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Maharashtra Pollution Control Board- Contract Agreement for O&M services of Project Facility

The Contract Agreement mutually agreed and entered into on this \_\_\_\_ day of \_\_\_\_ (month), Two thousand and Four at \_\_\_\_ (Name of Place/ City),

BETWEEN

\_\_\_\_\_ (Municipal Body) acting through \_\_\_\_ (address of Municipal Body), hereinafter referred to as “the Municipal Body” which expression shall unless repugnant to the context include its successors and assigns, OF THE PART,

AND

\_\_\_\_\_ (Name of Contractor), a company incorporated under provisions of the Companies Act, 1956, having its Registered office at \_\_\_\_\_ (address of Contractor), hereinafter referred to as “Contractor” which expression shall unless repugnant to the context include its successors and permitted assigns, OF THE OTHER PART.

WHEREAS

\_\_\_\_ (Municipal Body) is the municipal corporation for \_\_\_\_\_ (Name of Place/ City) responsible for providing municipal and civic services, which includes the collection, transportation, treatment and disposal of Municipal Solid Waste generated in the town/ village/ city. \_\_\_\_ .The Contract Agreement mutually agreed and entered into on this \_\_\_\_ day of \_\_\_\_ (month), 2005 at \_\_\_\_ (Name of Place/ City),

BETWEEN

\_\_\_\_\_ (Municipal Body) acting through \_\_\_\_ (address of Municipal Body), hereinafter referred to as “the Municipal Body” which expression shall unless repugnant to the context include its successors and assigns, OF THE PART,

AND

\_\_\_\_\_ (Name of Contractor), a company incorporated under provisions of the Companies Act, 1956, having its Registered office at \_\_\_\_\_ (address of Contractor), hereinafter referred to as “Contractor” which expression shall unless repugnant to the context include its successors and permitted assigns, OF THE OTHER PART.

WHEREAS

- A. \_\_\_\_ (Municipal Body) is the municipal corporation for \_\_\_\_\_ (Name of Place/ City) responsible for providing municipal and civic services, which includes the collection, transportation and disposal of Municipal Solid Waste generated in the city. \_\_\_\_ (Municipal Body) currently disposes the collected MSW directly at designated dumping/ disposal sites, however, to undertake the MSW management as per the MSW Rules 2000, \_\_\_\_ (Municipal Body) is required to treat the

- biodegradable waste so that only inert waste is disposed at the designated dumping site.
- B. The Ministry of Environment and Forests (MoEF), Government of India (GoI), has formulated the Solid Waste (Management and Handling) Rules 2000 (“MSW Rules”), which makes it mandatory for every municipal authority to implement a scientific solid waste management system wherein the Municipal Solid Waste is duly collected, processed and the residual inert/non-biodegradable solid wastes disposal in an engineered sanitary Landfill (as hereinafter defined).
  - C. \_\_\_\_\_(Municipal Body) desires to undertake such Project Facility as detailed in the Notice Inviting Tender and Request for Proposal at \_\_\_\_\_(Name of Place/ City) through private sector participation.
  - D. (Municipal Body) had invited competitive proposals from eligible Bidders/ Association of Bidders for Development of the Project Facility and in response thereto \_\_\_\_\_(Municipal Body) received proposals from several persons including the Contractor /Association of Bidders for Development of the Project Facility.
  - E. \_\_\_\_\_(Municipal Body), after evaluating the aforesaid Proposals accepted the Proposal submitted by the Contractor / Association of Bidders and issued Letter of Acceptance No. \_\_\_\_\_ dated \_\_\_\_\_ to the Contractor / Association of Bidders for developing the Project.
  - F. In accordance with the terms of the proposal submitted by the Bidder/ Association of Bidders, \_\_\_\_\_ (Municipal Body) has agreed to grant to the Contractor the Contract (as hereinafter defined).
  - G. The Parties hereto are required to enter into the Contract Agreement being these presents to record the terms, conditions and covenants of the Contract.

NOW THIS AGREEMENT WITNESSETH

## **ARTICLE I**

### **1.1 Definitions**

“Agreement”: means this Agreement executed between \_\_\_\_\_ (Municipal Body) and \_\_\_\_\_ (Contractor) including all the Annexures, Schedules, amendments, bid documents, correspondences, etc. for the implementation of the Project.

“Biodegradable waste”: shall mean that waste that can be degraded by micro-organisms.

“Bio-medical Waste”: shall have the meaning assigned to it as per the Bio-Medical Waste (Management and Handling) Rules 1998

“Commencement Date”: The Commencement Date shall be the date of signing the Agreement

“Contractor”: M/s. \_\_\_\_\_, the name of the selected bidder

Maharashtra Pollution Control Board- Contract Agreement for O&M services of Project Facility

“Contract Period”: means \_\_\_\_ years from the Commencement Date and ending on the Termination Date.

“COD”: (Commercial Operations Date) means the date on which the Contractor commences commercial operations upon securing written approval from the Municipal Body.

“Development”: means the conceptualisation, installation/construction, commissioning of assets that are required to be handed over to the Contractor for the performance of its obligations as stipulated under this Agreement on Operate and Maintenance basis.

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

“Hazardous Waste”: shall have the meaning assigned to it as the Hazardous Waste (Management and Handling) Rules 2000

“Inert waste”: shall mean that waste that is neither biodegradable nor recyclable.

“Municipal Solid Waste”: the meaning assigned as under the MSW Rules 2000 published as per GR\_\_\_\_\_ dated 25<sup>th</sup> September 2000

“Municipal Body”: means the \_\_\_\_\_ (name of the Municipal Corporation)

“Planned Maintenance”: shall mean those maintenance activities that have to be carried out to ensure smooth operations of the Project Facility and that have been carried out in accordance with the O&M plan that the Contractor is stipulated to provide to the Municipal Body as per the terms stipulated in this Agreement.

“Project”: means the operation and maintenance of the Project Facility.

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

“Project Facility”: means the assets including but not limited to the assets handed over to the Contractor for the purpose of fulfilment of Contractor’s obligations as laid down in this Agreement.

“Termination Date”: Means the end of the Contract Period due to efflux of time or the date on which the Agreement is terminated as per the provisions of the Agreement, whichever is earlier.

“Tests”: means the tests as prescribed by the Municipal Body from time to time that shall be carried/ conducted by the Contractor at the notified time and notified date in the presence of the Municipal Body to examine the Project Facility to ensure compliance with applicable Rules, Laws, etc.

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

“Waste”: shall mean the waste collected, transported, segregated and supplied by the Municipal Body, directly or indirectly through a notified designated agency, for the purpose of supplying the same to the Contractor as per the terms of this Agreement.

## **1.2 Interpretations**

In this agreement, unless the context otherwise requires,

- a) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transaction entered into herein under;
- b) References to Applicable Laws 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) Reference to recitals, articles, sub-articles, 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 other party or by Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such party or Project Engineer in his 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 either such days or dates.

## **ARTICLE II Contract**

### **2.1 Grant of Contract**

Pursuant to the Request for Proposal process, the Municipal Body hereby grants and authorises the Contractor to operate and maintain the Project Facility in accordance with the Terms and Conditions stipulated in this Contract Agreement

### **2.2 Contract Period**

The Contract is hereby granted for the period commencing from the Commencement Date and ending on the Termination Date (“the Contract Period”) during which the Contractor is authorised to operate and maintain the Project Facility in accordance with the provisions hereof

### **2.3 Acceptance of Contract**

In consideration to the rights, benefits and privileges bestowed upon the Contractor, the Contractor hereby accepts the Contract and undertakes to perform all of its obligations as per the Terms set forth in this Agreement

### **2.4 Assignment of Contract**

The Contractor shall not create any Encumbrances, Liens, Rights, Obligations, and Interests on the Project Facility and/ or this Agreement, except after seeking written approval from the Municipal Body.

## **ARTICLE III Project Site**

### **3.1 Applicable Permits**

The Municipal Body has secured the requisite permits for the Development of the Project. The Contractor agrees that it shall undertake all steps required to adhere to the terms and conditions stated in the permits secured by the Municipal Body. The Contractor shall also secure any additional permits/ clearances that may be required in the course of the operation and maintenance of the Project Facility as required by prevalent law from time to time

The Municipal Body agrees to assist the Contractor in seeking such additional permits/ clearances that may be required from time to time.

### **3.2 Lease of Land**

The Municipal Body shall lease the land required for the construction of the Project Facility at a nominal lease rental of Re. 1/- per square meter per annum for the Contract Period.

### **3.3 Handover of Project Site and Project Facility**

Within 15 days from the Commencement Date, the Municipal Body shall handover the Project Site and the Project Facility as described in Schedule E, on an as-is-where-is basis, free from encumbrances, for the operation and maintenance of the Project Facility

Subject to the Contractor fulfilling all its Obligations as set forth in this Agreement, the Contractor may commence utilisation of the Project Site for the purpose of operation and maintenance of the Project Facility.

### **3.4 Rights, Title and Use of Project Site and Project Facility**

- (i) The Contractor shall have the right to use the Project Site only for the purpose of operation and maintenance of the Project Facility and for the same may regulate and be liable for the entry of third parties.
- (ii) The ownership of the Project Facility shall continue to vest with the Municipal Body.
- (iii) The Contractor agrees not to create any encumbrance on the Project Site nor the Project Facility and shall keep indemnified the Municipal Body for any deviations there from.
- (iv) The Municipal Body shall keep indemnified the Contractor for any disputes that may arise on account of the ownership rights of the Project Site or for any liabilities that are outstanding related to the Project Facility as on the date of hand over of the Project Facility to the Contractor.
- (v) The Municipal Body shall be responsible for the shifting of Utilities, if any, on behalf of the Contractor. Any costs/ charges that may arise on account of shifting of Utilities, including the associated relocation costs shall be to the account of the Contractor. The Municipal Body shall endeavour to shift/ relocate the Utilities in the minimum possible time to ensure that the Contractor does not suffer any pecuniary losses on account of the same.
- (vi) The Contractor shall allow during the tenure of the Contract Period the use of the Project Site for the purpose of laying cables, ducts, etc that may be required by the Municipal Body in the course of its performance of its other responsibilities.

### **3.5 Peaceful Possession**

The Municipal Body warrants that the ownership rights of the Project Site and the Project Facility is vested with the Municipal Body and that the Municipal Body has full powers to hold, dispose of and deal with the same, consistent with the provisions of this Agreement.



The Contractor shall, subject to compliance with the terms and conditions of this Agreement, continue to enjoy peaceful possession of the Project Site and the Project Facility during the Contract Period.

#### **ARTICLE IV Monitoring of the Project Facility**

The Municipal Body, in order to ensure fairness and transparency in its role as supervisor of the operations and maintenance of the Project Facility, shall authorise formation of a Committee to monitor the operations and maintenance of the Project Facilities.

The objective of the Committee is to have close co-ordination between the Contractor and the Municipal Body in order to take timely action on events that may hinder the operations and maintenance of the Project Facility in a transparent and timely manner.

##### **4.1 Composition of Committee**

Within 15 days of the signing of this Agreement, a Committee comprising a representative each from the Contractor and the Municipal Body (*preferably an operational level person*) shall be formed to monitor the performance of the Project Facilities.

The Committee shall be chaired by the Deputy Commissioner or Chief Officer of the respective Municipal Body as designated from time to time.

The Deputy Commissioner or Chief Officer may co-opt representation from the State Pollution Control Board or the Collectorate's office to refer any matter that is critical to the smooth operations of the Facility..

##### **4.2 Specific Obligations of the Committee**

The Committee shall supervise the operations and maintenance of the Project Facility. The Committee shall undertake such functions as mentioned in Schedule B attached herewith.

##### **4.3 Frequency and expenses related to meetings**

The Committee shall meet regularly and under any circumstances the period between successive meetings shall not exceed 30 days during the operations and maintenance period or at such times where, in the opinion of the Committee, the operations of the plant are or have the potential to be affected due to disputes.

The expenses of conducting such meetings including stationery, cost of appointment/engagement of external consultant, miscellaneous expenses, etc. shall be borne equally by the Contractor and the Municipal Body.

##### **4.4 General Role of the Committee**

- (i) Review the Operations and Maintenance Plan submitted by the Contractor from time to time and keep the Municipal Body informed about the same.

- (ii) Monitor the performance of the Contractor as per the terms of this Agreement and submit a monthly report to the Municipal Body in a format as required by the Municipal Body.
- (iii) Ensure that a register is maintained at the Weighment Facility by the Contractor and all the details pertinent to the operations of the Project Facility are noted correctly by the Contractor namely vehicle registration number, load (in tonnes), time in, time out, driver name and any other information as is required by the Municipal Body from time to time. The Committee shall also conduct such verifications / checks to ensure that the Contractor is in compliance with the same.
- (iv) Inform the Municipal Body of any events that have the potential of having a material adverse affect on the Project Facilities due to Municipal Body's EoD, Contractor's EoD, Force Majeure Events or any other event as in the opinion of the Committee along with the possible solution.
- (v) Obtain and maintain records with regards to the operation of the Project Facilities, resources deployed by the Contractor on a daily basis and any other records as required by the Municipal Body.
- (vi) Conduct such tests on the end product as well as the ambient air to ensure compliance with applicable environmental laws.
- (vii) Compile the data required for computing / verifying the amounts payable to the Contractor as per the provisions of this Agreement.

#### **4.5 Right to appoint an external consultant**

In the event of any difference in opinion/ dispute between the Contractor and the Municipal Body with respect to the Project Facilities, the committee shall consider the option of appointing an external consultant/ expert, on a case-to-case basis, in relation to the matter in dispute. The option to appoint such an external consultant shall however be subject to the Municipal Body's consent and further it is clarified that neither the Municipal Body nor the Contractor shall be under any obligation to abide by the report so submitted by the external consultant/ expert.

The cost with regards to the appointment of the External Consultant shall be shared equally between the Municipal Body and the Contractor. The Municipal Body, directly or through its representative, shall monitor the Project Facility at such intervals, as it may deem necessary. The Contractor shall offer unhindered access to the Municipal Body and/ or its authorised representative to visit and inspect the Project Facility.

### **ARTICLE V Contractor's Obligations**

#### **5.1 General Obligations**

##### **5.1.1 Performance Guarantee**

The Contractor towards due performance of its obligations as per the Terms of this Agreement shall provide to the Municipal Body a Performance Guarantee (in the form of a Fixed Deposit in a nationalised bank or a Bank Guarantee from a Nationalised Bank acceptable to the Municipal Body) equivalent to Rs\_\_\_/= (Rupees \_\_\_\_\_ only) {equal to

at least 3 months of billing as determined as per the provisions of this Agreement} valid for the tenure of the Contract Period.

The Performance Guarantee shall be released by the Municipal Body in the event of early Termination of this Agreement subject to the Termination not being as a result of Contractor's Event of Default and payment of all dues payable to the Municipal Body by the Contractor prior to Termination

### **5.1.2 Arrangement for Finances**

The Contractor at its own cost and expense shall make such arrangements in a timely manner for arranging finances, if so required by the Contractor, for the operation and maintenance of the Project Facility.

### **5.1.3 Review of Project Facility**

- (i) Hand over of Project Facility to the Contractor for operation and maintenance
  - (a) The Contractor shall undertake a joint review of the Project Facility along with the Municipal Body. The Municipal Body shall ensure that the Project Facility is in good operating condition and the parameters of operations are within the then prevailing applicable standards, laws, statutes, etc. The Contractor shall ensure that the Project Facility to be handed over by the Municipal Body shall cater to the quantities of waste that are indicated in Schedule F herein and the Contractor shall not represent at any time throughout the Contract Period for any considerations, in kind or cash, due to any reasons whatsoever including deviation from the indicative list provided in Schedule F.
  - (b) The Contractor and the Municipal Body shall then document the observations on the review of the Project Facility and this document would then form the base document on the status of the Project Facility as on the date of hand over of Project Facility and shall be referred to in the event of any future dispute, etc.
- (ii) Replacement of all or any part of Project Facility
  - (a) The Contractor shall be responsible for replenishment/ replacement of any or all of the Project Facility after the same is handed over to the Contractor as evidenced by a written communication between the Municipal Body and the Contractor.
  - (b) The Contractor shall immediately, as and when the need be felt, inform the Municipal Body of such replacement/ replenishment. The Contractor shall also along with the written communication of such replacement/ replenishment provide to the Municipal Body the details of the same including the make and such other information as may be required by the Municipal Body. The objective of seeking such details is to ensure that the Contractor does not compromise on the quality of the replacement/ replenishment.
  - (c) If the Contractor does not comply with the instructions of the Municipal Body with regards to the replacement/ replenishment, then the Municipal Body shall be at a liberty to undertake the same on its own or through its agents and

recover the amounts so incurred from the Contractor from its future amounts due under this Agreement.

(iii) Records to be maintained by the Contractor

The Contractor is required to maintain all records related to the Project Facility throughout the Contract Period and provide the same to the Municipal Body forthwith upon demand.

#### **5.1.4 Operation and Maintenance**

(i) The Contractor shall operate and maintain the Project Facility in accordance with the O&M Requirements as detailed in Schedule C.

The Contractor shall 30 days prior to the Commissioning of the Project Facility submit to the Municipal Body, the Operations and Maintenance plan for the forthcoming Financial Year.

(ii) The Contractor may undertake the operations and maintenance of the Project Facility by itself or through a sub-contractor possessing requisite technical financial and managerial capabilities; but in either case, the Contractor shall remain solely responsible to meet the O&M requirements.

(iii) The Municipal Body shall undertake such tests as deemed necessary to check the adherence of the Contractor to the O&M requirements and issues such instructions from time to time to rectify/ attend to the Project Facility.

The Contractor shall forthwith take action upon the instructions as communicated by the Municipal Body and submit a plan to the Municipal Body indicating the methodology to be followed and the time frame for action.

If the Contractor fails to undertake the activities as communicated by the Municipal Body, then without any prejudice to its other rights under this Agreement, the Municipal Body shall undertake the same by engaging the services of any third party and claim 120% of the expenses so incurred from the Contractor.

(iv) The Contractor shall be considered to be in breach of this Agreement if it fails to persistently meet the O&M requirements and in the reasonable and fair opinion of the Municipal Body is found to result in a Material Adverse Effect on the Project Facility.

(v) The Municipal Body shall, without any prejudice to its other rights as per the terms of this Agreement, have a right to terminate this Agreement if the Contractor fails to remedy the deficiencies in performance towards the O&M requirements from time to time.

#### **5.1.5 Insurance**

The Municipal Body shall be responsible for insuring the Project Facility at all times during the Contract Period. However, the Contractor shall exercise due care and responsibility while rendering its duties and be liable for all damages arising out of negligence on part of the Contractor or its agents, assignees, etc.

The Contractor shall be responsible for insuring its assets deployed for the performance of its obligations as per this Agreement including manpower.

### **5.1.6 Clearances, Permits, etc**

The Contractor agrees that it shall be in compliance with Regulatory as well as Statutory Laws for all aspects of the Project Facility. The Contractor shall seek and secure and maintain all Clearances/ Permits required in relation with the Operation and Maintenance of the Project Facility in line with the MSW Rules, environmental, health and safety aspects. The Contractor shall adopt corrective steps to ensure compliance with the applicable norms for the operations and maintenance of the Project Facility.

### **5.2 Specific Obligations**

The Contractor shall perform the obligations as stipulated in Schedule B herein.

### **5.3 Miscellaneous Obligations**

The Contractor shall at it's own cost and expenses shall:

- (i) Obtain all Applicable Permits as required under Applicable Law and be in compliance thereof at all times during the Contract Period.
- (ii) Investigate, study, operate and maintain the Project Facility as per the provisions of this Agreement.
- (iii) Comply with Applicable Law governing the operations of Municipal Solid Waste processing units at all times of the Contract Period.
- (iv) Ensure and procure that any contract relating to the Project Facility, entered into by the Contractor for operations and maintenance of the Project Facility in accordance with the provisions of this Agreement shall not be any way detrimental to the interests/ obligations of the Municipal Body towards its role as the responsible agency for provision of civic services to citizens.
- (v) Ensure and Procure that any sub-contract entered into by the Contractor towards the performance of obligations shall be co-terminus and adhere to the principles, in letter and spirit, as stipulated in this Agreement.
- (vi) Ensure that the recyclables that would be segregated from the transported waste are sold/ disposed in a safe manner, which is not detrimental to the environment. In this regards, the Contractor shall comply with the instructions given by the Municipal Body from time to time, if any, with regards to the disposal/ sale of such recyclables including provision of infrastructure/ support to informal recycling workers.
- (vii) 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.
- (viii) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the project and hereby indemnifies the Municipal Body against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Municipal Body be treated as employer in this regard.

- (ix) Make arrangement on its own for the construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits.
- (x) Be responsible for all health, security, environment and safety aspects of the project at all times during the Contract Agreement.
- (xi) Ensure that the Project Facility are free from encroachments at all times and take all steps necessary to remove encroachments, if any.
- (xii) Upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of Municipal Body for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.

#### **5.4 No Breach of Obligations**

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

- (i) Force Majeure Event subject to Clause 9.2.2
- (ii) Municipal Body's Event of Default
- (iii) Compliance with the instructions of the Municipal Body or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Contractor of any of its obligations hereunder;

Closure of the Project Facility or part thereof with the approval of the Municipal Body

#### **ARTICLE VI Municipal Body's Obligations**

In addition to any of its other obligations as per the provisions of this Agreement, Municipal Body shall have the following obligations:

##### **6.1 Specific Obligations**

- (i) The Municipal Body, on its own or through any of its designated agency, shall at its cost, risk and expense, endeavour to supply to the Project Facility in any given year after COD till the Termination Date, pro rata, such quantity of Municipal Solid Waste, as indicated in Schedule F herein.
- (ii) Municipal Body shall declare and maintain or cause to declare and maintain, a no-development zone around the Project Facility as required under the MSW Rules or the Applicable Laws from time to time.
- (iii) Municipal Body shall endeavour not to supply construction debris, Untreated Bio-Medical Waste and Hazardous Waste.
- (iv) Municipal Body shall grant in a timely manner all such approvals, permissions and authorisations which the Contractor may require or is obliged to seek from the Municipal Body under this Agreement, in connection with the 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 the Municipal Body within 7 days from receipt of request from the Contractor to make available such authorisation.

## **6.2 General Obligations**

Municipal Body shall

- (i) where appropriate provide necessary assistance to the Contractor in securing Applicable Permits.
- (ii) observe and comply with all its obligations set forth in this Agreement.

## **ARTICLE VII Payments to the Contractor**

### **7.1 Payment Terms**

The Contractor is entitled to receive consideration in lieu of the performance of its obligations as laid down in this Agreement as per Schedule B.

### **7.2 Payment mechanism**

- (i) The Contractor shall open a bank account with a nationalised bank acceptable to the Municipal Body and inform the account number to the Municipal Body in a reasonable time. This is necessary, as the payment to the Contractor shall be made directly favouring the Contractor in the designated bank account.
- (ii) The Contractor shall on a fortnightly basis in arrears, raise a bill as per the Payment Terms along with necessary supportings that Municipal Body may so demand from time to time.
- (iii) The Municipal Body shall calculate the amounts to be payable as determined from Schedule B herein and remit the payment by way of cheque payable to the Contractor at the designated bank account.

## **ARTICLE VIII Events of Default**

### **8.1 Events of Default**

Event of Default shall mean either Contractor Event of Default or Municipal Body Event of Default or both as the context may admit or require.

#### **8.1.1 Contractor Event of Default**

Any of the following events shall constitute an Event of Default by the Contractor (“Contractor Event of Default”) unless such event has occurred as a result of one or more reasons as stated in Clause 5.4:

- (i) The Contractor has failed to accept the Waste supplied by Municipal Body in accordance with Schedule F for a continuous period of two days for reasons attributed to planned maintenance shutdown as indicated by the Contractor in the O&M requirements to be submitted to the Municipal Body as per Clause 5.1.4 or an aggregate period of five days in any given month;

- (ii) At any time during the Contract Period, the Contractor fails to adhere to the O&M Requirements and has failed to remedy the same within the stipulated period of receipt of notice in this regard from the Municipal Body.
- (iii) The Contractor has failed to make any payments due to the Municipal Body and the same is in default for more than 60 days.
- (iv) The Contractor is in Material Breach of any of its obligations under this Agreement and the same has not been remedied within the stipulated time frame provided by the Municipal Body.
- (v) Any representation or Warranty made by the Contractor under this Agreement is found to be false and misleading.
- (vi) Contractor is declared insolvent;
- (vii) Any petition for winding up of the Contractor has been admitted and liquidator or provisional liquidator has been appointed or the Contractor 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 Municipal Body, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Contractor under this Agreement.
- (viii) Contractor has abandoned the Project Facility
- (ix) Contractor has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (x) Contractor 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 15 days.

#### 8.1.2 Municipal Body Event of Default

Any of the following events shall constitute an event of default by Municipal Body (“Municipal Body Event of Default”) provided that the default is not as a result of Contractor Event of Default or Force Majeure Event:

- (i) Municipal Body has failed to make any payments due to the Contractor and the same is due for a period exceeding 30 days.
- (ii) Municipal Body is in Material Breach of any of its obligations under this Agreement and has failed to cure such Breach within 45 days of receipt of notice thereof issued by the Contractor.
- (iii) Municipal Body has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iv) Municipal Body has unreasonably withheld or delayed grant of any approval or permission which the Contractor 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 Municipal Body under this Agreement has been found to be false or misleading.

## **8.2 Termination due to Events of Default**



8.2.1 Termination for Contractor Event of Default:

- (i) Upon Contractor's Event of Default, Municipal Body shall, without any prejudice to its other rights in respect thereof under this Agreement, be entitled to terminate this Agreement. The process for Termination through the Termination Notice shall be as laid down in Clause 8.2.3 herein below.
- (ii) If the Municipal Body decides to terminate this Agreement, as per Clause 8.2.1 (i) above, then a Preliminary Notice of Termination shall be issued to the Contractor by the Municipal Body citing the events underlying such notice. Within 30 days of receipt of such notice from the Municipal Body if the Contractor does not submit an Action Plan indicating the steps to be taken by the Contractor to rectify the underlying Events of Default, then the Municipal Body shall be entitled to terminate this Agreement by issuing a Termination Notice and appropriate the Performance Security, if subsisting.
- (iii) If the Action Plan is submitted within 30 days by the Contractor, then the Contractor shall have a further period of 30 days to cure the underlying Events of Default. If however, the Contractor is unable to cure the underlying Events of Default within the said period of 30 days, then the Municipal Body shall be entitled to terminate this Agreement by issuing a Termination Notice and appropriate the Performance Security, if subsisting.

8.2.2 Municipal Body's Event of Default:

- (i) Upon Municipal Body's Event of Default, the Contractor shall, without any prejudice to its other rights thereof under this Agreement, be entitled to terminate this Agreement. The process of Termination by issue of the Termination Notice is laid down in Clause 8.2.3 herein below.
- (ii) If the Contractor decides to terminate this Agreement, as per clause 8.2.2 (i) above, then a Preliminary Notice of Termination shall be issued to the Municipal Body by the Contractor citing the events underlying such notice. Within 30 days of receipt of such notice from the Contractor, if the Municipal Body does not submit an Action Plan indicating the steps to be taken by the Contractor to rectify the underlying Events of Default, then the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice.
- (iii) If the Action Plan is submitted within 30 days by the Municipal Body, then the Municipal Body shall have a further period of 30 days to cure the underlying Events of Default. If however, the Municipal Body is unable to cure the underlying Events of Default within the said period of 30 days, then the Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice.
- (iv) However, for reason mentioned in 8.1.2 (i) hereinabove, the Contractor shall be entitled to terminate the Agreement by giving a Termination Notice of 30 days.

8.2.3 Termination Notice

If a Party, having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub clause 8.2.1, 8.2.2, 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 calculated as on the date of termination;
- (iv) any other relevant information.

#### 8.2.4 Obligations of Parties

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

- (i) Until Termination the Parties shall fully discharge their respective obligations, as may be reasonably possible, so as to sustain the operations of the Project Facility.
- (ii) The termination payment, if any, payable by the Municipal Body in accordance with the following sub- clause 8.2.6 is paid to the Contractor on the Termination Date and
- (iii) The Project Facility is handed back to the Municipal Body by the Contractor on the Termination Date free from any encumbrance along with any payment that may be due to the Municipal Body.

#### 8.2.5 Withdrawal of Termination Notice

Notwithstanding anything contained in this Agreement, the Party who has issued the Termination Notice shall withdraw the Termination Notice upon satisfying itself fully of the cure of the underlying Event of Default by the other Party at any time before the end of the Termination. However, the Party who has issued the Termination Notice shall be fully compensated for any incidental loss/ damages/ costs that may arise and be reasonably established due to the underlying Event of Default.

#### 8.2.6 Termination Payments

Upon Termination of this Agreement on account of Municipal Body's Event of Default, the Contractor shall be entitled to withdraw the Performance Security, if subsisting, and receive from Municipal Body, any payments outstanding as at the date of Termination. Provided Municipal Body shall be entitled to deduct from the Termination Payment any amount due and recoverable by Municipal Body from the Contractor as on the Termination Date.

However, upon Termination of this Agreement on account of Contractor's Event of Default, the Contractor shall not be entitled to receive any payments outstanding and the Municipal Body shall invoke the Performance Guarantee provided by the Contractor.

### **8.3 Rights of Municipal Body upon Termination**

Upon Termination of this Agreement for any reason whatsoever, Municipal Body shall upon making the Termination payment, if any, to the Contractor have the power, authority and right to:

- (i) enter upon and take possession and control of the Project Facility forthwith
- (ii) prohibit the Contractor and any person claiming through or under the Contractor from entering upon / dealing with the Project Facility

Upon Termination of the Contract Agreement pursuant to the above procedure, the Municipal Body shall not have any obligation whatsoever to compensate for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employed or engaged by the Contractor in connection with the Project, and the hand back of the Project Facility by the Contractor to Municipal Body shall be free from any such obligation including payments yet to be made to any party (ies) by the Contractor as against services already deployed by the Contractor for the operation and maintenance of the Project Facility. The Contractor shall however be liable for the services tendered for the operation and maintenance of the Project Facility and for which advance payments have already been made by the Contractor.

### **8.4 Rights of Parties**

Notwithstanding anything contained in this Agreement, Termination pursuant to any of the provisions contained in this Agreement shall not preclude any Party to seek redressal of the right to recover monetary damages or any other right which it may have under law or contract. The rights and obligations of either Party under this Agreement, including without limitation to Termination Payments, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## **ARTICLE IX Force Majeure**

### **9.1 Force Majeure Event**

Any of the following events which is beyond the reasonable 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

- (i) Earthquake, flood, inundation and landslide;
- (ii) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric/ climatic disturbances;
- (iii) Fire caused by reasons not attributable to the Contractor or any of the employees, Contractors or agents appointed by the Contractor for purposes of the Project;
- (iv) Acts of terrorism;
- (v) Strikes, labour disruptions or any other industrial disruptions not arising on account of the acts or omissions of the Contractor or its assignees
- (vi) Action of a Government Agency having Material Adverse Effect including but not limited to

- (a) Acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Contractor's or its assignees rights in relation to the Project
  - (b) Any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Contractor or its assignees in any proceedings which is non-collusive and duly prosecuted by the Contractor, and
  - (c) Any unlawful, unauthorised and without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Contractor's or its assignees breach or failure in complying with the Project requirements, Applicable Laws, Applicable Permits, any judgements or orders of a Governmental Agency or of any contract by which the Contractor or its assignee may be bound.
- (vii) Early determination of this Agreement by the Municipal Body for reasons of national emergency or national security.
- (viii) Any failure or delay of a contractor caused by any of the sub-clauses (vi) and (vii) hereinabove, for which no offsetting compensation is payable to the Contractor to or on behalf of the contractor.
- (ix) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, military action, civil war, ionising radiation, contamination by volcanic eruptions, any failure or delay of a sub-contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Contractor by or on behalf of the sub-contractor.

## **9.2 Duties of Parties during Force Majeure Event**

### 9.2.1 Notice of Force Majeure Event

- (i) 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 Engineer and the other Party of the same setting out, inter alia, the following reasonable detail:
  - (a) the nature and extent of the Force Majeure Event;
  - (b) the estimated Force Majeure Period
  - (c) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
  - (d) 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
  - (e) any other relevant information concerning the Force Majeure Event, and/ or the rights and obligations of the Parties under this Agreement.
- (ii) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding clause (i), the Parties shall along with the Independent Engineer, meet, hold discussions in good faith and where necessary conduct physical inspection/ survey of the Project Facility in order to:

- (a) Assess the impact of the underlying Force Majeure Event;
  - (b) To determine the likely duration of Force Majeure Period and;
  - (c) 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.
- (iii) The Affected Party shall during the Force Majeure Period provide to the other Party regular (not less than weekly) reports concerning the matters set out in the preceding clause (ii) as also any information, details or documents, which the other Party may reasonably require.

#### 9.2.2 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:

- (i) Due notice of the Force Majeure Event has been given as required by the preceding sub clause 9.2.1;
- (ii) The excuse from performance shall be of no greater scope and of no longer duration that is necessitated by the Force Majeure Event;
- (iii) The Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility in accordance with the Good Industry Practice and its relative obligations under this Agreement.
- (iv) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project engineer 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 from resuming such performance;
- (v) 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.
- (vi) 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 the Good Industry Practice.

### **9.3 Costs during the Force Majeure Event**

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.

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

#### 9.4.1 Termination

If a Force Majeure Event, excluding events described under Clause 9.1 sub-clauses (vi), (vii) or (viii) continues or is in the reasonable judgement 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 Clause 9.1 sub-clause (vi) or (viii), and the same subsists for a period exceeding 365 days, then either Party shall be entitled to terminate this Agreement.

Provided that Municipal Body may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clause 9.1 sub-clause (vi) or (viii).

#### 9.4.2 Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding Clause 9.4.1, it shall issue Termination Notice setting out;

- (i) In sufficient details the underlying Force Majeure Event;
- (ii) The Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) Any other relevant information.

#### 9.4.3 Obligation of Parties upon Termination

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 to the Contractor by the Municipal Body in accordance with the provisions of this Agreement is paid to the Contractor on the Termination Date and;
- (ii) the Project Facility is handed back to the Municipal Body by the Contractor on the Termination Date free from all encumbrance.

#### 9.4.4 Termination Payment

Upon Termination of this Agreement due to Force Majeure Event, Termination Payment equivalent to amounts payable and outstanding as on the date of Termination, to the Contractor for services rendered upto the date of commencement of the Force Majeure event (the date the Notice of Force Majeure Event is delivered across by the Contractor to Municipal Body) shall be made to the Contractor by the Municipal Body.

*Maharashtra Pollution Control Board- Contract Agreement for O&M services of Project Facility*

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

## **ARTICLE X Hand back of Project Facility**

### **10.1 Ownership of Project Facility**

Without prejudice and subject to this Contract, the *Ownership* of the Project Facility including the renovations, refurbishments, improvements carried out from time to time by the Contractor, shall at all times vest with the Municipal Body.

### **10.2 Contractor's obligations**

- (i) The Contractor shall, handover at no cost, the Project Facility to the Municipal Body, free from any encumbrance in a reasonably good operating condition.
- (ii) The Contractor shall, at least 12 months from the date of handover of the Project Facility to the Municipal Body, organise for a detailed inspection of the Project Facility. The Municipal Body and the Contractor, within 60 days of the inspection shall prepare a detailed plan, including but not limited to the technology aspects of the Project Facility that would need to be handed back to the Municipal Body.
- (iii) The Municipal Body, pursuant to the detailed plan prepared as above, shall furnish a list of items, with descriptions attached thereto, to the Contractor for necessary action.
- (iv) The Contractor on the Termination Date shall hand back the free and peaceful use of the Project Facility to the Municipal Body at no cost including technology transfer, if any. The Contractor shall ensure that the Municipal Body is unencumbered to use the technology till it deems fit at no financial cost/ charge/ levy/ royalty, etc.

### **10.3 Municipal Body's obligations**

The Municipal Body may appropriate such amounts by invoking the Performance Security or otherwise, to ensure that the Project Facility are in a condition as listed down in the list furnished to the Contractor.

## **ARTICLE XI Representation and Warranties**

### **11.1 Contractor's Representations and Warranties**

The Contractor represents and warrants to the Municipal Body that:

- (i) it is duly organised, validly existing and in good standing under the laws of India.
- (ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) It has taken all necessary corporate and other action under the Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (iv) It has the financial standing and capacity to undertake the Project;
- (v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof in any court of law;
- (vi) 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 Contractor's Memorandum and Articles of



- Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected
- (vii) There are no actions, suits, proceedings, or investigations pending or to the Contractor'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 Contractor Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
  - (viii) 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 of nay government agency which may result in Material Adverse Effect;
  - (ix) 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 are in the aggregate have or may have Material Adverse Effect;
  - (x) Subject to receipt by the Contractor from Municipal Body 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 Contractor in and to the Project Facility shall pass to and vest in the Municipal Body on the Termination Date free and clear of all encumbrances without any further act or deed on the part of the Contractor or Municipal Body;
  - (xi) No representation or warranty by the Contractor contained herein or in any other document furnished by it to the Municipal Body 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;
  - (xii) No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Contractor to any person to procure the Contract.
  - (xiii) No bribe or illegal gratification has been paid or will be paid in cash or in kind by or on behalf of the Contractor to any person to procure the Contract.
  - (xiv) Without prejudice to any express provision contained in this Agreement, the Contractor acknowledges that prior to the execution of this Agreement, the Contractor has after a complete and careful examination made an independent evaluation of the Project Facility, and the information provided by the Municipal Body, 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 Contractor in the course of performance of its obligations hereunder.
  - (xv) The Contractor 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 Municipal Body shall not be liable for the same in any manner whatsoever to the Contractor.

## **11.2 Municipal Body's Representations and Warranties**

Municipal Body represents and warrants to the Contractor that:

- (i) it has full power and authority to grant the Contract;
- (ii) It has taken all necessary action to authorise the execution, delivery and performance of this Agreement;

- (iii) This Agreement constitutes Municipal Body's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) There are no suits or other legal proceedings pending or threatened against Municipal Body in respect of the Project Facility or the project.

### **11.3 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 XII Dispute Resolution**

### **12.1 Amicable resolution**

- (i) 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 Monitoring Committee (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (ii) below
- (ii) Either party may require such Dispute to be referred to the \_\_\_\_\_, Municipal Body (or the person holding charge) and the Chief Executive Officer of the Contractor for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 11.2 below.

### **12.2 Arbitration Proceedings**

- (i) Procedure

Subject to the provisions of Clause 12.1 above, 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 the arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act.

- (ii) Place of Arbitration

The place of Arbitration shall be \_\_\_\_\_ but by Agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

- (iii) 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.

(iv) **Enforcement of Award**

The Parties shall 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 Provision of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

**12.3 Performance during dispute**

Pending the resolution of any Dispute, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such resolution

**ARTICLE XIII Miscellaneous**

**13.1 Sub-Contract**

The Contractor shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of Municipal Body.

**13.2 Labour**

The Contractor shall comply following things regarding the deployment of manpower by him.

- (i) The Contractor shall not employ in connection with the works any person who has not completed his 18 years of age.
- (ii) The Contractor at his cost should carry out periodical health check up of all employees at least twice in a year.
- (iii) The Contractor shall furnish to the Municipal Body information on the various categories of labour employed by him and the facilities given to the employees in the form prescribed for the purpose at such intervals as may be specified.
- (iv) The Contractor shall in respect of labour employed by him comply with or cause to be complied with provisions of the various labour Laws and the Rules and Regulations as applicable to them in regards to matters provided therein and shall indemnify the Municipal Body in respect of all claims that may be raised against the Municipal Body for non-compliance thereof by the Contractor.
- (v) The Contractor shall obtain the license in accordance with the rules and provisions of Labour (Regulation and Abolition) Act, 1970 and adhered to all terms and conditions stipulated therein. The Contractor shall pay its personnel deployed for the operations and maintenance of the Project Facility as per the minimum wages act in force and amended from time to time
- (vi) The Contractor or his authorised representative shall on the written directions of the Municipal Body, immediately remove from the work, any person employed thereon, who may, in the opinion of the Municipal Body, be incompetent or has

misconduct himself. Such person shall not be employed again on the works without the written permission of the Municipal Body. Notwithstanding anything contained herein, the Municipal Body, may take such action as may be necessary for compliance of the various labour laws and to recover the cost thereof from the Contractor.

**Accidents:**

- (a) It shall be the Contractor' responsibility to protect against accidents on the works. He shall indemnify Municipal Body against any claim for damage or injury to persons or property resulting from and in the course of work and also under the provision of the Workmen's Compensation Act.
- (b) On the occurrence of an accident arising out of works which results in death or which is so serious as to be likely to result in death the Contractor shall within 24 hours of such accident, report in writing to the Municipal Body, the fact stating clearly and in sufficient details the circumstances of such accident and the subsequent action. All other accounts on the works involving injuries to person or damages to property other than that of the Contractor shall be promptly reported to the Municipal Body, stating clearly and in sufficient details the facts and circumstances of the accidents and the action taken. In all cases the Contractor shall indemnify the Municipal Body against all loss or damage resulting directly or indirectly in this behalf Contractor failure to report in the manner aforesaid includes under the Workmen's Compensation Act as to confirm to the provision of the said Act to such accidents.
- (c) In the event of an accident in respect of which compensation may become payable under The Workmen's Compensation Act, (VIII of 1923) or any other act including all modifications thereof whether such compensation may become payable by the Contractor or by the Municipal Body, the Municipal Body shall retain whole or part of the payment due and payable to the Contractor such sum or sums of money as may in the opinion of the Municipal Body sufficient to meet such liability, on receipt of award from the Labour Commissioner in regards quantum compensation the difference in amount will be adjusted.

**13.3 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 allocated time 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 + 2% per annum from the due date for payment. The Party entitled to receive such sum of monies, shall also be entitled with a right of set-off against the monies payable to the other Party from whom the monies are due.

Interest on delayed payment is not to be taken as an excuse for late payments and the parties shall adhere to the timelines specified in the spirit of this Agreement.

### **13.4 Governing Law and Jurisdiction**

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

### **13.5 Waiver**

- (i) 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:
  - (d) 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;
  - (e) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
  - (f) shall not affect the validity or enforceability of this Agreement in any manner
- (ii) 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.

### **13.6 Survival**

Termination of this Agreement

- (i) shall not relieve the Contractor nor the Municipal Body of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- (ii) 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

### **13.7 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 Parties hereto and evidenced in writing.

### **13.8 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 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

Municipal Body  
\_\_\_\_\_

\_\_\_\_\_  
Contractor  
\_\_\_\_\_

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.

### **13.9 Severability**

If for any reason whatsoever any provisions 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 such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

### **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 No Partnerships**

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.

### **13.12 Exclusion of Implied Warranties, etc.**

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

### **13.13 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

Maharashtra Pollution Control Board- Contract Agreement for O&M services of Project Facility

SIGNED SEALED AND DELIEVRED

For and on behalf of the Municipal Body

Name  
Designation

For and on behalf of the Contractor

Name  
Designation

In the presence of :

Name  
Designation