successful and the Project Facilities can be safely and reliably opened for operation, the Independent Consultant shall issue Readiness Certificate.

Provided, notwithstanding that certain works or things forming part of Construction Works are not complete, if following Tests, the Independent Consultant determines that the Project Facilities can be safely and reliably opened for operations, the Independent Consultant may issue Provisional Readiness Certificate to the Concessionaire. The Provisional Readiness Certificate shall have appended thereto a list of outstanding

items signed jointly by the Independent Consultant and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within such time as may be determined by the Independent Consultant, not exceeding 90 (ninety) days of the date of issue of the Provisional Readiness Certificate. Upon satisfactory completion of all Punch List items, the Independent Consultant, shall promptly and in any case within 15 days thereof, issue Readiness Certificate.

- (iii) If the Concessionaire fails to complete the Punch List items within the said period of 90 days, MCD may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Concessionaire. The cost incurred by MCD in completing the Punch List items, as certified by the Independent Consultant, shall be reimbursed by the Concessionaire to MCD within 7 days from the date of receipt of a claim in respect thereof from MCD. Thereupon, the Independent Consultant may issue Readiness Certificate.
- (iv) The Independent Consultant, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the procurement of the New Project Facilities or Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Design Requirements or Construction Requirements respectively.
- (v) The Project shall be deemed to be complete and ready only when the Provisional Readiness Certificate or the Readiness Certificate is issued by the Independent Consultant in accordance with the provisions hereof.

Provided if COD is delayed beyond 90 days of the Scheduled Project Completion Date, MCD shall be entitled to terminate this Agreement and to appropriate the Performance Security.

## **5.7 Operation and Maintenance**

The Concessionaire shall undertake the Project in accordance with the O&M Requirements.

- (a) The Concessionaire may undertake the Project by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the



Concessionaire shall remain solely responsible to meet the O&M Requirements.

- (b) The Concessionaire shall, during the Operations Period;
  - (i) have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Consultant/MCD and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - (ii) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Consultant, at the Landfill Site. Such site office shall have work stations including computers for four (4) persons, heating and cooling equipment and toilet facilities. All charges in respect of maintenance of the site office, electricity and power charges shall be borne by the Concessionaire.
  - (iii) All Tests shall be conducted to ascertain compliance by the Concessionaire with the Operations Plan and the O&M Requirements.
  - (iv) The Independent Consultant, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the operation of the Project, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the O&M Requirements.
- (c) In the event the Concessionaire has failed to operate and maintain the Project in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the Independent Consultant or MCD (“Notice to Remedy”), MCD may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to operate and maintain the Project or cause to repair and maintain the Project Facilities at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by MCD on account of such operation and

maintenance or repair and maintenance within 7 days of receipt of MCD's claim therefor.

- (d) The Concessionaire shall be deemed to be in material breach of O&M Requirements, if the Independent Consultant acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:
  - (i) there has been failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
  - (ii) The maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
  - (iii) There has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
  - (iv) There has been persistent breach of O&M Requirements.
- (e) For avoidance of doubt, persistent breach shall mean:
  - (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Independent Consultant/MCD;
  - (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Independent Consultant/MCD, requiring the Concessionaire to remedy a breach, and
  - (iii) repeated occurrence of a breach notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.
- (f) Upon occurrence of a material breach of O&M Requirements, MCD shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement,

depending upon the nature of the obligation in respect of which a material breach has occurred, be entitled to either levy a penalty and thereafter terminate this Agreement, if such breach takes place for three consecutive months or in respect of breach of obligations by the Concessionaire which are of a more serious nature, immediately terminate this Agreement. The details of each of the obligations pertaining to O&M Requirements and relative penalties are set in Annexure 1 of Schedule I pertaining to O&M Requirements.

## **5.8 Insurance**

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the Concession Period all insurances in respect of the Project Facilities in accordance with the Good Industry Practice and have the same duly certified by the Independent Consultant. The Concessionaire shall maintain a register of entry in order of premiums paid towards the Project Facilities and proof of payments made shall be submitted to MCD whenever requested for.

## **5.9 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 Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire may 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 re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

## **5.10 Un-insurable Risks**

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

#### **5.11 Environmental Compliance**

The Concessionaire shall, at all times, ensure that all aspects of the Project and the processes employed in the construction, operation and maintenance of the Project Facilities shall conform to the laws pertaining to environment, health and safety aspects including rules such as MSW Rules, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time necessary clearances from all Government Agencies and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans.

#### **5.12 Land Use**

The Concessionaire shall ensure optimum utilisation of the Facility Site and Workshop Site and shall not use the same for any purpose unconnected or which is not incidental to the Project or related activities.

#### **5.13 Maintenance of Records**

The Concessionaire shall maintain records of the quantum (measured in tonnes) of Bio-degradable Substance, Non-Bio-degradable Substance deposited at the Landfill Site, duly countersigned by the Independent Consultant and provide monthly, quarterly and annual reports of the same to the Independent Consultant and MCD in the format of report set out in Schedule P.

#### **5.14 Weighment of MSW**

The Concessionaire shall, weigh the Bio-degradable Substance and Non Biodegradable Substance at the entry gate of the Landfill Site and Test such substances for level of bio-degradability in the presence of the Independent Consultant. The Concessionaire shall also construct suitable civil works within the Landfill Site in the Waste Inspection Area, for installation of Testing equipment.

### **5.15 Sale/Distribution of Recyclable Substances**

The Concessionaire shall be free to sell or otherwise dispose of Recyclable Substances and other materials recovered from the Municipal Solid Waste at such price and to such Persons and using such marketing and selling arrangements and strategies as it may deem appropriate.

### **5.16 Shareholding**

The Concessionaire shall ensure that:

- (a) The Applicant / Consortium holds not less than 51% of its paid up equity capital until 2 years after COD and not less than 26% of its paid up equity capital during the balance Operations Period.
- (b) M/s \_\_\_\_\_ [“Lead Member”] holds at any time not less than 50%
- (c) of the Consortium’s holding in the paid up equity capital of the Concessionaire.

OR<sup>6</sup>

- (c) M/s \_\_\_\_\_ [“Lead Technical Member”] and M/s \_\_\_\_\_ [“Lead Financial Member”] holds at any time not less than 25% each, of the Consortium’s holding in the paid up equity capital of the Concessionaire.

### **5.17 Applicable Permits**

The Concessionaire shall in respect of the Project, procure the Applicable Permits and be in compliance thereof at all times during the Concession Period.

### **5.18 Vehicle Tracking and Monitoring System**

The Concessionaire shall provide all necessary assistance and cooperation to MCD for the installation of the Vehicle Tracking and Monitoring System in the vehicles used by the Concessionaire for collection and transportation of MSW. The cost of such system shall be incurred by MCD in a manner set out in the O&M Requirements.

---

<sup>6</sup> This provision will be firmed up once the preferred bidder is known.

### 5.19 General Obligations

The Concessionaire shall at its own cost and expense:

- a. investigate, study, design, procure, build, operate, maintain and transfer the Project Facilities in accordance with the provisions hereof;
- b. comply with Applicable Law at all times during the Concession Period;
- c. endeavor to sell or otherwise dispose off all Recyclable Substances in a manner which is not detrimental to the environment;
- d. endeavor to improve the ancillary conditions and infrastructure related to the Project, including assistance to informal recycling workers;
- e. carry out Awareness Campaign by contracting with reputed non-government organisations (NGO's) to educate and train Persons generating MSW to segregate such waste into Biodegradable Substances and Non-biodegradable Substance;
- f. provide uniforms for all its employees/ Contractor's personnel which shall be worn by such employees/personnel while on duty;
- g. provide street corner bins at places within the Concession Area in accordance with the O&M Requirements;
- h. register vehicles used for transportation of segregated MSW with the concerned Government Agencies and ensure that all taxes are paid up-to-date on such vehicles;
- i. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- j. 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 from any third party and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies MCD against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall MCD be treated as employer in this regard;

- k. make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;
- l. be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- m. ensure that the Facility Site and Workshop Site remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- n. upon receipt of a request thereof, afford access to the Facility Site and Workshop Site to the authorised representatives of MCD for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- o. pay all Taxes, duties and outgoings, including utility charges relating to the Project Facilities.
- p. establish a standard protocol for addressing complaints from Persons in the Concession Area to the satisfaction of the Independent Consultant in accordance with the O&M Requirements.
- q. upon instructions of the MCD, hand over indicated quantities of MSW to such persons as may be specified by MCD, upon payment to the Concessionaire of the Tipping Fee in respect of such waste.
- r. conduct the Awareness Campaign in accordance with the provisions of Schedule S.
- s. submit reports regarding matters specified in Schedule P .
- t. endeavour to employ the existing informal Municipal Solid Waste collectors within the Concession Area, to carry out the

work of collection and segregation of MSW, in accordance with this Agreement and Applicable Law.

For the purpose of this sub-clause, it is clarified that the informal Waste Collectors shall not mean or include the “*Safai Karmacharis*” employed by MCD.

#### **5.20 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 8.3;
- (b) MCD Event of Default;
- (c) Compliance with the instructions of the Independent Consultant/MCD or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;
- (d) Closure of the Project Facilities or part thereof with the approval of the Independent Consultant/ MCD.

#### **5.21 Advertisement**

The Concessionaire shall be entitled to undertake or permit any form of commercial advertising or display on the sides of the Waste Storage Depots and in consideration thereof, receive amounts from Persons interested in advertising as aforesaid.

### **ARTICLE 6**

#### **MCD’s OBLIGATIONS**

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



## 6.1 Specific obligations

- a. give all assistance to the Concessionaire to employ the existing informal Municipal Solid Waste collectors including rag pickers and assist the Concessionaire in solving issues arising from the redeployment and employment of such waste collectors by the Concessionaire.

For the purpose of this sub-clause, it is clarified that *the informal Waste Collectors* shall not mean or include the “*Safai Karmacharis*” employed by MCD.

- b. grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from MCD under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorisation for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by MCD in the form as set out in Schedule R within fifteen days (15) days from receipt of request from the Concessionaire to make available such authorisation.
- c. subscribe to the Substitution Agreement within 30 Days of the intimation regarding Financial Close given by the Concessionaire;
- d. procure and install weighbridge facility and Testing equipment at the Landfill Site before commencement of the Operations Period. MCD shall ensure that such weighbridge facility and Testing equipment are properly serviced and in good working condition during the Operations Period;

## 6.2 General obligations

The MCD shall:

- (i) where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (ii) when required during the Operations Period, change the location of the Workshop Site within the Concession Area, and shall notify the Concessionaire at least one month prior to the shifting of the said site. MCD shall bear all costs associated

with such change of location and ensure that such alternative site shall contain all facilities as were available in the original site;

- (iii) observe and comply with all its obligations set forth in this Agreement.
- (iv) at its cost, install the Vehicle Tracking and Monitoring System on the vehicles used by the Concessionaire for collection and transportation of MSW.

**6.3 Obligation for Payment of Compensation for change in location of Landfill Site**

- a) MCD may upon expiry of life of the Landfill Site or otherwise in accordance with sub-clause (d) below, be entitled to change the location of the Landfill Site to a new location set out in Schedule D or a location specified later by MCD. Provided, MCD shall not effect any such change in location, unless the Concessionaire has been granted not less than four (4) months prior notice of such change and adequate compensation for meeting the additional cost arising on account of such change of location.
- b) The Concessionaire shall be compensated for the additional cost arising on account of such change of location of the Landfill Site in accordance with the following formula:

$$\Delta \text{ TFR} = X * \Delta D * p \text{ TFR}$$

Where,

$\Delta \text{ TFR}$  = Change in tipping fee rate (Rs per Ton)

$\Delta D$  = Shortest road length distance between existing Landfill Site and the changed Landfill Site per trip

p TFR = prevailing TFR (Rs per Ton)

*X* = Adjustment factor as per following table:

Zone	Value of $\Delta D$ (kms)	Value of X
City	15	0.006
Central	10	0.004
South	10	0.004

- c) MCD shall after change of location of the Location of the Landfill Site, pay Tipping Fee on the basis of the Tipping Fee Rate plus additional amounts calculated in accordance with sub-clause (b) above.
- d) In case of a temporary non availability of Landfill Site during the Operation Period, MCD may subject to providing the Concessionaire at least 3 days prior notice of the same, effect a temporary change in location of Landfill Site. MCD at its cost, agrees to shift/provide suitable equipment for weighment/Testing of MSW at such temporary Landfill Site. The Concessionaire shall be compensated for the additional cost arising from such change in location of the Landfill Site in accordance with 6.3 (b) and (c) above.

## **ARTICLE 7**

### **TIPPING FEE**

#### **7.1 Tipping Fee**

- (a) Subject to the provisions of this Agreement and in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, MCD agrees and undertakes to pay to the Concessionaire, Tipping Fee calculated in accordance with Article 7.2.
- (b) The Concessionaire shall weigh the segregated Bio-degradable Substance and Non Bio-degradable Substance at its weighbridge facility and Test such waste at the Waste Inspection Area in the Landfill Site and get it duly certified by the Independent Consultant in the manner as set out in the O&M Requirements. Provided, if the weighbridge facility or the Testing equipment at the Waste Inspection Area is out of order, the Concessionaire shall have such weighment and Tests certified by an authorised official of MCD and the Independent Consultant.

The Concessionaire shall, on the 5th day of every month or in case the 5th day of a month is a holiday, then on the following

working day of such month, submit to MCD a statement (“Tipping Fee Statement”) providing the following details, of the Municipal Solid Waste collected during the preceding month in the manner as set out in the O&M Requirements providing the following details:

- (i) Total quantity of Municipal Solid Waste collected by the Concessionaire during the preceding Month, providing separate details of the quantity of Bio-degradable Substance, Non-Bio-degradable Substance, including daily details of the same;
- (ii) Amount of Tipping Fee for the previous Month calculated in accordance with Article 7.2 (a) and the results of the Tests conducted in accordance with Section 4.3 of Scheule I.

The Tipping Fee Statement shall be verified by the Independant and an authorised official of MCD, within 7 days of receipt of such statement by them.

If COD occurs in the middle of any month, the Tipping Fee Statement, provided by the Concessionaire shall relate to period commencing from the date of occurrence of COD till the end of the month and the Tipping Fee Statement shall be submitted on the 5 th day of the succeeding month.

**7.2 Mechanism of Payment**

- (a) MCD shall, within 30 days from the date of receipt of the Tipping Fee Statement pay to the Concessionaire Tipping Fee in accordance with the formulae given in this sub-article.

The Tipping Fee payable by MCD for the previous month will depend on the level of segregation achieved during the said month as determined from the table below. The levels of segregation achieved would be ascertained by the Independent Consultant by conducting the Tests.

Year of Operation	Months from COD	SB = Segregation Benchmark for corresponding Month	R = Applicable Penalty for corresponding Months
-------------------	-----------------	--	---

		( in % terms)*	(in % terms)
Year 1	1 - 12	0	NIL
Year 2	13 - 24	5	15%
Year 3	25 - 36	10	15%
Year 4	37 - 48	12	15%
Year 5	49 - 60	15	15%
Year 6	61 - 72	18	15%
Year 7	73 - 84	20	15%
Year 8 onwards	85 onwards	20	15%

\* The percentage of the total number of vehicle trips to the Landfill Site during the preceding month which have duly passed the Tests relating to level of biodegradability in accordance with the O&M Requirements.

IF,

the segregation level achieved for the particular Month is lower than the Segregation Benchmark (SB) as in the table above, then the Tipping Fee payable shall be calculated in accordance with the formula given below:

$$\text{Tiping Fee (TF)} = [ Q_B + Q_{NB} ] * \text{TFR} * (1 - R/100)$$

where,

$Q_B$  = Total Quantity of Biodegradable Substance during the preceding Month (in tons)

$Q_{NB}$  = Total Quantity of Non-biodegradable Substance during the preceding Month (in tons)

TFR = Tipping Fee Rate payable by MCD per ton during the year in accordance with Schedule L.

R = Reduction applicable for the particular month on non-achievement of Segregation Benchmark (SB) as presented in the table above.

For assessing the Reduction the Concessionaire shall perform Test 1 as set out in the O&M Requirements and get it duly verified by the Independent Consultant.

- (b) MCD shall pay to the Concessionaire an amount equal to 97 <sup>1/2</sup> % of the Tipping Fee payable to the Concessionaire for each month;
- (c) MCD shall deposit the balance 2 <sup>1/2</sup> % of the Tipping Fee every month into a special account designated as “Retention Money Account”, opened with a bank acceptable to the Concessionaire, until monies in the said account accumulate to the extent of Rs. \_\_\_\_ crores<sup>7</sup>. MCD shall thereafter pay the entire Tipping Fee to the Concessionaire until expiry/Termination of this Agreement.
- (d) Any delay in making payment by MCD in accordance with the Tipping Fee Statement shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at SBI PLR % per annum calculated for the duration of delay.
- (e) All payments to the Concessionaire shall be made by way of account payee cheque drawn in favour of the Concessionaire.

## ARTICLE 8

### FORCE MAJEURE AND CHANGE IN LAW

#### 8.1 Force Majeure Event

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

- (a) earthquake, flood, inundation and landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;

---

<sup>7</sup> This should be 2 crores for City, SP and KB Zone and 4 crores for West, Central and South Zone

- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, contractors or agents of the Concessionaire;
- (d) acts of terrorism;
- (e) strikes, labour disruptions, any other industrial disturbances or public unrest not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (f) action of a Government Agency having Material Adverse Effect, including but not limited to:
  - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project/Project Facilities or any part thereof or of the Concessionaire's or the Contractor's rights in relation to the Project,
  - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
  - (iii) any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Design Requirements, Construction Requirements or O&M Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) early determination of this Agreement by MCD for reasons of national emergency or national security.
- (h) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub clause

for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

## **8.2 Notice of Force Majeure Event**

- (a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify Independent Consultant and the other Party of the same setting out, inter alia, the following in reasonable detail:
  - (i) the nature and extent of the Force Majeure Event;
  - (ii) the estimated Force Majeure Period;
  - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
  - (v) Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
  
- (b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding clause (a), the Parties shall along with the Independent Consultant, meet, hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
  - (i) assess the impact of the underlying Force Majeure Event,
  - (ii) to determine the likely duration of Force Majeure Period and,
  - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of



obligations, the performance of which shall have been affected by the underlying Force Majeure Event.

- (c) The Affected Party shall during the Force Majeure Period provide to the other Party and the Independent Consultant regular (not less than weekly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the other Party may reasonably require.

### **8.3 Performance of Obligations**

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 8.2 (a);
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Independent Consultant written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;

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

#### **8.4 Termination due to Force Majeure Event**

##### **(a) Termination**

- (i) If a Force Majeure Event, excluding events described under Clauses 8.1(f), 8.1 (g), and 8.1(h), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.

Notwithstanding anything inconsistent contained in this Agreement, if a Force Majeure Event is an event described under Clauses 8.1(f), or 8.1(h), and the same subsists for a period exceeding 365 days, then either Party shall be entitled to terminate this Agreement.

Provided that MCD may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 8.1(f), or 8.1(h).

##### **(b) Termination Notice**

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

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

(c) **Obligation of Parties**

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

- (i) the Termination Payment, if any, payable by MCD in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date; and
- (ii) the Project/Existing Project Facilities is handed over to MCD by the Concessionaire on the Termination Date free from any Encumbrance.

(d) **Termination Payment**

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

- (i) If Termination is due to a Force Majeure Event, described under Clauses 8.1 (a) to (e) no Termination Payment shall be made by MCD to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate :
  - (a) the proceeds of any amounts under insurance policies; and
  - (b) the amounts in the Retention Money Account referred to in Article 7.2 (c) above.
- (ii) If Termination is due to the occurrence of any event described under Clauses 8.1(f), or 8.1(g), MCD shall pay to the Concessionaire, Termination Payment equal to 170 % of the Book Value as on the date of Termination Notice. The Concessionaire would also be allowed to

appropriate the amounts in the Retention Money Account.

Provided MCD shall be entitled to deduct from the Termination Payment any amount due and recoverable by MCD from the Concessionaire as on the Termination Date.

- (iii) If Termination is due to the occurrence of the event described under Clause 8.1 (h), MCD shall pay to the Concessionaire, Termination Payment equal to 100 % of the Book Value of the Existing Project Facilities as on the date of Termination Notice. The Concessionaire would also be allowed to appropriate the amounts in the Retention Money Account.

Provided MCD shall be entitled to deduct from the Termination Payment any amount due and recoverable by MCD from the Concessionaire as on the Termination Date.

#### **8.5 Liability for other losses, damages etc.**

Save and except as expressly provided in this Article 8, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

#### **8.6 Change in Law**

- (a) Change in Law means the occurrence or coming into force of any of the following, after the Appointed Date:
  - (i) The enactment of any new Indian law;
  - (ii) The repeal, modification or re-enactment of any existing Indian law
  - (iii) A change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

- (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) Relief to Concessionaire**

Subject to the Concessionaire taking necessary measures to mitigate the impact or the likely impact of Change in Law on the Project, if as a direct consequence of a Change in Law, the Concessionaire is obliged to incur additional cost in any Accounting Year, such additional cost shall (without duplication) be allocated and shared between the Concessionaire and MCD as under :

<b>Increase in Capital Expenditure (in Rs. lakhs)</b>	<b>MCD's Share</b>
Upto Rs. 75 lacs	0%
Above Rs. 75	50% of the capital expenditure in excess of Rs. 75 lacs.

<b>Increase in Costs (in Rs. lakhs)</b>	<b>MCD's Share</b>
Upto Rs. 75 lacs	0%
Above Rs. 75 lacs	50% of the amount in excess of Rs. 75 lacs.

- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify MCD and the Independent Consultant of the following:

- (i) The nature and the impact of Change in Law on the Project;
  - (ii) In sufficient detail, the estimate of the additional cost likely to be incurred by the Concessionaire on account of Change in Law;
  - (iii) The measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising 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-clause, MCD and the Concessionaire shall along with the Independent Consultant hold discussions and take all such steps as may be necessary including determination/certification by the Independent Consultant of the quantum of the additional cost to be borne and paid by MCD.
- (e) MCD 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 Events of Default

Event of Default means either Concessionaire Event of Default or MCD 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 5.19:

- (i) The Concessionaire has failed to adhere to the Construction Requirements, Design Requirements or

O&M Requirements and such failure, in the reasonable estimation of the Independent Consultant, is likely to delay achievement of COD beyond 90 days of the Scheduled Project Completion Date or has actually resulted in the Concessionaire not achieving COD within 90 days of the Scheduled Project Completion Date;

- (ii) At any time during the Operations Period, the Concessionaire fails to adhere to the Construction Requirements, Design Requirements or O&M Requirements and has failed to remedy the same or has failed to take any effective steps to remedy the same within 60 days of receipt of notice from MCD;
- (iii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days;
- (iv) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (v) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- (vi) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of MCD, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.
- (vii) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;

- (viii) The Concessionaire has abandoned the Project or the Project Facilities;
- (ix) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (x) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days;
- (xi) The Concessionaire is in breach of the Operations Plan;
- (xii) The Concessionaire collects or attempts to collect MSW from any area outside the Concession Area;
- (xiii) The Concessionaire has failed to make payment of any sum that has become due and payable to MCD under provisions of this Agreement and such amount remains unpaid for a period beyond 90 days;
- (xiv) The Concessionaire has failed to prepare and submit reports referred to in Schedule P in accordance with this Agreement and such failure continues for a period of more than 60 days after intimation by MCD;
- (xv) The Concessionaire has failed to ensure minimum shareholding requirements specified in Article 5.16.

**b) MCD Event of Default**

Any of the following events shall constitute an event of default by MCD ("MCD Event of Default"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) MCD has failed to make any payments due to the Concessionaire and more than 180 days have elapsed since such default;
- (ii) MCD 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;

- (iii) MCD has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) MCD has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (v) Any representation made or warranties given by the MCD under this Agreement has been found to be false or misleading.
- (vi) MCD has failed to deliver possession of any of the Existing Project Facilities, Facility Site or Workshop Site to the Concessionaire or failed to provide adequate access to or Landfill Site within 60 days from the date of receipt of notice from the Concessionaire in that regard.
- (vii) MCD has failed to execute the Substitution Agreement in accordance with Article 6.1(c) or having executed the same is in breach of any of its obligations there under and such breach has not been cured within 30 Days from the date of written notice thereof given by the Concessionaire.
- (viii) MCD has failed to instal the weighment and Testing Equipment in the Landfill Site before COD.

## **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 MCD may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, MCD may subject to the provisions of the Substitution Agreement, terminate this Agreement in the manner as set out under Clause 9.2(a)(ii) and Clause 9.2(a)(iii).

- (ii) If MCD decides to terminate this Agreement pursuant to preceding clause (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 MCD in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, MCD shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting and upon certification by the Independent Consultant to the bank where the Retention Money Account is held, amounts in the said account.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days 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, MCD shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security, if subsisting and upon certification by the Independent Consultant to the bank where the Retention Money Account is held, amounts in the said account.

**(b) Termination for MCD 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 MCD 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 clause (i) it shall in the first instance issue Preliminary Notice to MCD. Within 30 days of receipt of Preliminary Notice, MCD shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "MCD Proposal to Rectify"). In case of non submission of

MCD Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

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

**(c) Termination Notice**

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

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

**(d) Obligation of Parties**

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

- i until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- ii the termination payment, if any, payable by MCD in accordance with the following sub-article (f) is paid to the Concessionaire on the Termination Date and

- iii the Existing Project Facilities are handed over to MCD by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to MCD.

**(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 Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice.

**(f) Termination Payments**

- (i) Upon Termination of this Agreement on account of MCD Event of Default, the Concessionaire shall be entitled to revoke the Performance Security, if subsisting, and receive from MCD, termination payment equal to 170% of the Book Value as on the Termination Date, and upon certification by the Independent Consultant to the bank where the Retention Money Account is held, amounts in the Retention Money Account.
- (ii) Upon Termination of this Agreement on account of Concessionaire Event of Default, Concessionaire shall be entitled to receive from MCD termination payment equal to 100% of the Book Value of the Existing Project Facilities as on the Termination Date.

**9.3 Rights of MCD on Termination**

- (a) Upon Termination of this Agreement for any reason whatsoever, MCD shall upon making the Termination

Payment, if any, to the Concessionaire have the power and authority to:

- (i) enter upon and take possession and control of the Existing Project Facilities forthwith;
  - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Existing Project Facilities;
- (b) Notwithstanding anything contained in this Agreement, MCD 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 regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Existing Project Facilities by the Concessionaire to MCD 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 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**

#### **HANDBACK AND TRANSFER REQUIREMENTS**

##### **10.1 Ownership**

Without prejudice and subject to the Concession, the ownership of the Existing Project Facilities, including all modifications, renovations and improvements made therein by the Concessionaire, shall at all times remain that of MCD.

## **10.2 Concessionaire's Obligations**

- (a) The Concessionaire shall at the end of the Concession Period hand back vacant and peaceful possession of the Existing Project Facilities to MCD free of cost and in good operable condition.
- (b) At least 12 months before the expiry of the Concession Period a joint inspection of the Project Facilities shall be undertaken by MCD, Independent Consultant and the Concessionaire. MCD/Independent Consultant shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/jobs ("Handback and Transfer Requirements"), if any, to be carried out so as to conform to the Construction Requirements, Design Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least three months prior to the expiry of the Concession Period and ensure that the Existing Project Facilities continue to meet such requirements until the same are handed back to MCD.
- (c) MCD/ Independent Consultant shall, within 45 days of the joint inspection undertaken under preceding clause (b) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be handed back to MCD.
- (d) The Concessionaire hereby acknowledges MCD's rights specified in Article 9.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

## **10.3 MCD's Obligations**

MCD shall, subject to MCD's right to deduct amounts from the Retention Money Account towards:

- (i) carrying out works/jobs listed under Article 10.2, which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to MCD in terms of Article 10.2, and
- (iii) any outstanding dues, which may have accrued in respect of the Project during the Concession Period,

duly discharge and release to the Concessionaire, the amounts in the Retention Money Account or balance therein after deductions in respect (i), (ii) and (iii) above, as the case may be, upon issuance of certificate by the Independent Consultant regarding compliance by the Concessionaire with the Handback and Transfer Requirements.

## **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, including those arising with regard to acts, decision or opinion of the Independent Consultant (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in sub-article (b) below.
- (b) Either Party may require such Dispute to be referred to the Principal Secretary to Government (or the Person holding charge), Urban Development Department, Government of New Delhi 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 resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, 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 Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation, the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

### **(b) Place of Arbitration**

The place of arbitration shall ordinarily be New Delhi but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

### **(c) English Language**

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

### **(d) Enforcement of Award**

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

### **(e) Performance during Arbitration**

Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue



to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

## **ARTICLE 12**

### **REPRESENTATIONS AND WARRANTIES, DISCLAIMER**

#### **12.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to MCD that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's charter documents or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of

which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;

- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from MCD of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement, all rights and interests of the Concessionaire in and to the Existing Project Facilities shall pass to and vest in MCD on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or MCD;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to MCD or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Existing Project Facilities, and the information provided by MCD, 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.

- (n) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that MCD shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **12.2 Representations and Warranties of MCD**

MCD represents and warrants to the Concessionaire that:

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

## **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 MCD.

- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities, except with prior consent in writing of MCD, which consent MCD shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (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/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
  - (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 SBI PLR % 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, unless specified otherwise in this Agreement. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

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

### **13.3 Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India. The Courts at New Delhi 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 authorised representative of such Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
  
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

### **13.5 Survival**

#### Termination of this Agreement

- (a) shall not relieve the Concessionaire or MCD 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 hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

**If to MCD :**

The Commissioner,  
Municipal Corporation of Delhi

-----  
Fax No. -----

**If to the Concessionairr:**

The Managing Director,  
----- Limited,

-----  
Fax No. -----

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 hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by 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 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 Waiver of Sovereign Immunity**

Each Party hereto unconditionally and irrevocably:

- (i) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts ;
- (ii) consents generally in respect of the enforcement of any judgment against it in any proceedings, in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use.

### **13.13 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 MCD by



(Signature)

(Name)

(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of the Concessionaire by:

In the presence of.

1)

2)

**SCHEDULE – A****CONCESSION AREA DETAILS - CITY ZONE****1. ZONE AREA & TONNAGE**

Estimated Area (sq km)	Theoretical Daily MSW generation @ 450 g/ person/day	Estimated Avg. Daily Tonnage of Waste (Tons Per Day)
19.28	212	452

**2. POPULATION**

Estimated population	Estimated no. of Households
4,73,306	1,68,842

**3. TONNAGE OF MUNICIPAL SOLID WASTE COLLECTED FROM ZONE**

Month	MSW disposed at Landfill Site (Tons)	
	2001-2002	2002-2003
<b>April</b>	7312	12555
<b>May</b>	11055	11638
<b>June</b>	10536	11881
<b>July</b>	11309	13342
<b>August</b>	12636	15530
<b>September</b>	12197	15470
<b>October</b>	13703	14785
<b>November</b>	12893	14727
<b>December</b>	11813	13716
<b>January</b>	12320	13715
<b>February</b>	11775	13412
<b>March</b>	13419	14329
<b>TOTAL</b>	<b>140968</b>	<b>165100</b>

*Source: CSE Deptt, MCD, 2003*

**4. WARD & COLONY LEVEL DETAILS\***

\*Same as the Previous Draft Concession Agreement

## **SCHEDULE – B**

### **CONSTRUCTION REQUIREMENTS OF THE EXISTING PROJECT FACILITIES**

#### **1.0 General**

The Construction Requirements for the Existing Project Facilities as defined in the Concession Agreement have been specified in this schedule. The Existing Project Facilities shall be constructed to meet the following requirements:

#### **2.0 Procedure before Commencement of Construction**

2.1 Prior to commencement of any construction activity, the Concessionaire shall finalize the technical plan and the Implementation Period plan section of Operations Plan for the Project in accordance with the format as set out in Operations Plan in Schedule O.

2.2 Prior to commencement of construction of any of the Existing Project Facilities, the Concessionaire shall have:

2.2.1 Obtained all such Applicable Permits as are necessary to commence construction of such facilities;

2.2.2 Mobilized the requisite resources, personnel and organization necessary for the same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise implementation of the Project and for exchange of information with the Independent Consultant and MCD;

2.2.3 Finalized in consultation with the Independent Consultant quality assurance and quality control procedures to cover all aspects of the Construction Works so as to ensure the desired quality.

#### **3.0 Basic Requirements for Existing Project Facilities**

3.1 The Existing Project Facilities shall conform to the basic requirements set out in this schedule and to the MSW Rules.

3.2 All aspects of design and procurement would be governed by MCD's intent to revamp and upgrade the collection, sorting and transportation

system for handling Municipal Solid Waste in the Concession Area. The approach is towards providing services in an integrated manner to the public of the Concession Area.

- 3.3 Development of an integrated collection, storage and transport system for Municipal Solid Waste in two separate components of (i) Biodegradable Substance and (ii) Non- Bio degradable Substance, as per the colour coding requirements of the MSW Rules.
- 3.4 All collection, storage and transportation of the MSW shall be in closed containers as specified with adequate capacity to hold the deposited MSW matching with the frequency of collection.
- 3.5 The Concessionaire shall design, modify and make available (a) Waste Storage Depots, (b) Facility Site and (c) Workshop Site in a manner as detailed in the subsequent sections of this schedule.

#### **4.0 Waste Storage Depots**

- 4.1 Based on the technical plan section of the Operations Plan, the Concessionaire shall identify Waste Storage Depots for modifications to meet requirements laid out in this schedule.
- 4.2 The Concessionaire is required to identify through the technical plan section of the Operations Plan, the number and specific location of the Waste Storage Depots (based on the existing list and location) that the Concessionaire plans to utilize for the Project. No new locations for Waste Storage Depots would be available to the Concessionaire.
- 4.3 Any change in the numbers and location of Waste Storage Depots during the Operations Period will require prior written permission from MCD.
- 4.4 In case MCD requires any change in the location of Waste Storage Depots during the Operations Period, the Concessionaire would be required to provide for the same. The additional cost to the Concessionaire, related to construction of new Waste Storage Depots would be borne by MCD after the additional cost for the construction of the new Waste Storage Depot/s has been verified by the Independent Consultant.
- 4.5 The civil structures (commonly known as *Dhalaos*) of the Waste Storage Depots planned to be utilized should be reconstructed/modified/renovated so that there are “no visible cracks”,

- “no broken walls”, and have “proper security mechanisms” to impede unauthorized access to the MSW.
- 4.6 The Waste Storage Depots should be so designed to allow for the segregated storage of MSW in two independent sections to store MSW as specified in Clause 3.3 of this schedule.
- 4.7 The Waste Storage Depots should so designed so as to be
- 4.7.1 Aesthetic,
- 4.7.2 Covered and with adequate natural light & ventilation
- 4.7.3 Allow for convenient and safe dropping of waste by generators of MSW.
- 4.7.4 Allow for easy cleaning & disinfections operations.
- 4.7.5 Not allow stray cattle, other animals and birds to have access to the waste
- 4.7.6 To allow for easy monitoring by Independent Consultant / MCD officials.
- 4.8 The Waste Storage Depots and storage facilities should be designed so that the MSW is not put on the floor and enables mechanical lifting.
- 4.9 The Waste Storage Depots should be designed to allow for easy identification of segregated compartments as specified in section 3.3 of this schedule, or have independent bins for dropping segregated waste by generators of MSW/ workers involved in waste handling.
- 4.10 The segregated sections should be coded and marked as specified in the MSW Rules.
- 4.11 In case sorting of MSW is undertaken at the Waste Storage Depots, adequate arrangements including sorting table (for mechanized or manual use) and implements used for sorting such as magnets, sieves etc should be made available to the workers.
- 4.12 The Concessionaire can utilize the earmarked outer portion of the faces of walls of the Waste Storage Depots for advertising. However, before advertising the Concessionaire would separately take prior permission of the MCD with respect of its size, design, color, contents etc.

- 4.13 The capacity of Waste Storage Depots should be such that it ensures optimal utilization of the existing space available. The maximum height allowed for construction however is 14 ft. max volume, outer dimensions.
- 4.14 The Concessionaire can utilize the upper 70% of the total outer surface of each face of wall of the Waste Storage Depot for advertisement. 15% of the adjoining surface of each face shall be reserved for a social message to be given by MCD which shall be constructed and maintained by the Concessionaire.
- 4.15 There should be proper lighting arrangement in the Waste Storage Depot. For this, no generator set will be used. The electric connection from the competent authority and payment of all the dues shall exclusively be the responsibility of the Concessionaire.

## **5.0 Facility Site**

The Facility Site shall comply with the following requirements :

- 5.1 The boundary wall (with a height of at least 2.0 meters above the nearest road level) for the Facility Site should be constructed before it is put to use so that it does not cause any nuisance to the public.
- 5.2 The construction and other works planned at the Facility Site should be so designed so as to cause no inconvenience to the public in terms of air, noise and water pollution.
- 5.3 The civil structures constructed with in the Facility Site should be aesthetic, allow for convenient and safe loading/unloading of MSW, easily cleaning and disinfections operations and allow for adequate natural light & ventilation.
- 5.4 All Applicable Permits for construction on the Facility Site would be obtained by the Concessionaire as per Applicable Law.
- 5.5 If the Facility Site is used as recycling center/transfer station and if temporary storage of MSW is planned, the storage facilities should be so designed so as to allow for easy identification of segregated MSW. The segregated sections should be marked as specified in the MSW Rules.

5.6 Under no condition should Biodegradable Substance be stored beyond 24 hrs at the Facility Site.

**6.0 Workshop Site**

6.1 Based on the Operations Plan, the Concessionaire shall modify the Workshop Site to meet requirements laid out below:

6.2 The design layout for the modifications at the Workshop Site should be such that it allows for systematic use of designated parking of vehicles, easy right of way for in and outbound vehicles and separate sections for repair and maintenance of vehicles.

6.3 The Workshop Site should be designed to upgrade the current status of the buildings and equipments handed over to the Concessionaire at the time of handover.

6.4 The maintenance of the Workshop Site should be at par with Good Industry Practice and should have all arrangements to meet emergency situations such as fire hazards as per Applicable Law.

6.5 The building and sheds in the Workshop Site should be painted annually and annual repair and maintenance operations should be carried out.

**7.0 Procedures during Construction**

7.1 The Concessionaire shall:

7.1.1 Ensure that the construction/rehabilitation of the Existing Project Facilities is undertaken with minimal inconvenience to the public;

7.1.2 Take precautions to avoid inconvenience, damage, destruction or disturbance to any third party's rights and properties;

7.1.3 Be in compliance with the Applicable Laws and Applicable Permits obtained for the Project including the clearances obtained by MCD;

7.1.4 Adhere to the Operations Plan of the Project ;

7.1.5 Deploy adequate number of qualified and competent personnel having relevant experience and skills.

7.2 Positions and Levels

7.2.1 The Concessionaire shall be responsible for:

- (a) The correctness of the positions, levels, dimensions and alignment of all parts of the Construction Works;
- (b) The provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities;

7.2.2 If, at any time during execution of the Construction Works, any error is noticed in the position, levels, dimensions or alignment of any part of the Construction Works, the Concessionaire, on being asked to do so by the Independent Consultant or MCD, shall at his own cost, rectify such errors to the satisfaction of the Independent Consultant.

7.3 Tests

7.3.1 Various quality control Tests would be undertaken as per the Construction Requirements and standards prescribed by Bureau of Indian Standards. Where no Testing methods are specified by the said standards, details of the Tests to be carried out and specifications to be achieved for the respective Existing Project Facilities/ Construction Works or part thereof shall be agreed upon with the Independent Consultant prior to construction;

7.3.2 Where material properties of the Existing Project Facilities/ Construction Works vary from or comply only marginally with the specifications contained in this schedule and Operations Plan, the Independent Consultant may increase the frequency of Testing as appropriate at the cost of the Concessionaire.

7.3.3 The Tests would be carried out at a location that the Independent Consultant may reasonably require, at the cost and expense of the Concessionaire.



7.3.4 The Concessionaire shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall supply samples of materials, as required by the Independent Consultant to undertake Tests.

7.4 In connection with the construction of the Existing Project Facilities, Independent Consultant may from time to time require:

7.4.1 Removal/substitution of any material, equipment or machinery which, in its opinion, do not meet the standards specified in this schedule from the construction site, within such time as may be specified in its instructions.

7.4.2 Re-execution, of any or part of the Construction Works which in the opinion of the Independent Consultant do not meet the standards set out in this schedule;

7.5 The Concessionaire shall mobilize adequate numbers of equipment and machinery to ensure adherence to the Operations Plan.

## **8.0 Procedures after Completion of Construction**

Upon completion of construction but prior to issue of the Readiness Certificate, the construction site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Independent Consultant.

## **SCHEDULE – C**

### **DESIGN REQUIREMENTS OF NEW PROJECT FACILITIES**

#### **1.0 General**

- 1.1 The Design Requirements for the New Project Facilities as defined in the Concession Agreement have been specified in this schedule.
- 1.2 The New Project Facilities shall conform to the requirements set out in this schedule and to the MSW Rules.

#### **2.1 Overall Design Parameters**

- 2.2 All aspects of design and procurement would be governed by MCD's intent to revamp and upgrade the collection, segregation and transportation system for handling Municipal Solid Waste in the Concession Area.
- 2.3 The New Project Facilities for the Project shall be designed to enable segregated collection, storage and transportation of MSW in separate components of (i) Biodegradable Substance and (ii) Non- Bio degradable Substance, as per the colour coding requirements of the MSW Rules.
- 2.4 All collection, storage and transportation of the MSW shall be in closed, colour coded containers with adequate capacity to hold the MSW matching with the frequency of collection.
- 2.5 The Concessionaire shall design, procure, renovate or build the New Project Facilities as listed below to meet the Design Requirements laid out in this schedule.

#### **3.0 Infrastructure for handling segregated waste**

##### **3.1 Street corner Bins**

- 3.1.1 Based on the approved technical plan section of the Operations Plan, the Concessionaire shall design, procure and locate street corner bins to meet the Design Requirements laid down in this section.

- 3.1.2 The street corner bins should be placed consistently within the Concession Area so as to ensure that there is a minimum of one street corner bin set in each square kilometer area.
- 3.1.3 The street corner bins would be of standardized international design conforming to DIN standards (Deutsches Institut für Normung e.V.) published by DIN, or its equivalent, used all over the world for loading/dumping solid waste, into vehicles by standardized lifting system conforming to DIN or equivalent system.
- 3.1.4 The capacity of the street corner bins, in the Concession Area should be arrived at by the Concessionaire after taking into account the quantum of MSW generated in the concerned location within the Concession Area.
- 3.1.5 The street corner bins could be either produced from high density polythene (HDPE) or should be steel garbage bins made out of steel meeting Bureau of Indian Standards (BIS) specifications.
- 3.1.6 The material of the street corner bins should be UV stabilized, cold and heat resistant
- 3.1.7 The street corner bins should be
  - a. Aesthetic,
  - a. Rigid and Durable
  - b. Non – absorbent and water tight
  - c. Chemical and corrosion resistant
  - d. Rodent proof and easily cleanable
  - e. Covered and designed to allow convenient and safe dropping of waste by generators of MSW
- 3.1.8 The street corner bins may be provided in pairs (two bins placed next to each other) with one bin designated to store Biodegradable Substance and the other to store Non-Biodegradable Substance.
- 3.1.9 The design of the street corner bins should be such as to restrict stray cattle and other animals (like dogs, pigs etc) and birds to have access to the waste stored in it.
- 3.1.10 The telephone numbers of the Complaint Redressal Centre are to be clearly reflected on all street corner bins.

- 3.1.11 The street corner bins should be colour coded and marked as specified in the MSW Rules, also ensuring easy monitoring by Independent Consultant / MCD and easy identification of independent street corner bins.

#### **4.0 SETTING UP FLEET & LOGISTICS INFRASTRUCTURE**

##### **4.1 Transport vehicles**

- 4.1.1 Based on the technical plan section of the Operations Plan, the Concessionaire shall design, procure and make available segregated, colour coded transport vehicles to meet the Design Requirements specified in this section.
- 4.1.2 The transport vehicles and the transportation system should be so designed to minimize manual loading and unloading MSW from vehicles. The transport vehicles and the loading system should be designed so that the loading and unloading operation is mechanized. A maximum of 10% of the waste generated in a Concession Area every month, would be permitted to be manually loaded.
- 4.1.3 The transport vehicles should be designed with tipping arrangement for carrying waste in covered, closed vehicles or vehicles compatible to carrying containerized MSW.
- 4.1.4 The transport vehicles should be so designed that they enable segregated transportation. For this separate vehicles for Biodegradable Substance and Non-Biodegradable Substance should be used.
- 4.1.5 The transport vehicles should be roadworthy vehicles as approved by the Delhi State Transport Authority and under Applicable Law confirming to rules and regulations prescribed in this respect, from time to time by any other concerned statutory and competent authorities, regarding use of fuel or pollution control or any other modification.
- 4.1.6 All transport vehicles shall be equipped with a communication network, either two way communication wireless or mobile phone system.

- 4.1.7 The Concessionaire shall ensure that each transport vehicle is inspected and cleared for use by the Independent Consultant before they are put into operation, and thereafter at periodic intervals as may be indicated by the Independent Consultant, to check their adequateness and their conformity with the specifications laid out in the technical plan section of the Operations Plan.

#### **4.2 Loading equipments**

- 4.2.1 Based on the technical plan section of the Operations Plan, the Concessionaire shall design, procure and make available loading equipment and other related equipments/implements to meet the Design Requirements specified in this section.
- 4.2.2 The loading system should be designed so that the loading and unloading operation is mechanized.

#### **5.0 Facilities for Complaint Redressal**

- 5.1 Based on technical plan section of the Operations Plan, the Concessionaire shall provide the following facilities for the complaint redressal mechanism to meet the Design Requirements specified in this section.
- 5.2 The design of the complaint redressal mechanism should be such that it allows for (a) easy monitoring of collection and transport operations by the Independent Consultant and (b) establishment of standard protocol to address customer complaints. A possible format for implementing the same is outlined below. However, this method is indicative and the Concessionaire is expected to design their own mechanism, in consultation with the Independent Consultant to meet the objectives in (a) and (b) in this Section 5.2:
- 5.3 Establish a “Complaint Redressal Center” at the transport workshop in the Concession Area which would have a minimum of three (3) operational dedicated phone lines for receiving customer calls/complaints. The telephone numbers of the Complaint Redressal Center are to be clearly reflected on all Waste Storage Depots, street corner bins and transport vehicles.
  - 5.3.1 Establish wireless communication network between “Complaint Redressal Center” and the supervisory field staff of the Concessionaire.

5.3.2 The aforesaid “Complaint Redressal Centre” shall be kept operational Monday through Saturday between 9 A.M to 6 P.M.

**6. Tests**

6.1 Various quality control Tests would be undertaken for testing the New Project Facilities as per the Design Requirements and standards prescribed by BIS. Where no testing methods are specified by the said standards, details of the Tests to be carried out and specifications to be achieved for the respective New Project Facilities shall be agreed upon with the Independent Consultant prior to COD

6.2 The Tests would be carried out at a location that the Independent Consultant may reasonably require, at the cost and expense of the Concessionaire.

6.3 The Independent Consultant may from time to time require removal of any material, equipment, machinery which, in its opinion, do not meet the Design Requirements specified in this schedule and Operations Plan.

**SCHEDULE D****LIST OF EXISTING PROJECT FACILITIES**

**1. NAME OF THE ZONE:** City Zone

**2. WASTE STORAGE DEPOTS (WSD)**

S No	Ward Number	Ward Name	Number of WSDs
1	1	Minto Road	27
2	2	Nizamuddin	26
3	109	Darya Ganj	2
4	110	Jama Masjid	11
5	111	Ballimaran	6
6	112	Chandni Chowk	4
7	113	Qassabpura	9

*\* Open sites (as indicated in the RfQ) and BOT Dhalaos in the zone are excluded from the list*

**3. WORKSHOP SITE DETAILS**

The detailed particulars of the Workshop Site have been given in Schedule "M".

**4. FACILITY SITE DETAILS**

The detailed particulars of the Facility Site have been given in Schedule "E".

**5. LANDFILL SITE DETAILS**

The detailed particulars of the Landfill Site have been given in Schedule "G".

**5.1 New Location identified for Landfill Site:** Jaitpur SLF  
Jaitpur/Tajpur,  
Near Badarpur Thermal Power Station,  
Delhi

**SCHEDULE E**

**DESCRIPTION OF THE FACILITY SITE**

- 1. Name of the Facility Site:** Maa Anandmai Marg, near SLF Okhla
- 2. Location:** Adjoining Cement Corporation of India, Maa Anandmai Marg, Okhla Phase-1
- 3. Area:** 1-2 Acres



## **SCHEDULE – F**

### **INDEPENDENT CONSULTANT - SCOPE OF WORK**

#### **1. Role of the Independent Consultant**

The Independent Consultant is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Independent Consultant shall encompass:

- 1.1 Verification and random checks of weighment and Testing of the MSW at the Landfill Site,
- 1.2 Independently review, monitor and where required by the Agreement, to approve the design, construction, operation and maintenance of the Project Facilities to ensure compliance by the Concessionaire with the Operations Plan, Design Requirements, Construction Requirements and O&M Requirements,
- 1.3 Report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- 1.4 Assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- 1.5 Review matters related to safety and environment management measures adopted by the Concessionaire for the Project.

#### **2. Scope of Services of the Independent Consultant**

The services to be provided by the Independent Consultant in accordance with the applicable provisions of this Agreement are specified in this schedule.

##### **2.1 Obligations during Implementation Period**

- a) Review of the Operations Plan submitted by the Concessionaire in accordance with Article 5 of the Agreement.

- b) Monitoring and reporting to the MCD on whether the Concessionaire has complied with the timelines for activities as specified in the Operations Plan in (a) above;
- c) Verify and report to MCD whether (i) the New Project Facilities comply with the Design Requirements (ii) Existing Project Facilities comply with the Construction Requirements and (iii) the Project Facilities comply with all Applicable Laws including MSW Rules.
- d) Issue Provisional/Readiness Certificate in accordance with the Article 5 of this Agreement;
- e) The Independent Consultant shall undertake, inter alia, the following activities and where appropriate:
  - (i) Require suspension of whole or any part of the Construction Works if in its reasonable opinion the same does not conform to the Construction Requirements;
  - (ii) Require clearing of any construction site of all construction equipment, surplus materials, debris and temporary installations as per applicable provisions of this Agreement.
  - (iii) Review the monthly progress report submitted by the Concessionaire during the Implementation Period and its conformity with the Operations Plan, report on the same to the MCD and suggest corrective measures, if any.
  - (iv) If during the course or upon review / inspection undertaken by the Independent Consultant, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Independent Consultant shall, under intimation to both the Parties, require the defaulting Party to remedy such breach/ default within time frame as may be felt suitable by the Independent Consultant.

## **2.2 Obligations during Operations Period**

### **2.2.1 Monitoring at Landfill Site**

The Independent Consultant's prime responsibility would be to monitor the operations at the weighbridge and waste inspection area at the Landfill Site. For this purpose the Independent Consultant shall undertake, inter alia, the following activities:

- a) Verification of the weighment;

- b) Verification of the Testing of the MSW in accordance with Section 4 of the O&M Requirements;
- c) Verification of the records generated at the weighbridge and Waste Inspection Area.
- d) Issue “Notice to Remedy” in event of observing non-compliance to O&M Requirements;
- e) If during the course or upon review/inspection undertaken by the Independent Consultant or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Independent Consultant shall, under intimation to both the Parties, require the defaulting Party to remedy such breach/default within such time and in such manner as the Independent Consultant may deem fit and in each case the same shall be recorded.

### **2.2.2 Conducting Random Inspections**

The Independent Consultant shall conduct random inspections of the Project Facilities as well as the operations as follows:

- a) The random inspections may be carried out by visual assessment with careful observation of the specific object/item for identification and for quantification of the deficiencies or damages of the Project Facilities and operation and maintenance of the Project Facilities. For this purpose the Independent Consultant can use photographs with time and place record.
- 1. During the random inspections, the Independent Consultant would monitor, in accordance with Good Industry Practice, the operations and maintenance activities undertaken by the Concessionaire so as to ensure compliance with the O&M Requirements;
- c) Issue “Notice to Remedy” in the event of non compliance to O&M Requirements and recording the same.
- d) Record and report to the MCD on the incidents of Material Breach or Persistent Breach of O&M Requirements;

### 2.2.3 Random inspection of Project Facilities

The Independent Consultant shall undertake inspection of the Project Facilities, Facility Site and Workshop Site in such frequency and sample selection as mentioned in the table below:

S. No	Project Facilities	Frequency of inspection	Sample selection requirement
1	Waste Storage Depots	Once a Month	A min. of 10% of the Waste Storage Depots selected at random from each ward. There should not be repetition of the same set of Waste Storage Depots in the next round of inspection.
2	Street corner bins	Once a Month	A min. of 10% of the Street corner bins selected at random from each ward. There should not be repetition of the same set of Street Corner Bins in the next round of inspection.
3	Facility Site	Once a Month	–
4	Workshop Site	Once a Month	–
5	Transport and loading Vehicles	Once a Month	A minimum sample of 10 % of each category of vehicles deployed in the Concession Area. There should not be repetition of the same set of vehicles in the next round of inspection.

### 2.2.4 Handback and Transfer of Project Facilities to MCD

At the time of handback and transfer of the Project Facilities to MCD at the end of Concession Period, the Independent Consultant shall:

- a) Monitor the compliance with the Handback and Transfer Requirements as provided in Article 10 of this Agreement and

- b) Issue a certificate of compliance on satisfactory completion of Handback and Transfer Requirements by the Concessionaire.

**2.2.5 Maintenance of Records**

- a) The Independent Consultant would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the Implementation Period and once every two months during the Operations Period as also to participate in emergency or extra-ordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.

**2.2.6** The Independent Consultant shall maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:

- a. Manpower deployed and other organizational arrangements of the Independent Consultant;
- b. Inspections undertaken and notices/instructions issued to the Concessionaire;
- c. Review compliance by the Concessionaire with the Agreement;
- d. Force Majeure Events;
- e. Material and Persistent Breach of O&M Requirements and Events of Default by the Parties; and
- f. Compliance by the Concessionaire with Handback and Transfer Requirements

**2.2.7** The Independent Consultant would be required to verify/issue the following reports to the Parties:

<b>Period/Event</b>	<b>Verification</b>	<b>Applicable report to be issued by the Independent Consultant</b>
1. Implementation	- Review monthly progress	-

Period	<p>report submitted by the Concessionaire</p> <ul style="list-style-type: none"> <li>- Issue “Notice to Remedy” in event of non compliance by the Concessionaire</li> <li>- Issue Provisional/ Readiness Certificate</li> </ul>	
2. Monitoring at Weighbridge	<ul style="list-style-type: none"> <li>- Verify weighment slip</li> <li>- Verify monthly Tipping Fee Statement as per Article 7 of the Agreement</li> </ul>	- Monthly Inspection Report
3. Monitoring at Waste Inspection Area	<ul style="list-style-type: none"> <li>- Verify recording of Test results</li> <li>- Verify monthly Tipping Fee Statement and penalties (if applicable) as per Article 7 of the Agreement</li> </ul>	- Monthly Inspection Report
4. Random Inspections of Project facilities	<ul style="list-style-type: none"> <li>- Advise MCD on penalties payable by the Concessionaire in accordance with Annexure 1 of the O&amp;M Requirements in Schedule I</li> </ul>	- Monthly Inspection Report
6. Force Majeure/ Material and Persistent Breach of O&M Requirements/Events of Default.	<ul style="list-style-type: none"> <li>- Issue “Notice to Remedy” in event on non compliance</li> <li>- Record Events of Default, Material/Persistent Breach of O&amp;M Requirements, Force Majeure Events</li> </ul>	
7. Handback and Transfer of Project Facilities	<ul style="list-style-type: none"> <li>- Specify list of works/jobs to be carried out by the Concessionaire in accordance with Article 10 of the Agreement.</li> <li>- Specify list of items to be handed back and transferred back to MCD by the Concessionaire.</li> <li>- Verify compliance by the Concessionaire with Handback and Transfer Requirements under Article 10 of the Agreement</li> </ul>	- Issue of compliance certificate of Handback and Transfer Requirements

**2.2.8 Material and Persistent Breach of O&M Requirements**

The Independent Consultant shall monitor the performance of the Concessionaire and report on incidence of Material and Persistent Breach of O&M Requirements with reference to the Compliance and Tolerance Criteria as laid out in Annexure 1 of the O&M Requirements:

**2.3 Awareness Campaign**

The Independent Consultant shall review the Awareness Campaign programme conducted by the Concessionaire in accordance with Schedule S.

**2.4 General Obligations**

The Independent Consultant shall carry out such other functions as may be specifically assigned to it under the Agreement including certification of adequacy of insurance and verification of termination payments

**SCHEDULE G**

**LANDFILL SITE**

**1. Name of the Site:** Okhla SLF

**2. Location of the Site:** Okhla Phase -1  
Adjoining Cement Corporation of India  
Maa Anandmai Marg  
Delhi



**SCHEDULE H**

**LIST OF NEW PROJECT FACILITIES**

Pursuant to the Concessionaire's obligations and based on the technical plan section of the Operations Plan, the New Project Facilities to be procured are listed below.

<b>S No</b>	<b>Category</b>	<b>New Project Facility</b>
1	Infrastructure for handling segregated waste	a. Street corner bins
2	Fleet and logistics infrastructure	a. Transport vehicles
		b. Loading equipments
3	Command control response mechanism	a. Complaint handling cell

## SCHEDULE I

### OPERATION AND MAINTENANCE REQUIREMENTS

#### SECTION 1 GENERAL

Based on the technical plan section of Operations Plan, the Concessionaire shall undertake the Project in compliance with the O&M Requirements laid out in this schedule.

##### **1.1 Service Goal**

It is MCD's goal to improve the existing standards of public health and environmental quality for the members of the public, through the provision of an efficient waste collection and transportation service.

##### **1.2 Basic Services**

During the term of this Concession, the Concessionaire shall collect, segregate, transport and deliver MSW at the Landfill Site on a daily basis (all 365 days in an year), in accordance with this Concession Agreement, and shall be solely responsible to provide necessary staff and equipment, in a manner consistent with this Agreement and considered Good Industry Practice to the satisfaction of the Independent Consultant and the MCD.

#### SECTION 2 O&M REQUIREMENTS FOR THE PROJECT

##### **2.1 Infrastructure for handling segregated waste**

Pursuant to the Concessionaire's obligations in Article 5 of this Agreement, the Concessionaire shall implement the Project in accordance with the O&M Requirements specified herein.

##### **2.1.1 Street corner bins**

Based on technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the street corner bins to meet the O&M Requirements specified in this section:

- a) The clearing schedule of street corner bins should ensure that the Biodegradable Substance is lifted at least once every 24 hrs.

- b) The clearing schedule of street corner bins should ensure that the Non Biodegradable Substance is lifted at least once every 48 hrs.
- c) There should be no overflow of MSW from the street corner bins, due to inadequate bin capacity planning or non lifting at scheduled times.
- d) Cleanliness of surrounding area: The Concessionaire should ensure that the area within 25 meters radius around the street corner bins, is kept clean at all times.
- e) The street corner bins should be washed/cleaned and disinfected at least once every week.
- f) Street corner bins need to be maintained so that there are
  - i. No breakages
  - ii. No cracks
  - iii. There is no toppling of bins
  - iv. No dislocation of covers

as specified in the compliance and tolerance criteria in the Annexure 1 of this schedule.

- g) The bin coding and the telephone numbers of the customer complaint cell as specified in Design Requirements in Schedule C should be clearly visible and repainted as often as required to maintain clear visibility of the same.
- h) Formats for the inspection & maintenance records shall be finalized in consultation with the Independent Consultant, and the same shall be documented.
- i) The compliance with Operation & Maintenance Requirements specified in this section shall be evaluated as specified in the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

### **2.1.2 Waste Storage Depots**

Based on the technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the Waste Storage Depots to meet the O&M Requirements laid out in this section.

- a) The clearing schedule of the Waste Storage Depots should ensure that the Biodegradable Substance stored in the Waste Storage Depots is transported out at least once every 24 hrs.
- b) The clearing schedule of the Waste Storage Depots should ensure that the Non Biodegradable Substance stored in the Waste Storage Depots is transported out at least once every 48 hrs
- c) Cleanliness of surrounding area: The Concessionaire should ensure that there is no spillage of MSW within 25 meters radius around the Waste Storage Depots at any point of time.
- d) Each worker involved in waste handling should be given uniforms, gloves, masks, aprons & other adequate safety gear & implements as laid out in the Compliance and Tolerance Criteria in Annexure 1 to this schedule
- e) On the exterior of the Waste Storage Depots adequate arrangements should be made to ensure that the basic coding and numbering of the Waste Storage Depots is clearly visible to generators of MSW/ Independent Consultant and MCD officials.
- f) The Concessionaire shall allow free access to MCD and other personnel and generators of MSW to deliver the MSW at the Waste Storage Depots.
- g) The Concessionaire shall allow free access to the Independent Consultant, any other person authorized by MCD, officials of the Central Pollution Control Board, Delhi Pollution Control Committee and any other government enforcement agency for inspection at any time without notice.
- h) The advertisement put on the outer walls of the Waste Storage Depots should not be violative of any of the provisions of Applicable Law. Such advertisement shall not

contain obscenity, shall not hurt the religious sentiments of the people and shall not be a disturbance to safe traffic movement.

- i) Painting and regular maintenance of the Waste Storage Depots should be carried out at least twice every year.
- j) All operations & maintenance records shall be maintained and kept throughout the Concession Period, and be made available upon the request of the Independent Consultant or the MCD or by any authorized agency as per Applicable Law. Formats for such records shall be finalized in consultation with the Independent Consultant, and the same shall be documented.
- k) The compliance to Operation & Maintenance Requirements laid out in this section shall be evaluated as specified in the Compliance and Tolerance Criteria in Annexure 1 of this schedule.

### **2.1.3 Facility Site**

Based on the technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the Facility Site to meet the O&M Requirements specified in this section.

- a) The workers engaged in handling MSW at the Facility Site should be provided with adequate safety gear in the form of uniforms, gloves, masks, aprons & suitable implements as laid out in the Compliance and Tolerance Criteria in Annexure 1 to this schedule
- b) All operations at the Facility Site should be carried out in accordance with Applicable Law.
- c) The Facility Site should have safe working conditions for all persons working in and around the said site as per Good Industry Practice.
- d) Painting of the Facility Site structures should be carried out at least once every year.
- e) Routine maintenance activities should be carried out at least once every year such that there are no breakages or cracks.

- f) Operations & maintenance records (including log books, stock of implements & other materials and their issue, register of issue of uniforms & protective gear) shall be maintained and kept throughout the Concession Period, and be made available upon the request of the Independent Consultant or the MCD. Formats for such records shall be finalized in consultation with the Independent Consultant, and the same shall be documented.
- g) The compliance with O&M Requirements laid out in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

## **2.2 Fleet & logistics infrastructure**

Pursuant to the Concessionaire's obligations in Article 5 of the Agreement, the Concessionaire shall operate and maintain the fleet and logistics infrastructure to meet the O&M Requirements specified in this section.

### **2.2.1 Workshop Site**

Based on technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the Workshop Site to meet the O&M Requirements specified in this section.

- a) The Workshop Site should have all the facilities for staff as per Good Industry Practice and Applicable Law.
- b) Regular maintenance and painting of the Workshop Site should be carried out at least once every year.
- c) The staff deployed at the Workshop Site should be provided with uniforms and adequate safety gear in the form of uniforms, gloves, masks, aprons & suitable implements as laid out in the compliance and tolerance criteria in Annexure 1 to this schedule.
- d) The operation of the Workshop Site should be carried out as per the Applicable Laws.
- e) Operations & maintenance records of the vehicles and other facilities at the Workshop Site shall be maintained and kept

throughout the Concession Period, and be made available upon the request of the Independent Consultant or the MCD. Formats for such records shall be finalized in consultation with the Independent Consultant, and the same shall be documented.

- f) The compliance with O&M Requirements specified in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

### **2.2.2 Transport vehicles**

Based on technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the transport vehicles to meet the O&M Requirements laid out in this section.

- a) Washing/cleaning and disinfection of the transport vehicles must be carried out at least once a week as per a schedule which should be available to the Independent Consultant / MCD for inspection and verification.
- b) All vehicles should comply with the fuel emission norms as per the Applicable Law.
- c) The drivers of the transport vehicles shall carry the following papers and any other as per Applicable Law:
  - Driver's license
  - Registration certificate of the vehicle
- d) All the drivers and helpers operating the transport vehicles should be provided with uniforms and adequate safety gear in the form of uniforms, gloves, masks, aprons & suitable implements as laid out in the Compliance and Tolerance Criteria in Annexure 1 to this schedule.
- e) The maintenance of the transport vehicles should be good so as to prevent break down of the vehicles in accordance with the Compliance and Tolerance Criteria in Annexure 1 to this schedule.
- f) All transport vehicles employed should contain
  - Vehicle controls and dashboard displays
  - Lamps and lighting, blinker systems
  - Reflective devices at the back and sides
  - Rear view Mirrors

- Occupant protection
  - Seat belts
  - Windshield mounting, wiping, and washing
  - Emergency equipment (fire extinguishers, spare tires, etc).
- g) The telephone numbers of the Complaint Redressal Centre shall be indicated on all the transport vehicles and repainted as often as required.
- h) Vehicle Tracking and Monitoring System:
- The Vehicle Tracking and Monitoring System (including vehicle mounted units and the control terminal) shall be procured and installed on the transport vehicles by MCD at any time during the Concession Period. The cost of the same shall be incurred by MCD.
  - The number of vehicle mounted instruments procured and supplied by MCD shall be equal to the total number of registered transportation vehicles of the Concessionaire and an additional 10% in numbers.
  - MCD will provide a comprehensive annual maintenance contract including replacement of all parts for the Vehicle Tracking and Monitoring System to the Concessionaire, the cost of which shall be incurred by MCD.
  - The Concessionaire shall ensure that the system is operational at all times. The operating costs of this system shall be borne by the Concessionaire.
  - The Concessionaire shall train the staff required for the purpose and ensure that all the reports as specified by MCD from time to time are generated and compiled.
  - The reports related to the Vehicle tracking and Monitoring system should be duly verified by the Independent Consultant and should be submitted with the monthly tipping fee statement in accordance with Article 7 of The Agreement.
  - The compliance with O&M Requirements specified in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.
- i) Operation & maintenance records (including log books of vehicles, stock of implements & other materials and their issue, register of issue of uniforms & protective gear) shall be maintained and kept throughout the Concession Period at the location normally used to park such transport vehicles or such other location where



maintenance records are kept, and be made available upon the request of the Independent Consultant or the MCD. Formats for such records shall be finalized in consultation with the Independent Consultant, and the same shall be documented by the Concessionaire.

- j) A fitness certificate for each transport vehicle should be prepared by the Concessionaire by the end of first month of every calendar year and given to the Independent Consultant for verification.
- k) The compliance with O& M Requirements specified in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

### **2.2.3 Loading equipment**

Based on technical plan section of the Operations Plan, the Concessionaire shall operate and maintain the loading equipments to meet the O&M Requirements specified in this section.

- a) The loading equipment should be either placed on roadworthy vehicles or if the loading vehicles are used then such vehicles should be roadworthy as approved by the competent authority in accordance with Applicable Law.
- b) Washing/cleaning and disinfection of the loading equipments/vehicles must be carried out at least once a week.
- c) The drivers of the loading vehicles shall carry the following papers and any other as per Applicable Law:
  - Driver's license
  - Registration certificate of the vehicle
- d) All the workers operating the loading equipments/vehicles should be provided with uniforms and adequate safety gear in the form of uniforms, gloves, masks, aprons & suitable implements as laid out in the Compliance and Tolerance Criteria in Annexure 1 to this schedule.

- e) The telephone numbers of the Complaint Redressal Centre shall be indicated on all the loading equipments/vehicles and should be repainted as often as required.
- f) Operation and maintenance records (including log books, stock of implements & other materials and their issue, register of issue of uniforms & protective gear) shall be maintained and kept throughout the Concession Period at the location normally used to park such vehicles/equipments or such other location where maintenance records are kept, and be made available upon the request of the Independent Consultant or the MCD. Formats for such records shall be finalized in consultation with the Independent Consultant, and the same shall be documented by the Concessionaire.
- g) A fitness certificate for each loading equipments/vehicles should be prepared by the Concessionaire by the end of first month of every calendar year and given to the Independent Consultant for verification.
- h) The compliance with O&M Requirements specified in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

### **SECTION 3: SERVICE REQUIREMENTS**

#### ***3.1 Collection and Transportation Standards***

- 3.1.1 Based on technical plan section of the Operations Plan, the Concessionaire shall undertake the Project to meet the service requirements relating to collection, segregation and transportation in this section.
- 3.1.2 The Concessionaire shall ensure that there is no spillage of MSW during transportation to the Landfill Site.
- 3.1.3 The transportation of MSW shall not be carried out during the peak traffic hours everyday (8:30 AM to 10:30 AM and 5:00 PM to 8:00 PM).

- 3.1.4 There shall not be any dislocation or removal of covers of the vehicles during transportation, exposing the MSW to the open atmosphere.
- 3.1.5 Dumping of the MSW on floor should be avoided while collection and storage. Under special circumstances dumping of MSW on the floor may be allowed by MCD.
- 3.1.6 The compliance with O& M Requirements laid out in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

**3.2 *Special Collections / Clearings***

- 3.2.1 MCD may request the Concessionaire for MSW collection trips and clearing of Waste Storage Depots / street corner bins on special occasions provided that such request is received by the Concessionaire at least 6 hours before the time when the clearing is required.
- 3.2.2 Such request from MCD has to be in a written form mentioning the time and place of clearing and is to be duly verified by the concerned person from the Conservancy, Sanitation and Engineering Department of MCD.
- 3.2.3 The maximum number of such requests that can be entertained by the Concessionaire in a month shall be 2% of the total number of vehicle trips during the previous month from the Concession Area.
- 3.2.4 The Concessionaire shall be paid for the tonnage of such waste cleared in the manner specified in Article 7 of the Agreement.
- 3.2.5 The Concessionaire shall ensure that there is no spillage of MSW at the loading point and during transportation to the Landfill Site

**SECTION 4: SEGREGATION REQUIREMENTS**

Based on technical plan section of the Operations Plan, the Concessionaire shall undertake the segregation of MSW in accordance with the requirements specified in this section.

## 4.1 Approach

The Concessionaire shall achieve minimum levels of segregation as specified in the segregation benchmark requirements in this schedule through a multi pronged approach including:

4.1.1 Effective use of semi mechanical sorting technology.

4.1.2 Effective use of Awareness Campaign;

### 4.2.1 Segregation requirements

a) The Concessionaire shall meet the segregation benchmark requirements specified below

Year of Operation	Months from COD	SB = Segregation Benchmark for corresponding Month (in % terms)*
Year 1	1 – 12	0
Year 2	13 – 24	5
Year 3	25 – 36	10
Year 4	37 – 48	12
Year 5	49 – 60	15
Year 6	61 – 72	18
Year 7	73 – 84	20
Year 8 onwards	85 onwards	20

\* The percentage of the total number of vehicle trips to the Landfill Site during the preceding month which has duly passed the Tests relating to level of biodegradability in accordance with the O&M Requirements.

and be in compliance with the same. Such compliance shall be monitored on the basis of Tests specified in the following sections 4.3.2 and 4.3.4 of this schedule.

b) The compliance to segregation benchmark requirements in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

### 4.2.2 Exclusion requirements

a) The Concessionaire shall operate and maintain the Project to meet the exclusion requirements relating to Recyclable Substances, Hazardous Wastes and construction debris from the

expiry of the first year of the Operations Period and compliance thereof shall be monitored on the basis of Tests specified in Sections 4.3.3 and 4.3.4 of this schedule.

- b) For the purpose of testing the MSW at the Landfill Site shall be tested for absence of materials listed as Recyclable and Hazardous substance in Schedule J. However, the list in Schedule J is an indicative list and is not limited to the materials listed therein.
- c) In case of any dispute related to the nature of the MSW substance, Independent Consultant's decision shall prevail.

### **4.3 Tests and Weighment requirements**

The Tests for establishing compliance to segregation benchmark referred to in 4.2.1 (Test 1 referred to below) and Test for excluding Recyclable Substances & Hazardous Waste (Test 2 referred to below) referred to in 4.2.2 shall be carried out by the Concessionaire in accordance with the Test 1 and Test 2 and sampling requirements specified below and duly verified by the Independent Consultant.

The tests shall be carried out at a separate area identified and set up by MCD pursuant to Article 6.1(d) at the landfill Site for the purpose of testing of MSW ("Waste Inspection Area").

#### **4.3.1 Weighment requirements**

- a) The Concessionaire shall get the vehicles weighed in accordance with this section.
- b) Following data shall be recorded at the weighbridge facility for each of the vehicles:
  - (i) Date of operation
  - (ii) Registration Number of the vehicle disposing MSW
  - (iii) Total laden weight of the vehicle
  - (iv) Time of entry of the vehicle
  - (v) Collection area code
  - (vi) Colour code of vehicle (biodegradable/non biodegradable)
  - (vii) Total unladen weight of the vehicle
  - (viii) Net weight of MSW
  - (ix) Time of exit of the vehicle
  - (x) Performance of Test 1 and Test 2 and results thereof

and the same shall be duly verified by the Independent Consultant as specified of Schedule F.

**4.3.2 TEST 1 - Test for establishing compliance with Segregation Benchmark**

- a) The Test for establishing compliance with segregation benchmark shall be carried out in accordance with this section.
- b) Sample Testing for the vehicles coded as segregated Biodegradable Substance in accordance with sample size specified in Section 4.3.4 shall be carried out by the Concessionaire for establishing compliance with segregation benchmark and duly verified by the Independent Consultant.
- c) Daily sample selection for Test 1 shall be in accordance with Section 4.3.4 of this schedule.
- d) The Concessionaire shall ensure that 90% of each 100 k.g sample selected in accordance with Section 4.3.4 below (10% of vehicles coded as carrying Biodegradable Substances) shall pass Test 1 and the same shall be duly verified by the Independent Consultant. The Concessionaire shall be liable for penalty in accordance with Article 7 of this Agreement in the event of non achievement of segregation benchmark referred to herein.

<b>Year of Operation</b>	<b>Months from COD</b>	<b>SB = Segregation Benchmark for corresponding Month (in % terms)</b>	<b>R = Applicable Penalty for corresponding Months (in % terms)</b>
Year 1	1 – 12	0	NIL
Year 2	13 – 24	5	15%
Year 3	25 – 36	10	15%
Year 4	37 – 48	12	15%
Year 5	49 – 60	15	15%
Year 6	61 – 72	18	15%
Year 7	73 – 84	20	15%
Year 8 onwards	85 onwards	20	15%

- e) Detailed procedure and guideline for carrying out this Test shall be finalized in consultation with the Independent Consultant, and the same shall be documented by the Concessionaire.
- f) Format for reporting Test results shall be finalized by the Concessionaire in consultation with the Independent Consultant.

#### **4.3.3 TEST 2 - Test of Hazardous Wastes & Recyclable Substances**

- a) The Test of Hazardous Wastes and Recyclable Substance shall be carried out in accordance with this section.
- b) Sample Testing of vehicles carrying MSW in accordance with the sample size specified in Section 4.3.4, shall be carried out by the Concessionaire for establishing compliance with exclusion requirements relating to Hazardous Wastes and Recyclable Substances and construction debris referred to Section 4.2.2 above and duly verified by the Independent Consultant.
- c) Daily sample selection for Test 2 shall be in accordance with Section 4.3.4 of this schedule.
- d) The Concessionaire shall ensure that 90% of each 100 kg sample selected in accordance with Section 4.3.4 below (5% of vehicles)

shall pass Test 2 and the same shall be duly verified by the Independent Consultant. The Concessionaire shall be liable for penalty in accordance with Article 5.7(f) of this Agreement read with Annexure 1 to this Schedule.

- e) The Concessionaire shall maintain daily records of the Test results.

**4.3.4 Sampling Requirements**

- a) The sampling requirements for Test 1 and Test 2 at the Landfill Site is laid out in this section.
- b) Sample size for the Test 1 and Test 2 shall be in accordance with the following table:

Sno	Test	Vehicles Tested	Sample Size	Calculation of Sample Size
1	Test 1	Biodegradable	10% of total vehicle trips	(Number of biodegradable vehicle trips in previous month/30) X 0.1
2	Test 2	a. Non biodegradable	5% of total vehicle trips	(Number of Non biodegradable vehicle trips in previous month/30) X 0.05
		b Biodegradable	5% of total vehicle trips	(No of biodegradable vehicle trips in previous month/30) X 0.05

- c) Detailed procedure and guideline for sampling shall be finalized by the Concessionaire in consultation with the Independent Consultant.
- d) The compliance with the O&M Requirements laid out in this section shall be evaluated with reference to the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

**SECTION 5: COMPLAINT REDRESSAL**

- 5.1 Based on technical plan section of Operations Plan the Concessionaire shall operate the complaint redressal mechanism to meet the O&M Requirements specified in this section.
- 5.2 Establish a coding mechanism to easily identify the command areas and nodal officers.



- 5.3 Establish a standard coding mechanism for all pre-transport vehicles, MSW workers, street corner bins, etc, directly related to the coding mechanism of command areas.
- 5.4 Establish the hierarchy of command areas, in the Concession Area, and nodal officers in charge of each command area, so as to ensure that there is no ambiguity or overlap between the command areas.
- 5.5 Timings of the Complaint Redressal Centre operated by the Concessionaire should be from 9 A.M. to 5 P.M. on 6 days a week
- 5.6 All complaints related to the Project, received from generators of MSW or MCD would need to be addressed within 24 hrs of receiving the complaint failing which the Independent Consultant/ MCD will have the right to demand an explanation or resolution of the complaint to their satisfaction.
- 5.7 A “complaint redressal log book” should be maintained by the Concessionaire for the Concession Area containing information including time and date of each complaint, complaint type, action taken and time taken for compliant redressal.
- 5.8 The Concessionaire would be required to submit a monthly complaint and redressal record to the Independent Consultant with a summary of complaints including:
  - a. Number of complaints during the previous month
  - b. % of complaints addressed in 24 hours
  - c. % of complaints not addressed in 24 hours and reasons therefor
  - d. Major unresolved complaints if any
- 5.9 The compliance to O & M Requirements laid out in this section shall be evaluated as specified in the Compliance and Tolerance Criteria in the Annexure 1 of this schedule.

## ANNEXURE 1 : COMPLIANCE AND TOLERANCE CRITERIA TO O&amp;M REQUIREMENTS

S.No	Asset / Project Deliverables / Service Standards	Performance Target	Tolerance Criteria	How / When measured by IE	Penalty on not meeting the criteria*	Issue of "Notice to Remedy" by IE
<b>1 INFRASTRUCTURE FOR HANDLING SEGREGATED WASTE</b>						
<b>1.1</b>	<b>Street corner Bins</b>					
a	Clearing of Biodeg. waste - Daily	90% of bins in Zone	less 5 percent	Monthly Inspection of: (i) Complaints records, (ii) Log books (iii) Operations	-	Issue of notice upon non compliance at the end of the month
b	Clearing of Nonbiodeg waste - in 48 hrs	85% of bins in Zone	less 5 percent		-	
c	No overflow	85% of bins in Zone	less 5 percent	Monthly Inspection of: (i) Operations and (ii) Project Facilities	Penalty of Rs 3 lakh on reported non compliance on any one or more of (c ) to (i)	Issue of notice upon payment of penalty on account of non compliance on any one or more of (c ) to (i) for three consecutive months
d	Weekly cleaning and disinfection	85% of bins in Zone	less 5 percent			
e	No breakages	85% of bins in Zone	less 5 percent			
f	No large cracks	85% of bins in Zone	less 5 percent			
g	No toppling of bins	85% of bins in Zone	less 5 percent			
h	No dislocation of covers	85% of bins in Zone	less 10 percent			
i	Bin coding clearly visible	85% of bins in Zone	less 5 percent			

<b>1.2</b>	<b>Waste Storage Depots (WSDs)</b>					
a	Daily clearing of biodegradable garbage	90% of WSDs in Zone	less 5 percent	Monthly Inspection of: (i) Complaints records, (ii) Log books, (iii) Operations and (iv) Project Facilities	-	Issue of notice upon non compliance at the end of the month
b	Clearing of non biodegradable garbage within 48 hours	85% of WSDs in Zone	less 5 percent		-	
c	Yearly painting	100% of WSDs in Zone	less 0 percent		-	
d	Protective clothing for workers	100 % of workers	less 5 percent		-	Issue of notice upon payment of penalty on account of non compliance on any one or more of (e) or (f) for three consecutive months
e	WSD coding maintenance	95% of WSDs in Zone	less 5 percent		Penalty of Rs 3 lakh on reported non compliance on any one or more of (e) or (f)	
f	Cleanliness of surrounding area within 25 m radii	85% of WSDs in Zone	less 5 percent			
<b>1.3</b>	<b>Facility Site</b>					
a	Protective clothing for workers	100 % of workers	less 5 percent	Monthly Inspection of: (i) Operations and (ii) Project Facilities	-	Issue of notice upon non compliance at the end of the month
b	Yearly painting	100% compliance	less 0 percent			
c	Record of illnesses of all types for workers (maintaining a health register)	100% compliance	less 5 percent			
d	No breakages and cracks	95% of times inspected	less 5 percent		Penalty of Rs 3 lakh on reported non compliance on any one or more of (e) or (f)	Issue of notice upon payment of penalty on account of non compliance for three consecutive months

<b>2 FLEET &amp; LOGISTICS INFRASTRUCTURE</b>						
<b>2.1</b>	<b>Workshop Site</b>					
a	Yearly painting	100% compliance	less 0 percent	Monthly Inspection of: (i) Operations and (ii) Project Facilities	-	Issue of notice upon non compliance at the end of the month
b	Protective clothing for workers	100 % of workers	less 0 percent			
<b>2.2</b>	<b>Transport Vehicles &amp; Loading Equipments</b>					
a	Protective clothing for workers	100 % of workers	less 0 percent	Monthly Inspection of: (i) Operations and (ii) Project Facilities	-	Issue of notice upon non compliance at the end of the month
b	Weekly cleaning & disinfection	90% of vehicles	less 5 percent			
c	Compliance to fuel emission norms	100% of vehicles	less 0 percent			
d	Presence of driving license & Registration Certificate	100% of vehicles	less 0 percent			
e	No break down of vehicles	90% of vehicle trips per day	less 5 percent			
f	Consumer complaint number clearly visible	90% of vehicles	less 5 percent			
g	All tipping fee statements with verified reports of vehicle tracking & monitoring system	100% of tipping fee statements	less 0 percent			
					Penalty of Rs 3 lakh on reported non compliance on any one or more of (c) to (g)	Issue of notice upon payment of penalty on account of non compliance on any one or more of (c ) to (g) for three consecutive months
<b>3 SERVICE REQUIREMENTS</b>						
<b>3.1</b>	<b>Collection &amp; Transportation Standards</b>					
a	No spillage/ leakage while transportation	90% of times inspected	less 5 percent	Monthly Inspection	Penalty of Rs 3	Issue of notice

b	No dislocation of covers while transportation	90% of times inspected	less 5 percent	of: (i) Operations and (ii) Project Facilities	lakh on reported non compliance on any one or more of (a) to (c)	upon payment of penalty on account of non compliance on any one or more of (a) to (c) for three consecutive months
c	No dumping of MSW on floor (except where exempted)	90% of times inspected	less 5 percent			
<b>4 SEGREGATION REQUIREMENTS</b>						
4.1	Segregation level requirements					
a	Segregation level requirements : Test of biodegradability					
	Months from COD	% of tested trips passing the Test 1		Daily monitoring of weighment and testing at Weighbridge and Inspection area as per Test 1 and compilation into monthly tipping fee statement	Penalty as per Article 7 of Agreement	Issue of notice upon payment of penalty on account of non compliance on (a) for more than six months in an year
	0-12	0%	less 0 percent			
	13-24	5%	less 0 percent			
	25-36	10%	less 0 percent			
	37-48	12%	less 0 percent			
	49-60	15%	less 0 percent			
	61-72	18%	less 0 percent			
	73 onwards	20%	less 0 percent			
b	Exclusion of recyclable & Hazardous substance					
	Months from COD	% of tested trips passing the Test 2		Daily Testing at Inspection area as per Test 2 and	Penalty of Rs 3 lakh on reported non compliance in	Issue of notice upon payment of penalty on account
	0-12	NIL	less 0 percent			

	13 onwards	85%	less 0 percent	compilation into monthly inspection report]	the monthly inspection report	of non compliance on (b) fpr three consecutive months
<b>4</b>	<b>COMMAND - CONTROL - RESPONSE MECHANISM</b>					
a	Timings (9 to 5 & 6 days a week)	100% Compliance	Less 5 percent	Monthly Inspection of Operations	Penalty of Rs 3 lakh on reported non compliance in the monthly inspection report	Issue of notice upon payment of penalty on account of non compliance on (a) or (b) fpr three consecutive months
b	Complaint redressal within 24 hours	90% of complaints	less 5 percent			

\* - **Explanation of Penalty Structure** : As can be seen from the table in Annexure 1, there are two categories of O&M obligations. The first category is where non compliance invites monetary penalty and the second category where every non compliance qualifies for issue of Notice to Remedy. There are seven instances where a reported non compliance by the Concessionaire can invite a penalty of 3 lakhs each, namely Street Corner Bins, Waste Storage Depots, Facility Site, Workshop Site, Transport and Loading Vehicles, Collection & Transportation Service Standards, Recyclable & Hazardous Waste Exclusion and Complaint Redressal Cell. Hence it may be noted that the maximum penalty the Concessionaire will have to pay during a month (excluding the penalty on account of 4.1a in the above table) would amount to 21 lakhs (7 X 3 lakhs) only.

**SCHEDULE J****LIST OF RECYCLABLE SUBSTANCE AND HAZARDOUS WASTES****LIST OF RECYCLABLE SUBSTANCE**

<b>Sr. No.</b>	<b>Trade Name</b>	<b>Description</b>
<b>PAPER</b>		
1	<i>File</i>	White Paper/Files
2	<i>Reecut</i>	Printed Paper, e.g. on labels
3	<i>Raddi</i>	Waste Paper
4	<i>Kitaab</i>	Book
5	<i>Akhbaar</i>	News Paper
6	<i>Computer jaali</i>	Dot Matrix Printer Paper
7	<i>Kapi</i>	Note Book
8	<i>Gatta</i>	Cardboard (thin, from packaging and thick, from cartons)
<b>Plastic</b>		
9	<i>Mix Plastic</i>	Mixed Plastic (only at first stage)
10	<i>Kali Plastic</i>	Black Plastic
11	<i>Syringe</i>	Syringe
12	<i>X-Ray</i>	X-Ray Sheets
13	<i>Paani ka Bottle / Cold Drinks Bottles</i>	Water Bottle / PET
14	<i>Computer ka dabbi</i>	Cartridge
15	<i>Jutaa ka sole</i>	Shoe Sole (PVC)
16	<i>Rubber Chappal</i>	Rubber Slipper
17	<i>Glucose Bottle</i>	Glucose Bottle Plastic
18	<i>H.M. Panni</i>	H.M.
19	<i>Doodh</i>	Milk Pouches
20	<i>Karak</i>	Polypropylene or Polystyrene in thin cups that make a noise when pressed . Eg , Nescafe cups.
21	<i>Raincoat</i>	PET
22	<i>Guddi</i>	Guddi Plastic
23	<i>Sheet</i>	Bakelite and similar thermoset plastics
24	<i>Panni</i>	Polyethylene (specially used for thin)
25	<i>Momjama (No. 1)</i>	L.D.PE
26	<i>Momjama (No.2)</i>	P.P. or HDPE
<b>Glass</b>		
27	<i>Beer Bottle</i>	Big Beer Bottle

28	<i>Kaanch</i>	Broken Glass
29	<i>Whisky Bottle</i>	Whisky Bottle
30	<i>Chhoti Beer Bottle</i>	Small Beer Bottle (Pint)
31	<i>Addha</i>	Half litre Bottle
32	<i>Pauwa</i>	Quarter litre Bottle
33	<i>Dawai Ka Bottle</i>	Medicine Bottle
34	<i>Kanch ka Glucose Bottle</i>	Glucose Bottle (Glass)
35	<i>Chatni Bottle</i>	Sauce Bottle/Glass
36	<i>Campa Bottle</i>	Cold Drink Bottle
<b>Metal</b>		
37	<i>Kabara /Tina</i>	Tin (but a generic reference to metals as well)
38	<i>Loha</i>	Iron (Scrap)
39	<i>Pepsi ka Dabba</i>	Aluminum Cans
40	<i>Silver</i>	Aluminium
41	<i>Peetal</i>	Brass
42	<i>Tamba</i>	Copper
43	<i>Ranga, Sikka</i>	Lead
44	<i>Roti Ki Packing</i>	Aluminium Foil
45	<i>Steel</i>	Steel
46	<i>Jalane Wala Taar or Taar</i>	Insulated Wire
47	<i>Purja</i>	Small Machinery Parts
48	<i>Motor Parts ka saman</i>	Motor Parts
49	<i>Tubelight ka choke</i>	Tube light choke
50	<i>15 liter ka Tin</i>	Cooking Oil Can
51	<i>200 liter ka drum</i>	Drum (200 Litre)
52	<i>5-50 liter can</i>	Can (5-50 Litre)
53	<i>Steel</i>	Steel
54	<i>Crystal</i>	Crystal Eg, the reflector lights on the indicator of a cycle etc.
<b>Others</b>		
55	<i>Jala Ghee/ Tel</i>	Used Cooking Oil
56	<i>Dunlop</i>	Dunlop (Mattress)
57	<i>Foam</i>	Foam
58	<i>T – Foam</i>	Packing Foam
59	<i>Kapra poorana</i>	Rejected Clothes
60	<i>Kapre ka kataran</i>	Clothes Cuttings
61	<i>Rui</i>	Cotton
62	<i>Roti</i>	Bread/ Roti
63	<i>Cuscot</i>	
64	<i>Furniture</i>	Furniture Item
65	<i>Lakkar</i>	Wood

**LIST OF HAZARDOUS WASTES**



1. Aerosol cans
2. Batteries from flashlights and button cells
3. Bleaches and household kitchen and drain cleaning agents
4. Car batteries, oil filters and car care products and consumables
5. Chemical and solvents and their empty containers
6. Cosmetic items, chemical-based
7. Injection needles and syringes after destroying them both
8. Insecticides and their empty containers
9. Light bulbs, tube-lights and compact fluorescent lamps (CFL)
10. Medicines, discarded
11. Paints, oils, lubricants, glues, thinners and their empty containers
12. Pesticides and herbicides and their empty containers
13. Photographic chemicals
14. Styrofoam and soft foam packaging from new equipment
15. Thermometers and mercury-containing products

**SCHEDULE - K**

**SUBSTITUTION AGREEMENT**

**THIS SUBSTITUTION AGREEMENT** is entered into on this the ----- day of ----- (Month) ---- (Year) at -----.

AMONGST,

Municipal Corporation of Delhi, a body corporate constituted under the Delhi Municipal Corporation Act, 1957 and having its office at \_\_\_\_\_ (hereinafter referred to as “**MCD**” which expression shall unless excluded by or repugnant to the context include its successors and assigns;

**AND**

\_\_\_\_\_ Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_ (hereinafter referred to as “**the Concessionaire**” which expression shall unless excluded by or repugnant to the context include the successors and permitted assigns),

**AND**

YYYY (Financial Institution/ Bank) having its Registered Office/Head Office at ----- hereinafter referred to as “**the Lender**”.

**OR**

ZZZZ (Financial Institution/Bank) having its Registered Office/Head Office at----- acting for and on behalf of the Lenders listed in schedule I hereto (hereinafter referred as “**the Lenders’ Representative**”.

**WHEREAS:**

- A. MCD is the Municipal Corporation for Delhi city responsible for providing municipal and civic services for the benefit of the public residing within such territory, which includes the collection, segregation, transportation and disposal of Municipal Solid Waste generated in the city. MCD currently disposes the collected waste at

designated dumping sites, which are, however, inadequate to handle the increasing quantity of waste generated in the city.

- B. MCD is desirous of improving the solid waste management services in the National Capital Territory of Delhi. For meeting the aforesaid objective, pursuant to Section 201 of the DMC Act, MCD upon receipt of authorisation by MCD Council Resolution No. ----- decided to invite private sector participation on Design, Procure, Renovate, Operate, Maintain, and Transfer (DPROMT) basis, to carry out the functions of collection, segregation, transportation and delivery of Municipal Solid Waste.
- C. By the Concession Agreement dated ----- entered into between MCD and the Concessionaire (hereinafter referred to as “the Concession Agreement”) the Concessionaire has been granted the Concession to implement the Project on DPROMT basis;
- D. With a view to facilitate financing of the Project by the Concessionaire, MCD and the Concessionaire have agreed to enter into a Substitution Agreement being these presents with the Lender/s/Lenders’ Representative.

**NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:**

## **ARTICLE 1**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereafter respectively assigned to them.

“**Agreement**” means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

“**Financial Assistance**” means the financial assistance set forth in schedule I hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

“**Lender(s)**” means the financial institutions/banks whose name(s) and addresses are set out in schedule I hereto.

**“Residual Concession Period”** means the period which shall be the remainder of the Concession Period computed from the date of substitution of the Concessionaire by the Selectee.

**“Selectee”** means a Person proposed by the Lender/Lender’s Representative pursuant to this Agreement and approved by MCD for substituting the Concessionaire for the Residual Concession Period, in accordance with the provisions of this Agreement.

**"Suspension Period"** means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice and ending on the date on which all formalities connected with the substitution of the Concessionaire by the Selectee including handing over of the Project Facilities, in accordance with this Agreement are completed and the substitution has become effective.

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

## ARTICLE 2

### SUBSTITUTION OF THE CONCESSIONAIRE BY THE SELECTEE

#### 2.1 Lenders right to Substitute

MCD and the Concessionaire hereby irrevocably agree that upon occurrence of a Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law/Financing Documents and without being required to exercise or exhaust such rights or remedies, have the right to seek substitution of the Concessionaire by Selectee for the Residual Concession Period under the Concession Agreement in accordance with the provisions of this Agreement.

#### 2.2 Preliminary Notice of Termination

MCD shall as soon as possible but in any case not later than 15 days of its knowledge of the occurrence of the Concessionaire Event of Default issue Preliminary Notice of Termination to the Concessionaire in terms of Article 9.2 (a) (ii) of the Concession Agreement, with a copy thereof simultaneously to the Lenders. Provided, if the Concessionaire Event of Default is the one set out in Article 9.1 (a)

(vii) of the Concession Agreement, MCD shall not be obliged to issue Preliminary Termination Notice until receipt by MCD of the recall notice issued by the Lender(s) to the Concessionaire

### **2.3 Suspension of Concession and Takeover of the Project Facilities**

The Concessionaire irrevocably agrees that if the Cure Period specified in the Preliminary Notice of Termination lapses without the Concessionaire Event of Default having been cured, the Concession shall from the expiry of such Cure Period stand suspended, without any further notice or other act of MCD being required, and that MCD shall have the right to enter upon and takeover the Project Facilities and to take all such steps as are necessary for the continuance of the Project, subject to servicing the payment obligations under the Financing Documents, and the substitution of the Concessionaire by the Selectee in accordance with this Agreement. The Concessionaire hereby irrevocably consents to the takeover of the Project Facilities by MCD forthwith upon suspension becoming effective.

### **2.4 Substitution Notice**

MCD and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Event of Default specified in the Preliminary Notice of Termination, the Lender/Lender's Representative may, within 30 (thirty) days of the expiry of the Cure Period specified therein, notify MCD and the Concessionaire about the intention of the Lender(s) to seek substitution of the Concessionaire by the Selectee for the Residual Concession Period (the "Substitution Notice").

### **2.2 Criteria for selection of the Selectee.**

The Lender/Lenders' Representative shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of the Selectee:

- (i) the Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire in respect of the Project, under the Concession Agreement;

- (ii) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to MCD under and in accordance with the Concession Agreement, and also payment of amounts due to the Lender(s) under the Financing Documents, upon terms and conditions as agreed to between the Selectee and the Lenders.

### ARTICLE 3

#### MODALITY FOR SUBSTITUTION

##### 3.1 Modalities for Substitution.

The following modalities shall be followed for substitution of the Concessionaire by the Selectee pursuant to this Agreement:

- (i) The Lender(s)/Lenders' Representative shall be entitled, within a period of 120 (one hundred twenty) days from the date of delivery of the Substitution Notice pursuant to the preceding Article 2.2 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the substitution of the Concessionaire by the Selectee and propose to MCD for its approval, the Selectee (the "Proposal"). The Proposal of the Lender/Lender's Representative shall contain the particulars and information in respect of the Selectee, particulars of the amounts due to the Lenders under the Financing Documents, the terms of Substitution and such data and information as would be necessary and relevant for MCD to decide as to the acceptability of the Selectee. The Lender/Lender's Representative shall provide to MCD such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as MCD may reasonably require.
- (ii) The Proposal shall be accompanied by an unconditional undertaking of the Selectee to the effect that it shall upon acceptance by MCD of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement, and to assume, take over, discharge and pay the Concessionaire's obligations under the Financing Documents on the terms and

conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with MCD and the Lender(s) as may be necessary or required to give effect to the substitution of the Concessionaire by the Selectee.

- (iii) MCD shall convey to the Lender/Lenders' Representative its acceptance or otherwise of the Selectee within 30(thirty) days of (a) the date of receipt of the Proposal by MCD, or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender/Lender's Representative to the MCD, whichever is later.
- (iv) At any time prior to the acceptance of the Selectee by MCD pursuant to this Agreement, MCD may require the Lender/Lenders' Representative to satisfy it as to the eligibility of the Selectee and the decision of MCD as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender(s), the Selectee and the Concessionaire. In the event that MCD fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/ the Selectee within a period of 30 days prescribed in preceding sub-article (iii), MCD shall be deemed to have accepted the Proposal/ the Selectee
- (v) The rejection of the Selectee if made by MCD shall be reasoned and be made after hearing the Lender/Lenders' Representative. Following the rejection of the Proposal, the Lender/Lenders' Representative shall have the right to submit a fresh Proposal, proposing another Selectee, within 30 days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-article (iii) and (iv) shall apply mutatis mutandis to such fresh Proposal.
- (vi) If MCD accepts the Proposal/fresh Proposal, MCD shall take all necessary steps to substitute the Concessionaire by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the Substitution of the Concessionaire by the Selectee for the Residual Concession Period.

- (vii) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favor of MCD and the Lender(s) so as to give full effect to the terms and conditions of substitution, subject to which the Selectee has been accepted by the Lender(s) and MCD and upon the delivery by MCD of the Project Facilities to the Selectee. Upon the substitution becoming effective pursuant to this sub-article all the rights of the Concessionaire under the Concession Agreement shall cease to exist. Provided nothing contained in this sub-article shall prejudice any pending/subsisting claims of the Concessionaire against MCD or any claim of MCD against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to the terms and conditions of the substitution, have a period of 90 days to cure any breach/default subsisting on the date of substitution and required or agreed to be cured.
  
- (viii) The decision of the Lenders and MCD in the selection of the Selectee shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire. The Concessionaire hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.

### **3.2 Termination and Termination Payment.**

- (i) Where the Lender/Lenders' Representative (on behalf of all the Lenders) communicates in writing that (i) the Lender/ Lender's Representative does not intend to seek substitution of the Concessionaire, or (ii) that the Lender/Lenders' Representative has not been able to find suitable Selectee or (iii) that MCD has declined to accept the Selectee proposed by the Lender/Lenders' Representative, MCD shall proceed to terminate the Concession and to make Termination Payment, in accordance with the provisions of the Concession Agreement.
  
- (ii) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by MCD and it is expressly agreed that MCD has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.



## **ARTICLE 4**

### **MODE OF TERMINATION PAYMENTS**

#### **4.1 Mode of Payment**

MCD and Concessionaire hereby irrevocably agree, and confirm that so long as the liabilities of the Concessionaire under the Financing Documents are outstanding the Termination Payment and any other amounts due and payable by MCD to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender(s)/Lenders' Representative and advised to MCD and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire towards the satisfaction of the amounts outstanding, due and payable under the Financing Documents, subject to payment by the Lender(s) of the surplus amount, if any, remaining after discharge of the liabilities of the Concessionaire under the Financing Documents, to the Concessionaire. Any payment so made shall to the extent of such payment constitute a valid discharge to MCD of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.

## **ARTICLE 5**

### **GENERAL**

#### **5.1 General**

- (i) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (ii) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by a Registered post acknowledgement due and delivered to the other parties.

- (iii) The expressions “MCD”, the “Concessionaire”, the “Lender” and the “Lenders’ Representative” herein used shall unless there be anything repugnant to the subject or context include the respective successors, legal representatives, administrators and permitted assigns.
- (iv) This Agreement shall not be affected by reorganization of any Lender, the Concessionaire or MCD and the successor in interest of the Lender or MCD shall have the benefit of this Agreement.
- (v) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided finally by arbitration by a Board of Arbitrators comprising of a nominee of each party to the dispute. Such arbitration shall be held in accordance to and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The arbitrators shall issue a reasoned award. The venue of such arbitration shall be New Delhi. The Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the “Award”) without delay.
- (vi) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceeding hereunder. The Courts in N.C.T of Delhi alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings there under.
- (vii) The consultation, recommendation or approval of the Lenders’ Representative under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same.
- (viii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (ix) It shall not be necessary for the Lender(s) or the Lenders’ Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.

- (x) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorized representatives of all the Parties hereto.
- (xi) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.
- (xii) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistency with the Concession Agreement.

SCHEDULE I

PARTICULARS OF FINANCIAL ASSISTANCE.

Name and Address of the Lender	Nature and Amount of Financing Assistance

IN WITNESS WHEREOF THE PARTIES HERETO HAVE SET THEIR HANDS HEREUNTO ON THE DAY, MONTH AND YEAR HEREINABOVE MENTIONED.

SIGNED AND DELIVERED ON BEHALF OF  
 -----LIMITED

BY: \_\_\_\_\_

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF  
MCD

BY: \_\_\_\_\_

Name:

Title:

SIGNED AND DELIVERED ON BEHALF OF THE  
LENDERS -----SET FORTH IN SCHEDULE I

BY: \_\_\_\_\_

Name:

Title:

**SCHEDULE L**

**TIPPING FEE RATES ( in Rs / Ton )**

To attach Appendix 5-C of the Proposal of the Bidders (in response to RfP)

**SCHEDULE M**  
**WORKSHOP SITE<sup>8</sup>**

**1. Name of the Site:**

**2. Location of the Site:**

---

<sup>8</sup> Any reference to “Workshop Site” to be treated as null and void for City Zone as Workshop Site is NOT part of Existing Project Facilities

**SCHEDULE - N**

**PERFORMANCE SECURITY  
(PERFORMA OF BANK GUARANTEE)<sup>9</sup>**

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

**In favour of**

Municipal Corporation of Delhi, a body corporate constituted under the Delhi Municipal Corporation Act, 1957 and having its office at \_\_\_\_\_ (hereinafter referred to as “MCD” which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

**WHEREAS**

- A. By the Concession Agreement (“CONCESSION AGREEMENT”) being entered into between MCD and \_\_\_\_\_ 10, a company incorporated under the provisions of the Companies Act, 1956/firm, having its registered office/ permanent address at \_\_\_\_\_, (“Concessionaire”), the Concessionaire has been granted the Concession to implement the Project envisaging collection, segregation and transportation and delivery of Municipal Solid Waste in the Concession Area on Design, Procure, Renovate, Operate, Maintain and Transfer (DPROMT) basis, (hereinafter referred to as “The Project”.)
- B. In terms of Article 5 of the Concession Agreement, the Concessionaire is required to furnish to MCD, an unconditional and irrevocable bank guarantee for an amount of Rs. 50,00,000 only as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to achievement of COD by the Concessionaire.

---

<sup>9</sup> To be issued by a Scheduled Bank in India

C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project;

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. \_\_\_\_\_ (hereinafter called “the Concessionaire”) of all its obligations relating to the Project and in connection with achievement of COD by the Concessionaire , in accordance with the Concession Agreement.
3. The Guarantor shall, without demur, pay to MCD sums not exceeding in aggregate Rs. 50,00,000 , within five (5) calender days of receipt of a written demand therefor from MCD stating that the Company has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any\_breach or failure on the part of the Concessionaire or validity of demand\_so made by MCD and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor’s obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, MCD shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/delayed exercise of any of its rights by MCD or any indulgence shown by MCD to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any

---

<sup>10</sup> In case of Consortium both members would be included as Parties to the Agreement and collectively referred to as ‘the Concessionaire/Consortium’ as the context may require.



of its rights by MCD or any indulgence shown by MCD, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>11</sup> unless discharged/released earlier by MCD in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum Rs. 50,00,000.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

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

SIGNED AND DELIVERED

by \_\_\_\_\_ Bank  
by the hand of Shri \_\_\_\_\_  
its \_\_\_\_\_ and authorised official.

---

<sup>11</sup> 24 months from the date of signing the Concession Agreement

## **SCHEDULE – O**

### **FORMAT OF OPERATIONS PLAN**

#### **1.0 General**

Pursuant to Article 5.4 of this Agreement, the Concessionaire shall prepare an Operations Plan in accordance with this section.

#### **2.0 Basic Components**

The Operations Plan shall consist of the following:

- a) Implementation period plan specifying the completion dates for each procedure and activity involved therein.
- b) Technical plan (detailed technical proposal submitted as part of the RfP, modified in accordance to MCD inputs) specifying the completion dates for each procedures and activities involved therein

##### ***2.1 Implementation period plan requirements***

2.1.1 The Concessionaire shall give proposed time lines broadly in the following format:

- a) The Concessionaire shall give a detailed schedule of implementation of the Construction Requirements of the Existing Project Facilities and the Design Requirements of the New Project Facilities and which shall specify the major milestones for construction, procurement, financial close, soft launch, documentation formats and COD;
- b) The Concessionaire shall give a detailed schedule and timelines for the trial run of the Project prior to the COD.
- c) Manpower deployment plan, including the designation of key personnel for the management and supervision of all activities associated with the Project. (This would include the designation of suitably qualified personnel for areas such as Project administration and supervision, construction management, vehicles and equipment maintenance, procurement, materials management and quality control); and

- d) Format of the monthly report containing interalia details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (monthly progress report).

## **2.2 *Technical plan***

- 2.2.1 The technical plan submitted by the Concessionaire at the Proposal Stage of the bidding process, together with any modifications carried out by the Concessionaire based on the suggestions/comments/observations of the MCD/Independent Consultant, shall constitute the technical plan section of the Operations Plan.

## **SCHEDULE P**

### **FORMAT OF REPORTS**

#### **1.0 Reporting Requirements during the Implementation Period**

During the Implementation Period, the Concessionaire shall submit to the Independent Consultant monthly progress report (for each calendar month or part thereof) within 5 working days of the last day of the month. The report shall review the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications), operations and maintenance activities undertaken and would, inter alia, include the following:

- 1.1 Progress of pre-construction activities - mobilization of equipments, personnel, site office, utility relocation etc.
- 1.2 Review of milestones set out in Operations Plan and reasons for delay, if any
- 1.3 Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- 1.4 'Change of Law' notice issued by Independent Consultant, if any, and status thereof
- 1.5 All deviations from the Operations Plan
- 1.6 Disagreements/ disputes, if any and proposed measures to be taken
- 1.7 Brief report of any accident/incident within the construction site, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence
- 1.8 Notes of meetings between the Concessionaire, the Independent Consultant and MCD highlighting critical decisions taken or agreements reached.
- 1.9 Request for a Readiness/Provisional Readiness Certificate on completion of activities listed in the Implementation Period plan section of the Operations Plan, and obtain a Readiness/Provisional Readiness Certificate, to be issued by the Independent Consultant.

#### **2.0 Reports during the Operations Period**

The Concessionaire shall submit the following reports in accordance with specific provisions of the Agreement, duly verified by the Independent Consultant

- 2.1 Monthly Tipping Fee Statement in accordance with Article 7 of the Agreement. This shall be a monthly compilation of records of the quantum (measured in tonnes) of Bio-degradable Substance, Non-Bio-degradable Substance deposited at the Landfill Site, duly countersigned by the Independent Consultant.
- 2.2 Annual compilation of Monthly tipping fee statement as mentioned in Section 2.1 above to the Independent Consultant and MCD in a format decided in consultation with the Independent Consultant.
- 2.3 The Concessionaire shall submit a quarterly report to MCD containing the list of wards/colonies and their performance on segregation levels in order to aid monitoring of generator level segregation by MCD officials
- 2.4 Monthly compilation of complaint redressal performance in accordance with Section 5 of the Schedule I.
- 2.5 Annual fitness certificate of the transport vehicles and loading equipment.
- 2.6 Yearly report on plan for Awareness Campaign in accordance with Schedule S.
- 2.7 Disagreements/ disputes, if any and proposed measures to be taken
- 2.8 Brief report of any accident/incident related to the Project, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence

**SCHEDULE Q**

**APPLICABLE PERMITS**

<b>S.NO</b>	<b>PERMIT</b>	<b>AGENCY</b>
1	Permits for drivers	
a	Permanent driving license depending on vehicle type	Transport Department, Govt of NCT Delhi
2.	Permits for vehicles	
a	Vehicle Registration	Transport Department, Govt of NCT Delhi
b	Fitness certificate	Transport Department, Govt of NCT Delhi
c	Pollution control certificates	Transport Department, Govt of NCT Delhi
3.	Water connection	Delhi Jal Board
4.	Application for PAN and other tax registrations	Concerned Deptt of Government of Delhi and GoI
5.	Clearance for employing labour – Primary employer	Labour Commissioner
6.	Employment of Migrant labour	Labour Commissioner
7.	Fire safety equipment	Government of NCT of Delhi/ Police Department
8.	Working in night shifts	MCD/Police Department

**SCHEDULE R**  
**AUTHORIZATION LETTER FOR AVAILMENT OF UTILITIES**  
*(To be given on MCD letterhead)*

**To whomsoever it may concern**

This is to confirm that pursuant to the Concession Agreement dated \_\_\_\_\_, entered into between the Commissioner, Municipal Corporation \_\_\_\_\_ of Delhi and \_\_\_\_\_ (“Concessionaire”), the Concessionaire has been authorized to design, procure, renovate, operate, maintain and transfer the Project Facilities and collect, segregate and transport Municipal Solid Waste in ----- Zone/s and for that purpose, to apply for and obtain all approvals, licenses and permits required therein and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Commissioner  
Municipal Corporation of Delhi

**SCHEDULE S  
AWARENESS CAMPAIGN**

**1.0 Design of Awareness campaigns prior to COD**

- 1.1 Based on technical plan section of the Operations Plan, the Concessionaire shall design Awareness Campaigns as specified in this section.
- 1.2 The Awareness Campaign programmes should be developed based on the outline provided in the Operations Plan, which clearly states the components and expenditure under each head.
- 1.3 The Awareness Campaign should be designed in such a manner that it reaches out to all the categories and sections of generators of MSW.

**2.0 Awareness campaign post COD**

- 2.1 Based on technical plan section of the Operations Plan, the Concessionaire shall undertake Awareness Campaign as specified in this section.
- 2.2 The Concessionaire shall submit an annual programme of Awareness Campaign to the Independent Consultant and MCD within the first month of each calendar year clearly notifying the components & expenditure under each head of expense.
- 2.3 The Concessionaire shall with the assistance of MCD educate the generators of MSW about the service that is being provided by the Concessionaire and shall provide and distribute information about the rights and responsibilities of the generators of MSW.
- 2.4 The Concessionaire shall notify the generators of MSW in its Concession Area about the details of the new services (if any) to be provided in accordance with this Agreement.
- 2.5 The Concessionaire shall also instruct the generators of MSW from time to time about MSW placement and delivery requirements, including provisions for special collections.
- 2.6 The Concessionaire shall duly inform the generators of MSW about the phone numbers of the Complaint Redressal Centre.
- 2.7 The Concessionaire shall organize quarterly awareness drives for two bin system for Biodegradable Substance and Non biodegradable Substance for segregation of MSW at source.
- 2.8 The Concessionaire shall organize quarterly awareness drive for segregation and proper disposal of Hazardous Wastes & Recyclable Substances.