



BHUBANESWAR MUNICIPAL CORPORATION

**REQUEST FOR PROPOSAL (RFP) FOR
“SUPPLY, INSTALLATION, OPERATION AND
MAINTENANCE OF 5 TPD COMPOSTING FACILITY
AT TEMPORARY TRANSFER STATION,
GADAKHANA, BHUBANESWAR”**

RFP Reference No. BMC-CE-08/2017-18 Dt.09.11.2017

Bid Identification No.: 2017_ORULB_41797_1

COST OF RFP DOCUMENTS: Rs. 10,500/-



BHUBANESWAR MUNICIPAL CORPORATION

No. 25152

Date: 09.11.2017

NOTICE INVITING REQUEST FOR PROPOSAL (RFP)

XXIX-P.W.(DIV-I) – 1390/2017

RFP Reference No. BMC-CE-08/2017-18 Dt. 09.11.2017

RFP PART-I (SECTION-I)

GENERAL AND TECHNICAL INFORMATION FOR SUBMISSION OF PROPOSAL

1. On behalf of the Commissioner, Bhubaneswar Municipal Corporation (BMC), City Engineer, Projects, BMC invites RFP for the work mentioned below in conformity with the terms and conditions of the Detailed RFP in Two Bid System through e-procurement system (Part-I: General & Technical Proposal and Part-II: Financial Proposal) from intending bidders fulfilling the eligibility criteria and other requirements mentioned in this Notice and in the respective RFP for the following work.

Sl. No.	Name of the Work	E.M.D in Rs.	Cost of RFP Document Rs.	Supply, Installation, Testing and Commissioning	Period of the Operation and Maintenance
1	2	4	5	6	7
1.	Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar	1,00,000 (One Lakh)	10,500 (Ten Thousand Five Hundred)	3 months	5 years

1. Intending bidders have to participate through “**On-Line**” bidding only. The website for online bidding is <https://www.tendersodisha.gov.in> and they may also view and download the tender from www.bmc.gov.in
2. The bid documents will be available in the above website from **11:00 A.M on 10.11.2017 to 5:00 P.M on 30.11.2017** for online bidding.

By Order of Commissioner, BMC

Sd/-
City Engineer
Bhubaneswar Municipal Corporation

Memo No.25153 /BMC, Dt.09.11.2017

Copy to M/s. Pearl Advertising Agency, Plot No. 8-A, Sabarasahi Lane, BJB Nagar, Bhubaneswar with a request to publish this notice in all editions of local leading two Oriya Dailies “The Sambad” and “The Dharitri ”two English National Dailies “ The New Indian Express” and “The Times of India” for one day publication on or before Dt. 10.11.2017 using minimum space & font size of “8” at already approved rate.

Sd/-
City Engineer

Memo No.25154 /BMC, Dt.09.11.2017

Copy to PA to Mayor/PA to Commissioner for kind information of Hon’ble Mayor and Commissioner, BMC.

Sd/-
City Engineer

Memo No.25155 /BMC, Dt.09.11.2017

Copy forwarded to the Under Secretary to Govt., H&UD Deptt./Water Resources Deptt./Works Deptt./G.A Deptt., Odisha for kind information.

Sd/-
City Engineer

Memo No.25156 /BMC, Dt.09.11.2017

Copy submitted to the City Engineer/ Executive Engineer, BMC, Division-II /Addl. Commissioners/ Dy. Commissioner (Projects)/CFO/Secretary, Corporation Section, BMC for information.

Sd/-
City Engineer

Memo No.25157 /BMC, Dt.09.11.2017

Copy to HA-Cum-Acct., BMC, Division-I/Advertisement Section/ Office Notice Board of Bhubaneswar Municipal Corporation for information of all concerned and the intending bidders.

Sd/-
City Engineer



BHUBANESWAR MUNICIPAL CORPORATION

NOTICE INVITING REQUEST FOR PROPOSAL (RFP)

RFP Reference No. BMC-CE-08/2017-18 Dt. 09.11.2017

RFP PART-I (SECTION-I)

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Sl. No.	Name of the Work	E.M.D in Rs.	Cost of RFP Document Rs.	Supply, Installation, Testing and Commissioning	Period of the Operation and Maintenance
1	2	4	5	6	7
1.	Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar	1,00,000 (One Lakh)	10,500 (Ten Thousand Five Hundred)	3 months	5 years

2. RFP documents can be seen and downloaded from BMC website www.bmc.gov.in for needful reference and in the www.tendersodisha.gov.in for on-line bidding.
3. Through this RFP BMC intends to procure an agency for Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar. This date, as decided by BMC, shall be binding upon the respective selected bidder/agency for the Package/Consignment.

4. Critical Dates of this RFP

Sl. No.	Description	Critical Dates
(i)	Period of Availability of the RFP in website for download	Dt.10.11.2017 (11.00 AM) to Dt. 30.11.2017 (5.00 PM)
(ii)	Last Date & Time of Seeking Clarification on the RFP (if any)	Dt. 16.11.2017 (5.00 PM) vide Sl. 14 below.
(iii)	Date and Time of Pre-Proposal Submission Meeting	Dt. 17.11.2017 (5.00 PM)
(iv)	Last Date & Time of Submission of Proposal (Hard Copies in Sealed Envelope through Regd. Post/Speed Post only)	Dt.04.12.2017 (5.00 PM)
(v)	Date & Time of Opening of the Technical Proposal/Part-I of the RFP	Dt. 05.12.2017 (11.00 AM)
(vi)	Date & Time of Opening of the Financial Proposal / Part – II of the RFP	To be intimated later after evaluation of the technical bids.

5. Eligibility Criteria

- i. The bidder shall be a Company registered under Companies Act 1956 or Companies Act 2013 or a registered Partnership Firm or a Sole Proprietorship Firm or a Trust or Society registered under the relevant Acts. Copy of Certificate of Registration/ Incorporation/ Partnership Deed as applicable shall be submitted along with the Bid.
- ii. The Bidder should have successfully implemented at least 1 (one) Aerobic Composting Plant of minimum 1 TPD capacity (if the plant was implemented in phases, the total capacity at a single location should add up to 1 TPD capacity). The bidder shall submit the Completion Certificate of the works executed by them for satisfactory performance from the owner of the facility/ client. Also references should be provided from the client confirming successful operation of any one plant of 1 (one) TPD operational for at least last one year from proposal due date. The operations may not necessarily be carried out by the Bidder.
- iii. The proposed individual Product(s) / Module(s) of the Composter (Vessel / Tumbler / Bin) and its capacity(ies) shall be the same that has already been successfully installed and operational for atleast one year at one or more client sites. Certificate of client(s) to be submitted along with the bid. For Illustration if the Bidder proposes 2 no. of 2 TPD Composter and 1 no. 1 TPD Composter, then the Operator shall provide proof of successful installation of the same 2 TPD and 1 TPD Module / Product which is operational for atleast last one year as on proposal due date.
- iv. The Bidder needs to provided the approach and methodology as per Annexure - X and demonstrate that the proposed Plant shall be able to handle 5 TPD of Biodegradable Waste and produce Compost as per FCO specifications for Organic Compost.
- v. The Bidder should have an average annual financial turnover of the last three years not less than INR 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) as per the latest Audited

Financial Statement and/or Certificate as certified by Chartered Accountant. The latest audited financial statement shall be submitted along with the Bid. The networth of the Bidder shall be positive as reflected in the balance sheet of last financial year. The Bidder shall submit certificate from the Chartered Accountant demonstrating positive net worth.

- vi. The Bidder shall have/possess necessary Portal Enrolment (Digital Signature Certificate-DSC) of required category for participation in this bidding process through e-procurement portal.
 - vii. The bidder shall not be blacklisted by any Central/State or Public Sector Undertaking as on the date of submission of the Bid.
6. Each Proposal (as per RFP Part-I) must be accompanied with legible self-signed copies of valid (Certificate of Incorporation/ Partnership Deed/ Registration Certificate as applicable), GST Registration, PAN Card, documents in support of the eligibility criteria defined at Sl. 5 above.
- In addition to this, each Proposal should accompany with original Earnest Money Deposit (EMD) and Cost of RFP Documents as specified in the above Table Sl. No.1. No Bidder should submit more than one Proposal (comprising Part-I and II) for the work failing which, the Proposal of the Agency shall be rejected. The EMD should have been pledged/issued (as applicable) in favour of Commissioner, Bhubaneswar Municipal Corporation in shape of Term Deposit Receipt or Fixed Deposit Receipt or Demand Draft or Banker's Cheque of any Nationalised or Schedule Bank(s) or in shape of Small Savings Instrument(s) of Govt. of India or in a combined shape of two or more of the aforesaid financial instruments failing which, the proposal shall be rejected out rightly. The Cost of RFP Documents should be in shape of Demand Draft and drawn on any Nationalized/Schedule Bank in favour of Commissioner, Bhubaneswar Municipal Corporation without which the Proposal shall not be considered for evaluation. The Demand Draft to be submitted by each intending Bidder towards cost of RFP documents should have been issued/drawn on or after the date of issue of this Notice and should essentially remain valid at least for three months from the date of its issue. Similarly, Demand Draft/Banker's Cheque, if submitted by any bidder for any Package towards EMD, as described above, should have been issued/drawn on or after the date of issue of this Notice and should essentially remain valid for three months from the date of its issue subject to further extension in conformity with the validity of the Proposal vide Sl.12 below. In case of interest bearing security(s)/deposit(s), as mentioned above, to be furnished towards EMD, the invested/deposited amount(s) shall only be taken into consideration as the amount of EMD furnished for the work, but not the amount(s) on maturity or the interest(s) likely to be accrued out of the said investment(s)/deposit(s). Accordingly, the intending bidders are urged to furnish the EMD(s). The EMD and Cost of RFP Documents should be placed inside a closed envelope superscribed as "EMD and Cost of RFP Documents for Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar". This closed envelope should be placed inside the main envelope vide Sl.9 below.
7. In addition to this each Proposal (Part-I) should also be accompanied with a cover letter original Declaration Certificate, No Relationship Certificate, Bidder Details, and for

correctness of the Proposal in the prescribed formats as mentioned in the Annexures. Without these documents the Proposal shall be liable for rejection. The Technical Proposal (as per RFP Part-I) containing the documents mentioned at Sl. 5 to above, excluding the financial instruments vide Sl.6 above, should be placed inside a closed envelope super scribed as “Technical Proposal for (“Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakana, Bhubaneswar with RFP reference no. BMC-CE-08/2017-18”). This closed envelope should be placed inside the main envelope vide Sl.9 below.

8. Each online bid should also be accompanied with scanned copies of Declaration Certificate & No Relationship Certificate and affidavit(s) for correctness of the Proposal in the prescribed formats as mentioned in the RFP without which the bid will be liable for rejection. Financial Proposal shall be filled online in the portal.
9. The required documents mentioned at Sl. 5 to Sl. 7 above and the financial instruments as described at Sl.6 above should be placed in two separate closed covers and should be placed inside a closed/sealed main envelope super scribed with the RFP Notice No. & Name of the RFP. Without the above documents (one or more than one) and, in case of faulty/erroneous/misleading/ inconsistent document(s), the Proposal shall be rejected out rightly. The closed envelope should be submitted in accordance with the details mentioned in Sl.10 below. If found necessary for further verification/reference/record, original(s) of any document(s), such as; license, PAN, GST, etc., should be produced by the respective Bidder(s) before the undersigned within such period as intimated/instructed (over telephone/physically/through e-mail/letter), failing which the respective Proposal shall be treated as incomplete/non-responsive and hence shall be rejected.

The closed/sealed main envelope containing the documents in different closed envelopes mentioned at Sl. 9 above should be sent through Regd. Post or Speed Post addressed to the City Engineer, Bhubaneswar Municipal Corporation, Goutam Nagar, Bhubaneswar so as to reach his office/BMC on or before the Date and Time mentioned at Sl.4 above. The Authority will not be held responsible for postal delay, if any, in the delivery of the documents and non-receipt of the same in time. The Authority shall also not be held responsible for any damage caused to the documents during transit & handling.

10. If the Technical Proposal (Part-I) containing the documents mentioned at Sl.9 above except the Financial Proposal vide Sl.8 above could not be opened on the date mentioned at Sl.4 above for any reason beyond the control of BMC, then the same shall be opened on the next official working/functioning day at 11.00AM.

The Financial Proposals of the bidders found qualified/selected, after evaluation of the Technical Proposals (Part-I) and upon verification of the financial instruments submitted, shall be opened later with prior intimation to them through their e-mail/telephone to be mentioned in the affidavits (vide Sl. No.7 above). Similarly, intimation will also be given through the e-mail/telephone of the respective bidders whose Proposals will be rejected (if any) after technical or financial evaluation.

11. Each received Proposal, if otherwise not rejected, shall remain valid for a period of 180 days from the Bid Due Date. Subsequent extension of validity of any Proposal shall be subject to mutual consent of the respective bidder and BMC.
12. The intending bidders are urged to acquaint themselves with the respective site conditions wherein, the corresponding Consignment is to be delivered and executed and submit their Proposal(s) accordingly.
13. In case of any inconsistency or contradict among different clauses/conditions/ instructions/ information furnished in this RFP, then necessary clarification can be sought for by the bidders before submission of their Proposals from the Executive Engineer , Drainage , BMC and Mahesh Reddy , OUIDF during office hours only from and till the dates mentioned at Sl.4 above. Regarding the Agreement to be drawn by BMC with the selected bidder for each Package, conditions stipulated in the respective RFP shall form part of the Agreement. In case of any dispute between the respective bidder(s) and BMC regarding the RFP/Agreement, decision of H&UD Deptt. shall be final & binding without prejudice to the remedies available to the respective Bidder(s) under laws of the country. Intending Bidders are requested to understand this condition thoroughly and submit their proposals accordingly. For legal disputes, if any, the place of occurrence of dispute shall be treated as the present jurisdiction of BMC.
14. The authority reserves the right to reject any or all the Proposals without assigning any reason thereof subject to the limitations prescribed by Central Vigilance Commission and State Regulatory Authorities concerned.
15. **Project Description**

Bhubaneswar Municipal Corporation intends to set up a Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting at Temporary Transfer Station, Gadakana, and Bhubaneswar where the municipal solid waste collected in the city is dumped every day. The objective is to set up a pilot decentralized 5 TPD Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting to process bio-degradable waste.

 - a. Description of Work of Operator – Supply, Installation, Testing and Commissioning of Equipment for 5 TPD Decentralized Municipal Waste Processing Plant using Aerobic Composting. Operation and Maintenance of the Plant for 5 years.
 - b. Authority – Bhubaneswar Municipal Corporation, Bhubaneswar.
 - c. Facility to be provided by BMC – Covered shed of ~750 Sq. M including toilet block and approach to the facility. The flooring will be of concrete. Details of facility to be provided by BMC is given in Schedule 4 (a).
 - d. Supply of bio-degradable waste – BMC shall supply 5 TPD of bio degradable waste to the site at its cost. The maximum of mixed waste shall be restricted to 30% i.e out of 5 TPD a minimum of 3.5 TPD of pure bio-degradable waste shall be provided and a maximum of 1.5 TPD shall be mixed waste with non-biodegradable portion less than 40%. The Operator shall have the right to refuse any lot of waste delivered by BMC containing more non-biodegradable waste

- e. Capital Subsidy – Capital Subsidy of Rs. 50 Lakhs shall be paid to the Operator in accordance with the Agreement
- f. Operator Selection – Operator shall quote Tipping Fees per MT in Indian Rupees. Operator shall be selected on the basis of lowest Tipping Fees. The terms of payment to the Operator and Performance Standards are explained in the Agreement.

16. Design Criteria

The facility should be designed and implemented in compliance to SWM Rules 2016. The proposed technology must conform to the following conditions:

- a. The technology shall be based on Aerobic Composting.
- b. The proposed facility shall have the capacity to process a minimum of 5 TPD bio-degradable waste.
- c. The Plant shall be set up within the covered area provided by Authority as given in Schedule 4. Major alterations to the civil works provided by the Authority is not permitted.
- d. The flooring provided for the shed is Cement Concrete of grade (1:2:4) 1” thickness with 12mm cement punning (1:4), (1:1.5:3) of 3” thickness and PCC of (1:4:8) of 4” thickness.
- e. In case the selected Operator needs superior foundation the same shall be constructed by him at his own cost.
Operator shall be advised to inspect the Civil Works during construction and request BMC to leave space for construction of the Foundation / Pedestal / Platform as the case may be. In case the flooring is already complete, the cost of drilling and excavation shall be borne by the Operator. Any damage to the existing structure shall be rectified by the Operator at his own cost.
- f. The power requirement of the proposed technology shall also be within the connected load that will be provided by the Authority (i.e. ~50 KW max, 3 phase). The power connection would be provided upto the site by the Authority complete in all respect including panels, meters etc. The internal electrification of the plant is in the scope of Operator. The Authority shall pay the connection charges. The Operator shall be responsible for payment of the electricity bill during the Term of the Project and the same amount shall be deducted from the tipping fee by the ULB.
- g. The Aerobic Composting process or curing must be done either in a container, vessel, tumbler, rack, pot etc. and shall not be done on the floor.
- h. The process shall not involve any heat treatment, incineration or burning etc. and it shall also not involve anaerobic digestion producing bio-gas.
- i. The process shall achieve at least 50% volume reduction.
- j. The rejects shall only contain non-biodegradable components like inert and recyclables. Biodegradable waste except for coconut shells and stems or logs shall not be treated as rejects. Rejects will be collected back by the ULB.
- k. There shall be no leachate discharge from the facility. Suitable measures for leachate management shall be adopted.
- l. The facility shall be odour free at all times.

- m. CCTV cameras at appropriate locations within the Project site shall be provided to capture the tipping of waste at the tipping area and the operation of the Plant. It shall also have storage and the monitoring system.
- n. The compost produced shall meet the FCO specifications for Organic Compost. The Successful Bidder shall be responsible for sale of compost.

17. Performance Security

Within one week of the date of the intimation notice, the successful bidder shall furnish performance security for an amount of Rs. 5 Lakhs in accordance with the conditions of Agreement. The performance security mentioned in the Agreement must be deposited with Bhubaneswar Municipal Corporation prior to signing of the Agreement.

18. Execution of Agreement

- a. After the deposit of the performance security, registered agreement will be executed between the parties. All the expenses including stamps, registration charges will all borne by the successful bidder.
 - b. On or before signing of the Agreement, the Operator shall submit cost of the project to be incurred by the Operator along with the breakup of cost of individual equipment. This shall form basis for insurance, hypothecation of assets in favour of Authority and termination payments. Before Commissioning of the Project, the Operator shall submit documentary evidence of the project cost incurred which shall be reviewed and validated by the Authority.
 - c. So long as the tender is not finally accepted by the Commissioner of Bhubaneswar Municipal Corporation, Bhubaneswar and registered Agreement is not executed, the lowest bidder will not get any right whatsoever.
19. If the selected bidder does not turn up for agreement after finalization of the proposal, then he/she/they shall be debarred from participation in bidding for three years and action will be taken to blacklist the bidder. In that case, the next lowest qualified bidder would be called for acceptance of the letter of intent failing which the RFP shall be cancelled. In case any bidder is black listed, it will be widely published and intimated to all departments of Government of Odisha and also to Govt. of India Agencies working in the state.

By Order of Commissioner, BMC

**City Engineer
Bhubaneswar Municipal Corporation**

Annexure-I

DECLARATION CERTIFICATE

1. I/We am/are acquainted with the local situation regarding the materials, labour and factors pertaining to the work for completion in all respect before submitting the Proposal.
2. I/We have carefully studied the conditions of supply and installation, specifications, RFP conditions and all other documents relating to this consignment and agreed to deliver the same accordingly.
3. I/We solemnly pledge that, I/We shall be sincere in discharging my/our duties as a responsible Bidder and complete the deliverables within prescribed time limit. In case any deviation happens, I/We shall abide by the decision of BMC.

Signature of the Bidder

Date:

CERTIFICATE OF NO RELATIONSHIP

I/We hereby certify that I/We* am/are* **related/not related** (*) to any officer of Bhubaneswar Municipal Corporation of the rank of Dy. Commissioner & above of BMC. I/We* am/are* aware that, if the facts subsequently proved to be false, my/our* contract will be rescinded with forfeiture of EMD and Bank Guarantee and I/We* shall be liable to make good the loss or damage resulting from such cancellation.

I/We* also note that, non-submission of this certificate will render my/our* Proposal shall be liable for rejection.

(*) - Strike out which is not applicable

Signature of the Bidder

Date:

AFFIDAVIT

(On Stamp Paper and Notarized)

(Applicable for All Bidders)

1. I/We, Sri/Smt/Ms....., Son/Daughter/Wife of , hereby declare as the Bidder/as the authorized signatory on behalf of the Bidder, ”.....”(strike out whichever is not applicable) that I/we am/are validly registered and entitled for participation in this RFP.
2. It is hereby declared that I/we are not currently deprived from participating in the tender/RFP of any Govt. Organization including BMC and I/we have furnished the required eligibility documents as a valid Bidder.
3. I/We hereby authorise and request any bank, person, firm or organisation to furnish information to BMC as deemed necessary by it in connection with my/our eligibility criteria and document verification related to my/our Proposal for the aforesaid work. I/We also authorise BMC to refer, peruse, consider & correlate my/our documents submitted in connection with other tenders/proposals and I /we have no objection if such documents either in whole or part are perused, referred and considered.
4. The undersigned undertake to submit further information/ documents as may be requested for/required by BMC in connection with this Proposal within the stipulated period to be intimated by BMC either through letter or through my/our Telephone No. furnished below. Non-response to this instruction by me/us within the stipulated period shall render my/our Proposal as non-response/incomplete and hence BMC shall be at liberty to take any action as deemed fit against me/us as well as to decide/cancel my/our Proposal and I/we will have no claim against such decision of BMC.
5. My/our present address for correspondence isand my Telephone Contact number is..... and e-mail ID for correspondence is..... I/We shall promptly and voluntarily intimate BMC about subsequent changes, if any, of my/our telephone number, e-mail ID and address for correspondence within a week from the date of occurrence of such changes failing which, I/we will be held responsible for any eventual delay/gap in correspondences/communications between me/us and BMC and subsequent follow-up actions and situation which may arise due to such delay/gaps.
6. I/We hereby declare that all the information and documents furnished herewith by me/us in connection with my/our Proposal for the project invited by BMC vide RFP No. BMC-CE-08/2017-18 Dt. 09.11.2017 are true and correct.

(Deponent)

(Signature of the Bidder/Authorized Signatory in case of Partnership Firm/Company with Seal of the Firm/Company)

Cover Letter

[On the letter head of Bidder]

[The bidders are required to fill up all the blank spaces in the form of tender.]

Name of Agreement	Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar
Name of the Authority	Bhubaneswar Municipal Corporation
Address of the Authority through the Commissioner	Commissioner, Bhubaneswar Municipal Corporation, Vivekanand Marg, Near Kalpana Square, Bhubaneswar – 751014
Description of Work	<ul style="list-style-type: none"> ▪ Supply, installation, Testing and Commissioning of Equipment for 5 TPD Decentralized Municipal Waste Processing Plant using Aerobic Composting ▪ Operation and Maintenance of the Facility for a period of 5 Years ▪ Transfer of the Facility to Bhubaneswar Municipal Corporation at the end of O&M period

Dear Sir,

- i. Having examined the tender documents for execution of the above mentioned work, we the undersigned offer to execute the said works in conformity with the said conditions of Agreement on a Capital Subsidy of Rs. Fifty Lakhs and Tipping Fees payable monthly for a period of 5 (five) years in accordance with the price schedule annexed with the form of tender.
- ii. We undertake, if our tender is accepted, to commence the works as per the provision of Agreement.
- iii. If our tender is accepted, we will Performance Security of Rs. Five Lakhs in the form of Bank Guarantee prior to the signing of Agreement.
- iv. We agree to abide by this tender for the period of validity of 180 days from the date of opening of the bids and it shall remain binding upon us and may be accepted at any time before the expiry of that period.
- v. So long as the tender is not finally accepted by the Commissioner, Bhubaneswar Municipal Corporation and Agreement is not executed, the successful Bidder will not get any right whatsoever.

- vi. We understand that you are not bound to accept the lowest Tipping Fee or any bid you may receive.

Signature

In the Capacity of _____ Duly authorised to sign the bid for and on behalf of

(Attach a copy of the Authorisation)

Date:

Letter of Authorisation

(To be forwarded on the letter head of the Bidder)

Ref.

Date:

The Commissioner,
Bhubaneswar Municipal Corporation,
Near Kalpana Square, Vivekanand Marg,
Bhubaneswar - 751014

Dear Sir,

Sub: Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar

We hereby confirm that we, the Bidder, satisfy the terms and conditions laid down in the RFP document.

We have agreed that (*insert individual's name*) will act as our Authorized Representative and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

Power of Attorney

[Applicable Stamp Duty to be Paid]

Know all men by these presents, we, (*name of Firm and address of the registered office*) do hereby constitute, nominate, appoint and authorize Mr./Ms. (*name & residential address*) who is presently employed with us and holding the position of _____ as our true and lawful attorney (hereinafter referred to as the "**Authorized Representative**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for "Supply, Installation, Operation and Maintenance of 5 TPD Composting Facility at Temporary Transfer Station, Gadakhana, Bhubaneswar" in response to the RFP floated by Bhubaneswar Municipal Corporation (BMC) including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the BMC, representing us in all matters before the BMC, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the BMC in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the BMC, and, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS.....DAY OF, 2017

For

(Signature, name, designation and address)

Witnesses:

1.

2.

Notarized

Accepted

(Signature, name, designation and address of the Attorney)

Notes:

- 1) The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common stamp affixed in accordance with the required procedure. Copy of such document should be submitted along with the power of Attorney.
- 2) Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favor of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

Details of Bidder*[To be submitted on Letterhead of Bidder]*

1. a.	Name	
b.	Date of Incorporation / Commencement	
2.	Brief Description of Company including details of its main line of Business	
3.	List of Directors	
5.	Details of Individual who will serve as point of contact / communication to Authority:	
a.	Name	
b.	Designation	
c.	Company	
d.	Address	
e.	Telephone No.	
f.	Email Address	
6.	Particular of Authorised Signatory of Bidder	
a.	Name	
b.	Designation	
c.	Company	
d.	Address	
e.	Telephone No.	
f.	Email Address	

Annexure VIII

Financial Qualification of Bidder

[To be submitted on Letterhead of Bidder]

SL No	Financial Year	Annual Turnover (Rs. Lakhs)	NET Worth (Rs. Lakhs)
1	2013-2014		
2	2014-2015		
3	2015-2016		
4	2016-2017		

Statutory Auditor

Name of Audit Firm:

Seal of Audit Firm:

Name of Partner:

Membership No:

Contact No:

Address:

Note:

The Bidder shall attach copies of the Balance Sheets, financial statements certified by Chartered Accountant in Practice with his registration no. for each financial year. The bidder will submit Statutory Audit Report for each year reflecting annual turnover for each year.

Eligible Project Experience of Bidder

List of Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting of minimum 1 (one) TPD capacity completed and commissioned (to satisfy clause 5(ii) of the RFP eligibility criteria) and List of Plants where the Product(s) / Module(s) of Composter(s) (Vessel/Tumbler/Bin) of capacity offered in this Bid are installed and Operational for one year. (to satisfy clause 5(iii) of the RFP eligibility criteria)

Sl. No.	Name of the work/ location & Dt.	Name of the Employer/ Client	Specification and Capacity of Composter(s) installed Date of Installation	Value of Contract price (Rs. Lakhs)	Years/period of operation	Spec of Composter Now offered	Scope of services and client certificate
1	2	3				4	6

Note:

1. Work Order and Completion Certificate of the works executed by Bidder for satisfactory performance of at least one number of 1 (one) TPD Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting from Client needs to be provided.
2. References should be provided from the Client confirming successful operation of any one plant of 1 (one) TPD operational for at least last one year.
3. Details of any plant in which same technology and equipment module offered under this RFP has been installed and operating for one year or more to be given as per clause 2 above along with clients certificate.
4. Authority reserves the right to undertake site visits to the above mentioned plants to assess its operational performance. Operator shall facilitates such visit.

**Name & Signature of
Authorized Signatory**

Methodology for Implementation and Operation

A description of the approach, methodology and work plan for performing the assignment. In addition to this the following information needs to be provided by the Bidder:

- a) Plant & Machinery and Equipment procurement and installation Plan
- b) List of Plant & Machinery and equipment required for the facility with specifications.
- c) Process Flow Diagram for the proposed facility along with the detailed description of the process along with the capacity and specifications of each equipment proposed. Bidder should be able to establish that the Plant & Equipment proposed and with the specifications offered, shall be able to handle 5 TPD of biodegradable waste and produce compost of acceptable quality.
- d) The Proposed Product / Module of the Composter should be the same as mentioned in Annexure – IX clause 2 and satisfying the RFP eligibility criteria clause 5(iii).
- e) List of Spare Parts needed (during Operation and Maintenance phase).
- f) Additional Civil Works required (if any) – shall be done by the Successful Bidder at his own cost
- g) List of Chemicals and Consumables required with their dosing.
- h) Manpower required for Operation and Maintenance.
- i) Strategy for marketing and sale of compost

Note:

The Authority shall examine the technical feasibility of the Proposal and may ask clarifications to satisfy that equipment and process meets the specified requirements. The offer found not meeting the above shall be rejected technically and their financial proposal shall not be opened.

RFP PART-I (SECTION-II)

SUPPLY, INSTALLATION, OPERATION AND MAINTENANCE AGREEMENT

BETWEEN

BHUBANESWAR MUNICIPAL CORPORATION

AND

[INSERT NAME OF THE SELECTED BIDDER]

FOR

**5 TPD COMPOSTING FACILITY AT TEMPORARY TRANSFER STATION,
GADAKANA, BHUBANESWAR**

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This SUPPLY, INSTALLATION, OPERATION AND MAINTENANCE (**Agreement**) is entered into on this _____2017.

BETWEEN:

- (1) Bhubaneswar Municipal Corporation, a body corporate constituted under the Orissa Municipal Corporation Act, 2003 and having its office at Vivekanand Marg, Bhubaneswar – 751014 and represented by its Commissioner (hereinafter referred to as the Authority, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns);

AND

- (2) [Name of the Selected Bidder], with its registered office at _____ and represented by its **Director/ Managing Director**, (hereinafter referred to as the Operator, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

The Authority, the Operator shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. The Authority wish to develop a Decentralized Compost Facility in Bhubaneswar at Temporary Transfer Station at Gadakana on Supply, Installation, Operation and Maintain basis by an Operator.
- B. The Authority has invited bids from prospective bidders vide tender notification _____ dated _____.
- C. Pursuant to the terms of the tender, [Insert name of the Selected Bidder] submitted its technical and financial proposals to implement the Project on _____ (the Bid).
- D. Following a process of evaluation of technical and financial proposals submitted by the bidders (including [Name of the Selected Bidder]), the Authority accepted the Bid on [Date of Bid Acceptance]. The Authority issued the letter of award on _____ to [Name of the Selected Bidder] (the LOA).
- E. [Name of the Selected Bidder] accepted the LOA and has agreed to Supply, Install Operate and Maintain the Project during the Term.
- F. [Name of the Selected Bidder] has submitted Performance Guarantee to the Authority on

G. The Parties now wish to enter into this Agreement to implement the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise, capitalised terms shall have the meaning given to them in the table below.

Abandonment	means the total cessation of any of the obligations of the Operator under this Agreement for a continuous period of 3 Days, other than as a result of a Force Majeure Event or a Change in Law.
Affected Party	has the meaning ascribed to it in Clause 14.1(a)(i).
Agreement	means this supply, installation, operation and maintenance agreement, along with its Schedules, Annexes and any amendments that may be made to it from time to time.
Tipping Fee	has the meaning ascribed to it in Clause 10.1(b)
Applicable Laws	means all laws in force and effect as on the Execution Date and which may be promulgated or brought in force and effect in India, including Odisha, after the Execution Date, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgements with the force of law, any final interpretation by a court with jurisdiction over the matter in question.
Applicable Permits	means any permissions, clearances, concessions, authorisations, consents, licenses, permits, rulings, exemptions, no-objections, resolutions, filings, orders, notarisations, lodgements or registrations or approvals of whatsoever nature that are required to be obtained by the Operator from time to time in connection with the Project and to undertake, perform or discharge its obligations contemplated by this Agreement in accordance with Applicable Laws.
Arbitration Act	means the Arbitration and Conciliation Act, 1996.
Authority Event(s) of Default	means any or all the events listed in Clause 15.1(b).
Authority Related Parties	means any of the following: (a) an officer, servant, employee or agent of the Authority acting in that capacity;

	<p>(b) any contractor including any third party appointed by the Authority or sub- contractor of the Authority of any tier and their directors, officers, servants, employees or agents acting in that capacity; or</p> <p>(c) any Person acting on behalf of the Authority.</p>
Authority Representatives	means the Person appointed by the Authority to represent it and to carry out any of its functions and exercise powers under this Agreement.
Authority's Step-In Right	has the meaning ascribed to it in Clause 16.9.
Bid	has the meaning ascribed to it in Recital C.
Business Day	means a Day on which the GoO and the Authority is open for business in Bhubaneswar.
Capital Subsidy	means the subsidy of Rs. 50 Lakhs per 5 TPD Composting Facility that the Authority shall pay to the Operator in accordance with Clause 10.1(a) to implement the Project.
Change in Law	<p>means the occurrence of any of the following events subsequent to the Execution Date:</p> <p>(a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law;</p> <p>(b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority;</p> <p>(c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any Government Authority;</p> <p>(d) the introduction of a requirement for the Operator to obtain any new Applicable Permit; or</p> <p>(e) the introduction of any new Tax or a change in the rate of an existing Tax.</p> <p>It is clarified that for the purposes of Change in Law, Taxes shall not include taxes on corporate income or income tax.</p>
Companies Act	means the Companies Act, 1956 as amended, modified or re- enacted by the Companies Act, 2013 and any other enactments from time to time including any rules or regulations framed under it.
Confidential Information	means any part of this Agreement or any information contained in this Agreement or any material provided to any of the Parties pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires or the Parties agree otherwise in writing.

Day	means a 24 hour period beginning at 0:00 hours IST and ending at 11:59 hours IST.
Delay Liquidated Damages	has the meaning ascribed to it in Clause 11.1.
Dispute	has the meaning ascribed to it in Clause 18.1.
Dispute Meeting	has the meaning ascribed to it in Clause 18.1.
Dispute Notice	has the meaning ascribed to it in Clause 18.1.
Emergency	means an event causing, or in the reasonable opinion of the Authority and the Operator, threatening to cause death or serious injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property or is against national interest.
Encumbrances	means mortgage, charge, pledge, lien (statutory or otherwise), assignment, assignment by way of security, hypothecation, trust, preference, priority, designation as loss payee under insurance contracts or other security interest securing any obligation of any Person or any other agreement or arrangement having a similar effect.
Equipment	means any equipment including shredder, compost system, curing system, ancillary and other equipment installed by the Operator to implement the Project.
Equipment Commissioning Certificate	has the meaning ascribed to in Clause 4.2(b).
Event of Default	has the meaning ascribed to it in Clause 15.1.
Execution Date	means the date of execution of this Agreement.
Expiry Date	means the date which is the 5 th anniversary of the Project COD, unless extended in accordance with the terms of this Agreement.
Financial Year	means a year commencing on 1 April of any calendar year and ending on 31 March of the following calendar year.
FM Notice	has the meaning ascribed to it in Clause 14.2.
Force Majeure Event	has the meaning ascribed to it in Clause 14.1(a).
Good Industry Practice	means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which are reasonably and ordinarily expected to be used by a skilled and experienced contractor or operator engaged in installation, management, operation and maintenance of facilities, equipment or systems of the type and size similar

	to the Project.
Government Authority(ies)	means one or more of the Government of India, the GoO, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the Government of India or the GoO exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the Operator, the Project or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of this Agreement.
LOA	has the meaning ascribed to it in Recital D.
Material Adverse Effect	means the effect of any act or event which materially and adversely affects the ability of any of the Parties to exercise its material rights or perform any of its material obligations under and in accordance with the provisions of this Agreement.
Month	means a calendar month as per the Gregorian calendar.
O&M Services	means the services set out at Schedule 2, to be provided by the Operator during the Term.
Party	means the Authority, or the Operator
Payment Statement	has the meaning ascribed to it in Clause 10.2(a).
Performance Bank Guarantee	has the meaning ascribed to it Clause 9.1(a).
Performance Liquidated Damages	has the meaning ascribed to it in Clause 11.2.
Person	means any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation or any other legal entity.
Preliminary Notice	means the notice of intended termination of this Agreement by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
Project	means the complete 5 TPD Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting at Temporary Transfer Station at Gadakana in Bhubaneswar together with the facility including civil works provided by the Authority and the Equipment installed by the Operator
Project COD	means the Commercial Operations Date of the Project has the meaning ascribed to in Clause 4.2 (d).

Project Site	Means the site earmarked for installation of Equipment by the Operator at Temporary Transfer Station at Gadakana in Bhubaneswar
Operator Representative	means the Person appointed by the Operator to represent it and to carry out any of its functions and powers under this Agreement.
Project SCOD	means Project Scheduled Commercial Operation Date has the meaning ascribed to in Clause 2.1.
Operator Event of Default	means any or all the events listed in Clause 15.1(a).
Operator Related Parties	means Operator's agents and contractors and its or their sub- contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project.
Rupees or Rs.	means Indian Rupees, the lawful currency of India.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.
Security	includes any mortgage, pledge, lien, encumbrance, security interest, right of set-off, hypothecation, assignment by way of security, retention of title or ownership or any other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means [Insert name of the Selected Bidder].
Taxes	means any Indian taxes including levies, imposts, cesses, duties and other forms of taxation, including income tax, GST, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty (whether central, state or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Authority, but excludes any interest, penalties and other sums in relation thereto imposed on any account whatsoever.
Term	has the meaning ascribed to it in Clause 3.5(a).
Termination Compensation	means any compensation payable to the Operator in accordance with Clause 17.
Termination Date	means the date on which this Agreement is terminated by a Party pursuant to serving a Termination Notice in accordance with its terms.
Termination Notice	means a notice issued by a Party to the other terminating this Agreement in accordance with its terms.
Transfer Date	means the Expiry Date or the Termination Date, whichever is earlier.
Vesting Certificate	has the meaning ascribed to it in Clause 20.3

Wilful Default	means a deliberate or conscious breach of this Agreement by any of the Parties which has a Material Adverse Effect on the other Party.
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1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the masculine includes the feminine and vice-versa;
- (b) the singular includes the plural and vice-versa;
- (c) any reference to a statute or statutory provision shall include such statute or provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (d) a reference to any clause, annex, schedule or recital shall refer, except where expressly stated to the contrary, to Clause, Annex, Schedule or Recital of this Agreement;
- (e) save where stated to the contrary, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
- (f) references to any documents being 'in the agreed form' means such documents have been initialled by or on behalf of each of the Parties for the purposes of identification;
- (g) headings are for convenience of reference only;
- (h) unless otherwise stated, any reference to any period commencing "from" a specific day or date and "till" or "until" a specific day or date shall include both such Days or dates;
- (i) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided for in this Agreement;
- (j) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall bear the ordinary English meaning;
- (k) the words "include" and "including" are to be construed without limitation;
- (l) the Annexes and Schedules to this Agreement shall form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement; and
- (m) reference to "Parties" in this Agreement shall include the Authority and the Operator, unless otherwise stated or the context otherwise requires.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in the metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below being rounded down.

1.4 Payment in Rupees

All payments under this Agreement shall be made in Rupees.

1.5 Responsibility for Related Parties

Subject to the provisions of this Agreement, the Operator shall be responsible to the Authority for the acts and omissions of the Operator Related Parties as if they were the acts and omissions of the Operator and the Authority shall be responsible to the Operator for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority.

1.6 Approval

Neither giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall unless expressly stated in this Agreement, relieve the Operator of any of its obligations under it or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.7 Succession

References to a public authority, other than the Authority, shall be deemed to include a reference to any successor to such public authority or any organisation or entity which has taken over either or both the functions and responsibilities of such public authority.

1.8 Precedence of Documentation

In the event of any ambiguities or discrepancies within this Agreement the following shall apply:

- (a) between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the provisions of this Agreement and the Appendices, the former shall prevail;
- (c) between the Agreement and the tender document, the former shall prevail; and

2. PRE-IMPLEMENTATION PERIOD

2.1 Project Scheduled Commercial Operation Date (SCOD)

Other than in the event of Change in Law, a Force Majeure Event or an Emergency, which might have the effect of termination or extension, the Operator shall achieve the Project COD for the Project, in accordance with Clause 4.1 (**Project SCOD**).

2.2 **Applicable Permits**

- (a) The Authority shall obtain and keep in force Applicable Permits including statutory clearances if any to be obtained from Pollution Control Board, Environmental Authorities, Water Resources Department, Development Authorities for setting up the Decentralized Municipal Waste Processing Plant using Aerobic Composting.
- (b) The Operator shall obtain and keep in force permits and registrations relating to employment of labour, Employees State Insurance (ESI), taxes and comply with the requirements of Applicable Laws relevant to the pre-implementation and implementation period.

2.3 **Handover of site to Operator**

- (a) The Authority shall handover the Project Site together with the civil works and allied facilities described in Schedule 4 (a) within 90 days from the date of execution of the Agreement.
- (b) If the Authority fails to handover the Project Site pursuant to Clause 2.3 (a), beyond 180 days from the date of execution of the Agreement, the Operator shall be entitled to terminate the Agreement by issuing 30 days notice to the Authority. The Operator in its discretion may extend the time period for handover of the Project site by the Authority.

3. **SCOPE OF PROJECT, GRANT OF EXCLUSIVE RIGHT AND TERM**

3.1 **Scope of Project**

- (a) The Project shall include designing, supplying, installation, commissioning of the Equipment and operating and maintaining the Project in accordance with the terms of this Agreement.

3.2 **Grant of Exclusive Right**

- (a) On and from the date of execution of the Agreement and subject to the right of the Authority to terminate this Agreement under Clause 16, the Authority grants the Operator the exclusive right to:
 - (i) design, implement and commission the Project;
 - (ii) use the facility provided by the Authority described in Schedule 4 (a) to install the 5 TPD composting plant and handover of the Project Site pursuant to Clause 2.3 (a);
 - (iii) operate and maintain the Project;
 - (iv) appoint contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms; and

- (v) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project.

3.3 Rights, Title and Interest to Project

- (a) The Operator shall, at its own cost and expense, make such improvements to the Project as may be necessary or appropriate to implement the Project in accordance with this Agreement.
- (b) The Operator shall not, without the prior written consent of the Authority, use the Project for any purpose other than the purposes of the Project and purposes incidental thereto as permitted under this Agreement or as may be otherwise approved by the Authority.
- (c) The Operator shall accept its rights and obligations in relation to the Project on an 'as is where is' basis and confirm having obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Operator and its rights and obligations under or pursuant to this Agreement.
- (d) If this Agreement is terminated for any reason prior to the Expiry Date, the exclusive rights and any other rights granted to the Operator under this Agreement shall automatically cease with effect from the Termination Date.
- (e) The Operator shall make good any damage caused by it or the Operator Related Parties to any roads, footpaths, conduits, landscaping and other works on any property adjoining the Project.

Upon occurrence of any loss or damage caused to the Project and/or any fixtures related to them, the Operator shall reinstate the Project and/or any fixtures related to them at its own cost. In the event that such loss or damage is caused due to acts or omissions not directly attributable to the Operator or the Operator Related Parties, the Operator shall recover the cost incurred in reinstating such items and/or any fixtures related to them from the proceeds of the insurances obtained by it in accordance with Clause 13.2.

The Operator shall not be liable for any liability in relation to the Project and any fixtures related to them existing or arising from any event or circumstances occurred prior to the date on which the exclusive right is granted or deemed to be granted to the Operator in accordance with Clause 3.2.

- (f) The Authority shall be responsible for operation and maintenance of all Project facilities until the exclusive right in relation to such Project is granted or deemed to be granted to the Operator in accordance with Clause 3.2 and subject to handover of the site by the Authority pursuant to Clause 2.3 (a).

3.4 Rights, Title and Interest to Equipment

- (a) The ownership, rights and title to the Equipment, including any leased equipment,

installed, located, created, provided or procured by the Operator pursuant to this Agreement shall vest with the Operator during the entire Term. The Equipment shall be hypothecated in favor of the Authority for value of the Capital Subsidy. Any removal of equipment from site shall be undertaken with prior approval of Authority with agreed time for replacement

- (b) The ownership, rights and title to any part of the Project, other than the Equipment, shall remain with the Authority.

3.5 **Term**

- (a) Subject to early termination of this Agreement in accordance with its terms, the initial term of this Agreement is 5 years from the Project COD (**Term**), unless extended in accordance with Clause 3.5(b) below.
- (b) No later than 1 year prior to the Transfer Date, the Parties shall meet to determine whether the Term shall be extended and the terms and conditions on which the Agreement shall be extended. Any extension of the Term shall be confirmed in writing.

4. **IMPLEMENTATION PERIOD**

4.1 **Commencement and Duration**

The implementation period for the Project shall commence from the date of execution of the Agreement. The Operator within 15 days from execution of Agreement shall submit work plan for implementation of the project including delivery schedule of the Equipment, fabrication, testing and commissioning.

The Operator shall be responsible for supply, erection, installation, testing and commissioning the Equipment for the Project in accordance with the provisions of the Agreement, Applicable Permits, Applicable Laws, and Good Industry Practice.

The Operator shall install the Equipment within 45 days from the date of handover of the site. Upon completion of Installation, the Operator shall carry out trial run and commission the plant within 30 days from the date of installation of the Equipment (Project SCOD).

4.2 **Commissioning and Performance test**

- (a) Once the Equipment is installed, the Operator shall submit a notice to the Authority, notifying the installation of the Equipment. The Authority shall have the right to inspect the installed Equipment to ensure that the Equipment has been installed in accordance with the technical specifications and design criteria in accordance with Schedule 3.
- (b) Before issue of Equipment Commissioning Certificate, the following requirements shall be met:

- (i) A successful Trial Run is conducted by the Operator for the complete duration of the process cycle of the system. (i.e. Compost generated from first batch of 5 tons of Biodegradable Waste).
 - (ii) Test have been conducted by the Operator (from an Agency approved by the Authority) to certify the that the Compost meets the FCO specifications for Organic Compost and volume reduction of atleast 50% is achieved.
 - (iii) Authority is satisfied that the Plant satisfies the Technical Criteria as per Annexure-X of the RFP and Design Criteria as per Schedule 3 of the RFP.
 - (iv) Operator shall submit documentary evidence of the project cost incurred by him which shall be reviewed and validated by the Authority.
- (c) The Authority, when satisfied, after undertaking verifications in accordance with 4.2 (b) above, shall, issue a certificate to the Operator, certifying that all Equipment has been successfully installed (**Equipment Commissioning Certificate**). Issuance of the Equipment Commissioning Certificate shall not be unreasonably withheld or delayed. Any Dispute in relation to issuance of the Equipment Commissioning Certificate shall be resolved in accordance with Clause 18.
- (d) The date on which the Equipment Commissioning Certificate is issued shall be deemed to be the Project Commercial Operations Date (COD).

5. O&M ACTIVITIES

5.1 Commencement and Duration

The Operator shall commence the O&M Services in respect of the Project from the date of issuance or deemed issuance of the Equipment Commissioning Certificate. The Operator shall continue to provide the O&M Services for the Project until the earlier of the Expiry Date or the Termination Date.

5.2 O&M Services

The Operator shall provide O&M Services in relation to the Project in accordance with the standards set out at Schedule 2, provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

The Operator shall not be liable for its failure to provide O&M Services in relation to the Project System in accordance with the standards set out at Schedule 2, during any period for which waste is not supplied to the Project.

6. REPORTING

- 6.1 During the Term, the Operator shall provide monthly reports to the Authority about the following matters:
- (a) Quantity of incoming waste, compost produced, quantity of rejects returned to Authority; and
 - (b) Monitoring and verification report.

- (c) Test Report of Compost Quality to be submitted on a quarterly basis.
- 6.2 If the Operator does not issue monthly reports within 3 Days of the end of the relevant Month for any 3 consecutive Months or there is a material information falsely provided in more than 3 reports during the Term, this event shall constitute an Operator Event of Default.

7. GENERAL RIGHTS, DUTIES AND OBLIGATIONS

In addition to the other obligations of the Parties set out in detail elsewhere in the Agreement, this Clause 7 sets out the key obligations of the Parties.

7.1 General Rights, Duties and Obligations of the Operator

- (a) The Operator shall during the Term:
 - (i) Supply, Erect, install, Test and Commission the Equipment; and
 - (ii) provide the O&M Services for the Project
- (b) Except as otherwise provided in this Agreement, the Operator shall not assign its rights, title or interest in this Agreement in favour of any Person without the prior written consent of the Authority.
- (c) The Operator may engage any Person who possesses the requisite skill, expertise and capability to provide the O&M Services, provided that:
 - (i) the Operator shall at all times be solely responsible to perform all its obligations under this Agreement and it shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in providing the O&M Services; and
- (d) Environmental and Social Requirements:
 - (i) The Operator shall carry out all its obligations under this Agreement in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits, and Good Industry Practice;
 - (ii) The Operator agrees to operate the Project with a documented environmental and social management system.

7.2 General Rights, Duties and Obligations of the Authority

- (a) The Authority shall:
 - (i) deposit the 50% of Capital Subsidy in the Escrow Account within 15 Business Days of entering into Escrow Agreement and disburse the same in accordance with Clause 10.1(a). The Authority shall replenish Escrow Account as per the Escrow Agreement;
 - (ii) during the Term, at all times fund the Escrow Account with an amount equivalent to Tipping Fee for 3 Months in relation to the Project;
 - (iii) pay the Tipping Fee

- (b) Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 Day notice to the Operator, assign any of its rights and benefits and/or obligations under this Agreement to an assignee who is a Government Authority.

7.3 Emergencies

- (a) If an Emergency arises during the Term, the Authority may instruct the Operator that such measures are undertaken by the Operator as necessary and practicable to ensure that the Emergency is dealt with and normal operation of the relevant Project resumes as soon as is reasonably practicable, provided that the Operator shall not be obliged to provide any service which it is neither qualified nor competent to provide.
- (b) Any additional costs incurred by the Operator, in dealing with an Emergency shall be borne by the Authority upon the Operator raising the Payments Statement in accordance with Clause 10.2 which shall include a separate line item headed "Emergency Costs". The invoice shall provide supporting documentary evidence for the cost incurred by the Operator. The Operator shall not be paid any such cost if the Emergency had been caused due to its own act or omission.
- (c) In the event that the Operator undertakes to provide additional or alternative services in case of an Emergency, the Operator shall make best efforts to meet the standards set out at Schedule 2 or any other standards pre-agreed with the Authority before providing such services.
- (d) Notwithstanding anything contained in this Agreement, if an Emergency arises during the validity of the Agreement, the Authority shall have the right to enter the Project facility and take over operation of the Project until such time the Emergency subsists.

8. EMPLOYEES AND TRAINING

- 8.1 The Authority shall remain the principal employer of the municipal employees working for the Authority's sanitation department. Such employees may or may not, at the Operator's sole discretion, be seconded to the Operator for a specific duration and under terms and conditions to be agreed upon between the Authority and the Operator. The Operator has no obligation under this Agreement to employ directly or indirectly any the Authority's employees.
- 8.2 Notwithstanding anything contained in Clause 8.1, the Operator shall train the employees of the Authority's sanitation department to operate, maintain and repair the equipment and systems installed by the Project. Training shall include both classroom and practical instruction. Course materials shall include the Operator's supplied operation and maintenance plans and manufacture manuals. This training shall be provided only once during the entire Term and shall be conducted within the first year of the Project COD.

9. PERFORMANCE BANK GUARANTEE

9.1 Performance Bank Guarantee

- (a) The Operator shall submit to the Authority a bank guarantee from a Scheduled Bank with a branch in Bhubaneswar, in the form set out at Appendix 2, payable at Bhubaneswar, to secure the due performance of the Operator's obligations under this Agreement during the Term (**Performance Bank Guarantee**). The charges for providing the Performance Bank Guarantee shall be borne by the Operator.

The Performance Bank Guarantee shall be for a sum equal to Rs. Five Lakhs. The Operator shall maintain the Performance Bank Guarantee in full force and effect till the Transfer Date.

If the Performance Bank Guarantee is scheduled to expire prior to the Transfer Date, then at least 30 Days prior to the scheduled expiry of the Performance Bank Guarantee, the Operator shall arrange for an extension or replacement of the Performance Bank Guarantee. If the Operator fails to extend or replace the Performance Bank Guarantee, the Authority shall be entitled to receive the un-drawn amount under the Performance Bank Guarantee. The amount so received shall be treated as a cash- retention and to the extent that there are no outstanding claims thereto, shall be released, without any interest on such amount, upon submission of a new Performance Bank Guarantee acceptable to the Authority or upon the scheduled date of expiration of the Performance Bank Guarantee.

- (b) The Authority shall have the right to draw on the Performance Bank Guarantee and claim the amount guaranteed on demand upon the Operator's failure to honour any of its obligations, responsibilities or commitments during the Term in respect of any amount due from the Operator to the Authority, including any Delay Liquidated Damages or Performance Liquidated Damages that the Operator is liable to pay under this Agreement.
- (c) If the Authority draws on the Performance Bank Guarantee, in part or in full, the Operator shall immediately, within 7 Days of such withdrawal, restore the value of the Performance Bank Guarantee to the amount stated in Clause 9.1(a).
- (d) If this Agreement is terminated for any reason other than the occurrence of a Operator Event of Default, the Performance Bank Guarantee shall be duly discharged and released to the Operator, subject to the Authority's right to receive any accrued amounts from the Operator before such termination.

10. PAYMENT AND INVOICING

10.1 Sums to which the Operator shall be entitled

a. Capital Subsidy

- (i) The Authority agrees to provide the Operator, Capital Subsidy in accordance with the provisions of this Clause 10.1(a).
- (ii) The Authority shall disburse of the Capital Subsidy to the Operator in three installments.

- 1) First installment equal to 50% of Capital Subsidy shall be disbursed on achieving COD.
 - 2) Second installment equal to 25% of Capital Subsidy shall be disbursed after three (3) months of successful operation after COD. and;
 - 3) Final installment equal to 25% of Capital Subsidy shall be disbursed after six (6) months of successful operation after COD.”
- (iii) A failure by the Authority to release the Capital Subsidy in accordance with the provisions of this Clause 10.1 shall constitute an Authority Event of Default.

b. Tipping Fee

- (i) The Tipping Fee of Rs. _____/ Metric Tonne shall be payable, on a monthly basis, to the Operator in relation to the Project.
- (ii) BMC shall pay Operator (irrespective of the actual quantity of waste supplied to the Operator due to the default of the Authority) every month an amount equal to:

$$\text{No. of days in a month} \times \text{Tipping Fees} \times 5 \text{ TPD}$$

The payment of the Tipping Fees is subject to Liquidated Damages as per Schedule-5 of the Agreement in case of operator default.

- (iii) In the event that the Equipment Commissioning Certificate is not issued by the Authority on the last Day of a Month, then the Operator shall be entitled to pro-rata Tipping Fee for the Month in which the Equipment Commissioning Certificate is issued.
- (iv) Tipping Fee adjustment formula:
The Tipping Fee shall be increased at the rate of 5% every year over the previous year. The first increase in Tipping Fee shall be effected on the date of first anniversary of COD.

10.2 Invoicing for Tipping Fee

- (a) Within 3 Business Days of commencement of each Month, the Operator shall submit to the Authority a statement setting out the details of the Tipping Fee for the preceding Month, calculated in accordance with Clause 10.1(b) as evidenced by a consolidated report evidencing adherence by the Operator of the performance standards set out at Schedule 2. (**Payment Statement**).
- (b) Within 7 Business Days of receipt of the Payment Statement, the Authority shall verify it for any apparent error such as mathematical miscalculations and accept the Payment Statement. In the event that the Authority notifies any apparent error in writing to the Operator within the time specified in this Clause 10.2(b), the Operator shall immediately rectify such error and re-issue the Payment Statement by no later than 5 Business Days of receipt of notification of such error from the Authority. The process set out in Clause 10.2(c) shall then apply to any re-issued Payment Statement.

In the event that Authority does not notify any error within 7 Business Days of receiving the Payment Statement, such Payment Statement shall be deemed to have been accepted by the Authority.

- (c) In the event that the Authority does not discover any error in relation to the Payment Statement and accepts the payment statement, then the Authority shall, within 7 Business Days of receipt of such Payment Statement, issue instructions to the Escrow Agent along with all relevant documents to release 75% of the Tipping Fee to the Operator.
- (d) Subject to Clause 10.2(e), Authority shall, within 10 Business Days of the date of acceptance of the Payment Statement and upon verifying adherence of the Operator to performance standards set out at Schedule 2, issue instructions to the Escrow Agent along with all relevant documents to release the remaining 25% of the Tipping Fee to the Operator.
- (e) In the event that the Authority wishes to exercise its right to set-off any amounts in accordance with Clause 10.3, it shall instruct the Escrow Agent accordingly. The Authority shall communicate exercise of its set-off rights to the Operator in writing, giving reasons and relevant details concerning the exercise of such right.
- (f) Except as expressly provided otherwise in this Agreement, the Operator shall not levy, collect or recover from Authority any charge or fee or claim any costs, expenses or any other reimbursement, other than the Tipping Fee.

10.3 Rights of Set-off

- (a) The Operator shall not be entitled to retain or set-off any amount due to the Authority, but the Authority may retain or set-off 25% of the Tipping Fee against any amounts due and payable from the Operator to the Authority, including Delay Liquidated Damages and Performance Liquidated Damages.
- (b) If the payment or deduction of any amount pursuant to Clause 10.2(a) is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with Clause 18.

10.4 Taxes

- (a) All amounts payable by the Authority to the Operator under this Agreement other than Tipping Fee are inclusive of all Taxes, if applicable. Tipping Fee payable by Authority is inclusive of all Taxes except GST. Any Change in Law on account of the introduction of new Taxes or change in the rates of existing Taxes shall be to the account of and payable by the Authority, as the case may be.
- (b) The Authority shall be entitled to make any deductions at source in accordance with Applicable Laws.
- (c) The Operator shall be responsible for all compliance related to the payment of any Taxes payable by it under this Agreement and shall solely be responsible for any proceedings initiated by the relevant Government Authorities, in respect of the non-payment, short-payment, non-compliance, penalty, interest or other such issue, and

for all liabilities and expenses related to such proceedings.

- (d) If any proceedings are initiated against the Authority by any relevant Government Authority for failure of the Operator to comply with Clause 10.4(c), the Operator shall fully indemnify and compensate the Authority, in accordance with Clause 13.
- (e) If any proceedings are initiated against the Operator by any relevant Government Authority for failure of Authority to comply with Clause 10.4(a), the Authority shall fully indemnify and compensate the Operator in accordance with Clause 13.

10.5 Escrow Arrangement

The Escrow Agreement shall inter-alia provide for:

- (a) the appointment of the Escrow Agent for the Term within 15 Business Days from entering into this Agreement;
- (b) the terms and conditions of the appointment of the Escrow Agent, including the fees to be charged by the Escrow Agent, which shall be borne by the Operator;
- (c) the obligation of the Authority to deposit amounts in accordance with Clause 7.2(a)(i) and Clause 7.2(a)(ii) with the Escrow Agent in accordance with the terms of this Agreement;
- (d) the release of amounts deposited by the Authority to the Operator in accordance with the procedure set out in Clauses 10.1 and 10.2; and
- (e) other specific rights and obligations of the parties to the Escrow Agreement, including a mechanism for provision of documents and issuance and receipt of instructions for release of payments.

11. LIQUIDATED DAMAGES

11.1 Delay Liquidated Damages

If the Operator fails to achieve the Project COD by the Project SCOD for reasons other than those set out in Clauses 7.3, 12 and 14, it shall pay liquidated damages to the Authority at the rate provided in Schedule 5 (**Delay Liquidated Damages**). If the Operator fails to achieve the Project COD within 30 Days of the Project SCOD, the Authority shall have the right to terminate this Agreement under Clause 16.1 and encash the Performance Bank Guarantee.

11.2 Liability for shortfall in O&M Services

Subject to the provisions of this Clause 11.2, in the event that the O&M Services do not meet the standards set out in Schedule 2 and Schedule 3, then the Operator shall pay liquidated damages at the rates provided in Schedule 5 (**Performance Liquidated Damages**).

11.3 Payment of Liquidated Damages

Any Delay Liquidated Damages or Performance Liquidated Damages, as the case may be, shall be payable by the Operator within 15 Business Days of receipt of a demand notice from the Authority. In the event that the Operator fails to pay such damages within the specified period, the Authority shall have the right to recover the amount of such damages either by

exercising its right to set-off under Clause 10.3 or by encashing the Performance Bank Guarantee.

This provision shall not prejudice the right of the Authority to terminate this Agreement in accordance with Clause 16 or any other right that the Authority may have under the Agreement or Applicable Laws.

11.4 Limitation of Liability

- (a) The aggregate liability of the Operator to the Authority under this Agreement in any Financial Year shall not exceed 50% of the Tipping Fee plus the Capital Subsidy less the proportionate depreciation for such Financial Year. The limitation of liability shall not apply to nor be reduced by:
 - (i) payments made by the Operator pursuant to its insurance policies;
 - (ii) the Operator's liability in case of fraud, fraudulent misrepresentation, wilful misconduct or Wilful Default, gross negligence or corrupt practices; or
 - (iii) the Operator's liability in respect of any failure to pay any Operator Related Parties.
- (b) Neither the Operator nor the Authority shall be liable to each other under this Agreement for any loss of profit, loss of revenue or any other indirect or consequential damages that may be suffered by the other Party.
- (c) Unless this Agreement provides otherwise, no approval, expression of satisfaction, comment, review, payment or certificate whatsoever made or given (or any failure to make or give the same) by the Authority, its representatives or employees under this Agreement, shall relieve the Operator of any of its obligations, risks or liabilities under this Agreement.

12. CHANGE IN LAW

12.1 Consequences of Change in Law

- (a) If a Change in Law occurs or is shortly to occur, then any of the Parties may notify the others expressing its opinion on:
 - (i) the likely effects of such Change in Law on the validity and enforceability of this Agreement or on the rights and benefits accruing to the Operator; and
 - (ii) the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Change in Law, while adhering to the original commercial and financial positions of the Parties.
- (b) As soon as practicable after receipt of any notice from a Party under Clause 12.1(a) above, the Parties shall meet as often as it may be necessary to re-negotiate and agree on the amendments (including, where necessary severing the invalid or unenforceable terms) of this Agreement.
- (c) If the Parties are unable to agree on necessary amendments to the terms of this

Agreement to give effect to the original commercial and financial positions of the Parties within a period of 90 Days of the date on which a notice is issued under Clause 12.1(a), then any Party shall be entitled to terminate this Agreement by giving 30 Days' notice.

- (d) Upon termination of this Agreement pursuant to Clause 12.1(c) above, no Termination Compensation is payable by the Authority to the Operator. All other consequences of termination as set out in Clause 16.6 shall apply.

13. INDEMNITY AND INSURANCE

13.1 Indemnity

- (a) Subject to Clause 13.1(b) below, the Operator shall be responsible for, and release and indemnify the Authority and the Authority Related Parties on demand from and against, all liability for:
 - (i) death or personal injury;
 - (ii) loss of or damage to property;
 - (iii) breach of statutory duty; and
 - (iv) actions, claims, demands, costs, charges and expenses (including legal expenses),

which may arise out of, or in consequence of, the implementation of this Project and any other performance or non-performance by the Operator or any Operator Related Party of its obligations under this Agreement.

- (b) The Operator shall not be responsible or be obliged to indemnify the Authority for:
 - (i) any of the matters referred to in paragraphs (iii) or (iv) of Clause 13.1(a) above which arises as a direct result of a Person acting on the instructions of the Authority or
 - (ii) any injury, loss, damage, cost and expense caused by the negligence or Wilful Default of the Authority, the Authority Related Parties or by the breach by any of them of their obligations under this Agreement.
- (c) The Authority, as the case may be, shall indemnify, defend and hold harmless the Operator against any and all proceedings, actions, third party claim for loss, damage and expense of whatever kind and nature arising out of any act or omission caused by the negligence or Wilful Default of it and the Authority Related Parties.
- (d) The Authority shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Agreement and the reasonable costs and expenses thereof shall be subject to the indemnification obligation of the Operator.

If, however, the Operator acknowledges in writing its obligations to indemnify the Authority in respect of any Loss to the full extent as provided by this Agreement, the

Operator shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Authority, and reimburses the Authority, as the case may be, for any reasonable costs and expenses incurred by the Authority prior to the assumption by the Operator of such defence. No Party shall settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority shall have the right to employ their own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Operator, as and when incurred.

- (e) Any indemnity of a Party under any other provisions of this Agreement shall be without limitation to any other indemnity by that Party under any other provision of this Agreement.

13.2 **Insurance**

The Operator shall at all times, as may be applicable, obtain, maintain and renew those insurance covers required in relation to people, Equipment, systems and third party damages in accordance with Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Operator shall maintain an insurance coverage against the risk of damage by fire, theft or otherwise (including vandalism) of Equipment until the title to the Equipment passes on to the Authority on the Transfer Date. The Value of Insurance shall be equal to the Value of Equipment as declared prior to signing of the Agreement less the accumulated depreciation.

14. **FORCE MAJEURE**

14.1 **Force Majeure Event**

- (a) A **Force Majeure Event** means any event whereby one Party to the Contract (“Affected Party”) has been prevented from performing its obligations under this Agreement due to an unavoidable event such as a natural disaster, hostage-taking, war, revolution, terrorism or sabotage, which, with even the best human judgement and experience and utmost care, could not have been reasonably foreseen in the circumstances, prevented or rendered harmless by economically reasonable means unless such event must be accepted by the relevant party due to its regular occurrence, including, circumstances such as crises, war or terror. If an event occurs as a result of the actions of or risks assumed by a party to the Contract, that event shall not constitute Force Majeure.
- (b) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute resolution procedure set forth in Clause 18, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure

Event.

14.2 **Notice of Force Majeure Event**

The Affected Party shall give notice to the other Parties in writing of the occurrence of any of the Force Majeure Events (the **FM Notice**), as soon as it arises or as soon as reasonably practicable and in any event within 10 Days after the Affected Party knew of its occurrence, and of the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken in accordance with Clause 14.5 and an estimate of the period of time required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

Any Party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 14.2.

14.3 **Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the period shall not exceed 120 Days. .

It is provided however that a Party shall be excused from performance only to the extent reasonably warranted by the Force Majeure Event.

It is further provided that, nothing shall absolve the Affected Party from any payment obligation accrued prior to the occurrence of the underlying Force Majeure Event.

14.4 **No Liability for Other Losses**

Save and except as expressly provided in this Clause 14, no Party shall be liable in any manner whatsoever to the other Parties in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Clause 14.

14.5 **Resumption of Performance**

During the period that a Force Majeure Event is subsisting, the Affected Party shall in consultation with the other Parties, make all best efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

14.6 **Termination Due to Force Majeure Event**

(a) If, prior to the completion of the 120 Day period (or any extended period) commencing from the date of issuance of the FM Notice, the Parties are of the reasonable view that:

(i) the Force Majeure Event is likely to continue beyond such 120 Days period

or any extended period agreed in pursuance of Clause 14.3; or

(ii) that it is uneconomical or impractical to restore the affected Project, then the Parties may mutually decide to terminate this Agreement, which termination shall take effect from the date on which such decision is taken.

Provided that if it is feasible and practical to restore the Project, the Parties shall bear the requisite restoration cost in proportion to their respective share in capital investment, after applying the insurance proceeds towards restoration.

(b) Without prejudice to the provisions of Clause 14.6(a) above, the Affected Party shall, after the expiry of the period of 120 Days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect.

Upon termination of this Agreement pursuant to this Clause 14.6(b), the consequences of termination as are set out in Clause 16.6 shall apply.

15. EVENTS OF DEFAULT

15.1 Event of Default means an Operator Event of Default or an Authority Event of Default or both, as the case may be.

a. Operator Event of Default

Operator Event of Default means any of the following events arising out of any acts or omissions of the Operator and which have not occurred as a consequence of any Authority Event of Default, Change in Law, a Force Majeure Event or an Emergency and where the Operator has failed to remedy the defects specified in the Preliminary Notice issued in accordance with Clause 16.1(b):

- (i) any Abandonment by the Operator;
- (ii) any breach by the Operator of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Operator to install the Equipment or perform the O&M Services;
- (iii) any representation made or warranty given by the Operator under this Agreement being false or misleading;
- (iv) failure of the Operator to achieve Project COD within 120 Days of the Project SCOD;
- (v) failure of the Operator to issue and maintain a valid Performance Bank Guarantee under Clause 9;
- (vi) failure of the Operator to comply with the O&M standards set out in Schedule 2 for a continuous period of 30 Days;
- (vii) a resolution for voluntary winding up passed by the shareholders of the Operator;
- (viii) the Operator entering into liquidation or similar state or if any order is made

for the compulsory winding up or dissolution of the Operator or the appointment of a receiver or administrator in respect of the Operator, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Operator's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or

- (ix) the Operator's failure to issue monthly reports in accordance with Clause 6.

b. Authority Events of Default

Authority Event of Default means any of the following events, unless such event has occurred as a consequence of the Operator Event of Default, a Change in Law, Force Majeure Event or an Emergency and where Authority has failed to remedy the defects specified in the Preliminary Notice issued in accordance with Clause 16.2(b):

- i. failure of the Authority to pay the Tipping Fee for more than 12 consecutive Months have elapsed since such payments became due;
- ii. a failure by the Authority to disburse the Capital Subsidy in accordance with the provisions of Clause 10.1(a);
- iii. any breach by the Authority of its obligations under this Agreement which has a Material Adverse Effect on the performance of the Operator's obligations under this Agreement; or
- iv. any representation made or warranty given by the Authority under this Agreement which is found to be false or misleading.

16. TERMINATION

16.1 Termination for Operator Event of Default

- (a) Without prejudice to any other right or remedy which Authority may have in respect thereof under this Agreement, upon the occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement in the manner provided in Clause 16.1(b).
- (b) The Authority shall issue a Preliminary Notice to the Operator providing 30 Days to cure the underlying Operator Event of Default. If the Operator fails to cure the underlying Operator Event of Default within such period allowed, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator and to invoke the Performance Bank Guarantee, if subsisting.

16.2 Termination for Authority Event of Default

- (a) Without prejudice to any other right or remedy which the Operator may have in respect thereof under this Agreement, upon occurrence of an Authority Event

of Default, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority.

- (b) The Operator shall issue a Preliminary Notice to the Authority, providing 30 Days to remedy/cure the underlying Authority Event of Default. If, however Authority fails to cure the underlying Authority Event of Default within such period allowed, the Operator shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority.

The Preliminary Notice shall be issued under this Agreement only for the Events of Default for which a cure period has been prescribed in the Agreement.

16.3 **Termination Notice**

The Termination Notice shall set out the following:

- (a) the underlying Event of Default, in sufficient detail;
- (b) the Termination Date;
- (c) the Termination Compensation as calculated in accordance with Clause 19; and
- (d) any other relevant information.

16.4 **Obligation of the Parties**

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

- (a) until termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued performance of O&M Services, if commenced;
- (b) the Project along with the Equipment is handed back to the Authority on the Termination Date in accordance with Clause 16.6; and
- (c) any Termination Compensation is paid to the Operator in accordance with Clause 17.

16.5 **Withdrawal of Termination Notice**

Notwithstanding anything contained in this Agreement, if the Party who has been served with a Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before termination occurs, the Termination Notice shall be withdrawn by the Party which had issued it, provided however that the Party in breach shall compensate the other Party for any direct costs caused by the Event of Default.

16.6 **Consequences of Termination**

Upon termination of this Agreement, the Authority shall:

- (a) take possession and control of the Project;
- (b) take possession and control of all the Equipment;
- (c) in the event of an Operator Event of Default, forfeit the Performance Bank

Guarantee; and

- (d) in the event of an Authority Event of Default, return the Performance Bank Guarantee, and pay the Termination Payment compensation .

16.7 **Accrued Rights and Liabilities**

Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement pursuant to its term shall be without prejudice to accrued rights of any Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of any of the Parties under this Agreement, including, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

16.8 **Voluntary Termination**

The Authority shall, in addition to any of its other rights to terminate this Agreement, have the right to terminate this Agreement at any time by giving a 60 Day notice to the Operator. In such event the Operator shall be entitled to the Termination Compensation in accordance with Clause 17.1.

16.9 **Authority's Step-In Rights**

For the purposes of providing the O&M Services during the cure period applicable to any Operator Event of Default, the Authority shall have the right to enter the Project site and take over the of the Project upon giving not less than 12 hours advance notice to the Operator (**Authority's Step-In Right**). The Authority may continue to exercise the Authority's Step-In Right until the Operator has remedied the Operator Event of Default and demonstrated to the reasonable satisfaction of Authority its readiness and ability to resume the provision of the O&M Services in accordance with the terms and conditions of the Agreement.

In exercising the Authority's Step-In Right, the Authority shall: (a) cause the O&M Services to be provided by an adequate number of sufficiently qualified personnel; (b) use commercially reasonable efforts to continue to perform all of the Operator's obligations under this Agreement; and (c) have no obligation to pay the Operator the Tipping Fee or the outstanding Capital Subsidy if any during the period such Authority's Step-In Right is being exercised.

During the exercise of the Authority's Step-In Right, the Operator shall: (a) cooperate in all respects with the Authority; and (b) to the extent requested by the Authority, assign its rights capable of being assigned under all Applicable Permits, this Agreement and any other contracts and relevant documents to the Authority during the period that the Authority is exercising the Authority's Step-In Right.

The exercise by the Authority of the Authority's Step-In Right shall not affect any other right or remedy the Authority may have, nor shall the existence of the Authority's Step-In Right or its exercise thereof relieve the Operator of any duty, obligation or liability under the Agreement or any other contract.

17. COMPENSATION ON TERMINATION

17.1 For Authority Event of Default or Force Majeure Event

In the event that the Termination Compensation is payable by the Authority to the Operator upon termination of this Agreement due to an Authority Event of Default or Force Majeure Event, then the Termination Compensation shall be:

Authority Event of Default or Force Majeure Event	Termination Compensation
After handover of site by Authority but prior to COD	a) Estimate of actual expenditure incurred by the Operator as determined by an independent valuer appointed by the Authority Less b) the amounts, if any, due to the Authority from the Operator under the provisions of this Agreement; and c) the amount realised, if any, from the insurance proceeds, unless utilised for restoration of the installed Equipment.
After COD but prior to first Anniversary of COD	a) Project cost incurred by the Operator, Less b) the amount of Capital Subsidy disbursed (if any); c) the amounts, if any, due to the Authority from the Operator under the provisions of this Agreement; and d) the amount realised, if any, from the insurance proceeds, unless utilised for restoration of the installed Equipment..
On or after first anniversary of COD	a) Project Cost incurred by the Operator, Less b) the amount of Capital Subsidy disbursed (if any); c) the amounts, if any, due to the Authority from the Operator under the provisions of this Agreement; and d) the amount realised, if any, from the insurance proceeds, unless utilised for restoration of the installed Equipment. e) (Completed no. of years after COD/5) X (Project Cost Incurred by the Operator – Capital Subsidy)

17.2 **(delete)**

17.3 For Operator Event of Default

Upon termination of this Agreement due to an Operator Event of Default anytime during the period between execution of the Agreement and the Termination Date, the Authority shall:

- (a) have the right to draw upon the entire amount of the Performance Bank Guarantee submitted by the Operator; and

- (b) have the right to recover the amounts, if any, due to the Authority from the Operator under the provisions of this Agreement; and
- (c) have the right to recover the amount realised, if any, from the insurance proceeds, unless utilised for restoration of the installed Equipment.
- (d) The Operator shall not be eligible for any Termination Compensation.

17.4 **Payment of Termination Compensation**

- (a) The Termination Compensation pursuant to this Agreement shall become due and payable to the Operator by the Authority within 30 Days of a demand being made by the Operator with the necessary particulars duly certified by an independent auditor. The Termination Compensation shall be paid by the Authority only upon transfer of the Project in accordance with Clause 20.
- (b) If for any reasons other than those attributable to the Operator, the Authority fails to pay the Termination Compensation on the date due, the Authority shall be liable to pay default interest on the Termination Compensation at the rate of 10% per annum, payable annually from such due date until the payment thereof.

17.5 **Full and Final Settlement**

Any Termination Compensation determined pursuant to this Clause 17 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Operator against the Authority, in relation to any termination of this Agreement and the Operator shall not have any other rights and remedies in respect of such termination.

18. **DISPUTE RESOLUTION**

18.1 **Conciliation**

In the event of any dispute, controversy or difference between the Authority and the Operator arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement) (a **Dispute**), the representatives of the Parties shall, within 10 Business Days of service of a written notice from either Party to the other Parties (the **Dispute Notice**) hold a meeting (the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of agreement to the contrary, the Dispute Meeting shall be held at the principal office of the Authority.

18.2 **Arbitration Procedure**

If a Dispute is not resolved within 20 (twenty) Business Days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any party to the Dispute shall be entitled to refer the Dispute to arbitration. This Agreement and the rights and obligations of

the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

18.3 Appointment of Arbitrators

If a Dispute is referred to arbitration by any Party such Dispute shall be resolved by a sole arbitrator to be appointed by mutual agreement of the Parties. If the Parties fail to appoint an arbitrator within 30 (thirty) Business Days after service of the notice of Arbitration, such arbitrator shall be appointed in accordance with provisions of the Arbitration Act.

18.4 Venue, Language and Rules of Arbitration

The venue of the arbitration shall be Bhubaneswar and the language of the arbitration shall be English. The arbitration shall be conducted in accordance with the Arbitration Act.

18.5 Award and Apportionment of Costs

The arbitration award of the arbitrator(s) shall be final and binding on the Parties and shall be enforceable in accordance with its terms. The arbitrator(s) shall state reasons for its/their findings in writing. The costs of arbitration and the manner of bearing such costs shall be determined by the arbitrator(s).

18.6 Law Governing the Arbitration

The arbitration shall be governed by the laws of India.

18.7 Survival

The provisions contained in this Clause 18 shall survive the termination of this Agreement.

19. REPRESENTATIONS AND WARRANTIES

19.1 The Operator represents and warrants to the Authority that:

- (a) it is duly organised, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary actions to authorise the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of the Operator,

enforceable against it in accordance with the terms hereof;

- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement;
- (f) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (g) the execution, delivery and performance of this Agreement does not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and the articles of association, charter documents/bye-laws, or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all respects 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 a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (j) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date, free and clear of all Encumbrances, without any further act or deed on its part or that of Authority, subject to any agreement under which any Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;
- (k) no representation or warranty made by it contained herein or in any other document furnished by it to the Authority including the Bid or to any Government Authority in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any Person by way of fees, commission or otherwise for securing the award of this Project or entering into this Agreement or for influencing or attempting to influence any officer or employee of Authority or the Authority Related Parties in connection therewith;
- (m) 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 government acts; and

- (n) consents generally in respect of the enforcement of any judgement 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;

19.2 The Authority represents and warrants to the Operator 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;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) this Agreement constitutes the legal, valid and binding obligation of the Authority, enforceable against it in accordance with the terms hereof; and
- (e) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

19.3 In the event that any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a Party under this Agreement.

19.4 Neither the Authority nor any of its agents or employees shall be liable to the Operator in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:

- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by the Authority to the Operator and/or the Selected Bidder; or
- (b) any failure to make available to the Operator any materials, documents, plans or other information relating to the Project.

20. TRANSFER

20.1 Operator's Obligations

The Operator, at no cost to the Authority, shall:

- (a) hand over peaceful possession of the Project and the Equipment, free of Encumbrances and in a condition which is fit for the purpose;

- (b) transfer all its rights, titles and interests in the assets comprised in the Project and the O&M Services which are required to be transferred to the Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- (c) The Operator shall furnish book value of assets after depreciation for taking in to books of account of the Authority.
- (d) hand over to the Authority all documents including manuals and records relating to the O&M Services;
- (e) transfer technology and up-to-date know-how relating to the O&M Services;
- (f) transfer or cause to be transferred to the Authority any agreements relating to the Project which are (i) valid and subsisting; and (ii) capable of being transferred to the Authority; and (iii) those agreements that Authority has chosen to take over, and cancel or cause to be cancelled such agreements relating to the Project not transferred to the Authority. For this purpose, the Operator shall ensure that all agreements relating to the Project are assignable in favour of the Authority without any further action on part of the respective counterparties. The Operator shall entirely at its cost, terminate all such agreements relating to the Project which are not transferred/assigned and/or are not required to be transferred/assigned to the Authority;
- (g) transfer to the Authority all such Applicable Permits which the Authority may require and which can be legally transferred;
- (h) deliver and transfer relevant records, reports, intellectual property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all manuals pertaining thereto, and complete 'as built' drawings as on the Transfer Date. For the avoidance of doubt, the Operator represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (i) remove within 90 Days from expiry of the Term or upon termination of this Agreement, from the Project, any moveable assets that are not taken over by or not to be transferred to the Authority in terms of the provisions of this Agreement;
- (j) ensure that the Project continues to meet the standards set out at Schedule 2 on the Transfer Date; and
- (k) comply with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all its rights, title and interest in the Project free from all Encumbrance and Taxes payable on or before the Transfer Date.

20.2 Authority's Obligations

Except in the event of expiry of the Project by efflux of time, the Authority shall pay compensation payable to the Operator in accordance with Clause 17 to the Operator. The

Operator confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement.

The Operator further confirms that payment of compensation by the Authority in accordance with Clause 20.2 shall be a valid discharge of the Authority's obligation to compensate the Operator under this Agreement.

20.3 Vesting Certificate

Upon the Authority and the Operator fulfilling their obligations, as set out in Clause 20.2 and Clause 20.3, respectively, the Authority shall issue a certificate in the form set out at Appendix 3 (**Vesting Certificate**) which shall have the effect of constituting evidence of divestment of all rights and title of the Operator in the Project and their vesting in the Authority. The divestment of all rights and title in the Project shall be deemed to be complete on the date of issue of the Vesting Certificate.

20.4 Divestment Cost

The Operator shall bear and pay all costs incidental to divestment of all the rights, title and interest of the Operator in the Project in favour of the Authority on the Transfer Date.

20.5 Risk

Until transfer in accordance with this Clause 20, the Project shall remain at the sole risk of the Operator except for any loss or damage caused to or suffered by the Operator due to any act or omission or negligence on the part of the Authority under this Agreement.

21. MISCELLANEOUS PROVISIONS

21.1 Survival of Obligations

Any cause or action which may have occurred in favour of a party or any right which is vested in a Party under any of the provisions of this Agreement during the period between the Execution Date and the Transfer Date as a result of any act, omission, deed, matter or thing done or omitted to be done by a Party before the expiry of the Term by efflux of time or otherwise in accordance with the provisions of this Agreement, shall survive the expiry of this Agreement.

21.2 Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project.

21.3 Clauses to Survive Termination

The provisions of this Agreement, including Clause 16, Clause 17, Clause 18, Clause 19 and Clause 20, to the fullest extent necessary to give effect thereto, survive the term of this Agreement/the termination of this Agreement and the obligations of Parties to be performed/discharged following the termination of this Agreement, shall accordingly be performed/discharged by the Parties.

21.4 Non-exhaustive Remedies

- (a) Save and except as provided in this Agreement, the remedies available to the Parties under this Agreement are not exhaustive and Parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (b) Save and except as provided in this Agreement, the exercise of any rights by a Party under this Agreement, shall not preclude such Party from availing any other rights or remedies that may be available to it under this Agreement or under any other agreement executed in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

21.5 Notices

- (a) Any notice or request in reference to this Agreement shall be written in English language and shall be sent by post or email and shall be directed to the other Party at the address mentioned below:

Authority:	Attention:	[•]
	Address:	[•]
	Tel:	[•]
	Email:	[•]
Operator:	Attention:	[•]
	Address:	[•]
	Tel:	[•]
	Email:	[•]

- (b) Each Party may change the above address by prior written notice to the other Parties.

21.6 **Governing Law and Jurisdiction**

This Agreement shall be governed by the laws of India and subject to the exclusive jurisdiction of the courts at Bhubaneswar/ Cuttack.

21.7 **Counterparts**

This Agreement shall be executed in 2 counterparts, each of which, when executed and delivered, shall be an original, and all two counterparts together shall constitute one and the same instrument.

21.8 **Language**

- (a) The formal text of this Agreement and any other agreement executed in relation to the Project shall be in the English language.
- (b) All notices and communications between the Authority and the Operator, required under this Agreement shall be in English.

21.9 **Confidentiality**

No receiving Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any Person or use for any purpose unconnected with the Project any Confidential Information during the Project Period and for a period of 5 years after the Expiry Date or the Termination Date, as the case may be, except to its representatives officers, directors, advisors, employers, agents, contractors and Associates who have a legitimate need to know the Confidential Information in order to perform their duties relating to this Agreement.

21.10 **Amendments**

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- (b) A Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by a Party, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement, as then most recently, if at all, amended, shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

21.11 **Waivers and Consents**

- (a) Any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the Person giving it and shall be effective only in the instance and for the purpose for which it

is given.

21.12 Severability

- (a) If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- (b) The Parties shall negotiate in good faith with a view to agree on one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to them and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the parties.

21.13 Costs and Expenses

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the preparation and execution of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEAL TO THESE PRESENTS ON THE DAY, MONTH & YEAR FIRST ABOVE WRITTEN IN PRESENCE OF THE FOLLOWING WITNESSES:

SIGNED, SEALED & DELIVERED

FOR AND ON BEHALF OF Authority

(Authorised Signatory)

FOR AND ON BEHALF OF Operator

(Authorised Signatory)

Witnesses:

1.

2.

SCHEDULE 1 - PROJECT SITE

Location: The project site of 750 Sq. M is earmarked at temporary transfer station at Gadakana.



SCHEDULE 2 - SCOPE OF SERVICES

As from the Execution Date and throughout the Term, the Operator shall carry out the following key activities

A. Installation of 5 TPD Decentralized Municipal Waste Processing Plant

- i. As per Equipment Installation Plan in Schedule 5, Operator has to supply, install and commission the Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting along with necessary equipment and other accessories and infrastructure as appropriate.
- ii. Insurance: The goods supplied by shall be fully insured in Indian Rupees against loss or damage incidental to manufacture or acquisition, transportation, storage, delivery, completion of installation and commissioning as brought out in Equipment Installation Plan. For delivery of goods at site, the insurance shall be obtained by the Operator, for an amount not less than the price of the goods on “all risks” basis.
- iii. Transportation, storage, demurrage/wharfage, etc.: Operator is required to transport the goods to the Project site and storage of the material till the same are installed.
- iv. Operator shall be responsible transportation of all materials to the site and keeping the same in own safe custody, at site. Authority shall not be the consignee to receive the materials supplied/ delivered. The Operator shall be wholly responsible for any loss, damage & theft.
- v. There should not be any damage what-so-ever, due to work of the systems to site identified under the project and existing infrastructure. All cost incurred due to damages to the site during system delivery / installation, Operation is recoverable from Operator.
- vi. All the tools and plants, including testing and measuring instruments required for the implementation of the project is to be arranged by the Operator.
- vii. Storage for supplies till such time they are consumed on site is in the scope of Operator.
- viii. Operator shall carry out additional civil works and up gradation of infrastructure wherever necessary for proper and reliable operation of the Project. Any alteration to the civil works and facilities provided by the Authority shall be made by the Operator only after prior approval of the Authority in writing.
- ix. Operator shall carry out internal electrification of the Plant and pay the electricity bills during the Term of the Project.
- x. In the design, planning and implementation of the Project facilities, the Operator shall take all such actions and do all such things (including without limitation, organizing itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors, if any, agents and employees) in such manner, as will:
 - (a) Adherence to the Design Standards as per Schedule 3
 - (b) Ensure the safety of personnel deployed in the facility or part thereof;

- (c) Ensure that the machinery employed be used for this Project only;
- (d) Keep the equipment and machinery employed for the Project from undue deterioration and wear.
- xi. Prior to making an application for issuance of a Equipment Commissioning Certificate, the Operator shall finalize and submit to the Authority:
 - (a) the O&M plan
 - (b) Shall conduct the Trial Run and Performance Test as specified in Clause 4.2 of the Agreement.
 - (c) formats for the reports to be submitted during the operations period.

B. O&M Manual

- i. Not later than 15 days prior to the scheduled commissioning date, the Operator shall, evolve an operation and maintenance manual (the “**O&M Manual**”) for the operations, regular and preventive maintenance of the Project in conformity with the maintenance requirements, safety requirements and Good Industry Practice.
- ii. The O&M Manual shall, in particular, include provisions for maintenance of Project assets and shall provide for life cycle maintenance, routine maintenance and periodic maintenance which may be reasonably necessary for maintenance and repair of the Project assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

C. Operation & Maintenance of Project over the Project Term

- i. During the Operation Period, the Operator shall, operate and maintain the Project in accordance with this Agreement either by itself, or through an O&M contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Operator hereunder shall include:
 - (d) Adherence to the Design Standards as per Schedule 3
 - (e) Segregation of bio-degradable waste from the waste supplied by the Employer at the Tipping area and receive 5TPD of waste as per agreed quality supplied by Authority.
 - (f) Processing of bio-degradable waste to compost meeting FCO specifications for Organic Compost.
 - (g) The rejects or the compost produced shall not be left open in the floor of the Plant. It shall always be stored in bags or containers.
 - (h) The fresh waste supplied by Authority shall be cleared from the tipping area on a daily basis and no waste shall lie accumulated at the tipping area
 - (i) Carry out periodic preventive maintenance of the Project

- (j) Undertaking routine maintenance including prompt repairs of all the facilities
 - (k) Market the compost produced;
 - (l) Maintain daily record of incoming waste received, rejects taken back by Authority, compost produced etc.
 - (m) Preventing, with the assistance of the concerned law enforcement agencies, any unauthorised use of the Project;
 - (n) Protection of the environment and provision of equipment and materials thereof;
 - (o) Operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
 - (p) Complying with safety requirements in accordance with applicable laws and good industry practices.
 - (q) The Operator shall in order to monitor the compost quality, at its own cost, sample and test the compost produced as per the requirement.
 - (r) The rejects from the plant shall only be non-biodegradables like inerts and recyclables. Biodegradable shall not be sent to rejects except coconut shells and wooden logs.
 - (s) The Operator shall ensure the security of its equipment and components and in the event of any theft of the equipment or the components, the Operator shall be responsible for arranging a replacement at its own cost and without any reimbursement from the Authority within minimum possible duration.
 - (t) Not more than 100 sqm of area shall be used for storage of finished product. If required, the Operator to arrange for excess storage at a different site at his own cost. The Operator shall take steps to effectively market the compost.
- ii. The Operator shall at its own cost repair, replace and maintain the civil works and facilities provided by the Authority at its own cost in good working condition at all times during the Term.
 - iii. Deployment of qualified/ trained personnel for operation and maintenance and undertaking various other monitoring, inspection, maintenance, repair, replacement, citizen complaints handling related activities to achieve desired operational parameters as specified in this Agreement.
 - iv. Submit Daily, weekly and monthly reporting on citizen complaints, operating status, etc. of the Project to the Authority
 - v. Take adequate insurance at Operator's own cost, during the Project Term against any damage or malfunctioning of equipment along with accessories on account of lightning strike, explosions, aircraft damage, riot, strike and malicious damage, storm, cyclone, typhoon, tempest, hurricane, tornado, flood and inundation, impact damages, subsidence and landslide including rock slide, bursting and / or overflowing of water tanks, apparatus and pipes, earth quakes, theft or any other causes beyond the control of Authority.
 - vi. Maintain updated asset register with complete details of all replacements/ changes/

modifications in the fixtures, infrastructure and other associated equipment/ ancillaries.

- vii. Ensuring knowledge transfer and training of Authority staff for operation and maintenance of Project.
- viii. The Operator shall, in respect of the Project facilities, ensure that:
 - a. applicable and adequate safety measures are taken;
 - b. adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project facilities, due to any of its actions, is minimized and is limited to standard as per the MSW Rules;
 - c. any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimized;
 - d. disturbance or damage or destruction to property of third party by operations of the Project facilities is controlled/minimized;
 - e. data relating to the operation and maintenance of the Project is collected and provided to the Authority or Independent Engineer when required;

D. Safety Requirements:

To ensure compliance with all safety standards and fulfill all the statutory obligations in respect of the deputed staff at its own cost during the Term of the Project;

- a. During the period of installation and the Term of this Agreement, the Operator shall ensure implementation of measures to ensure safety of working personnel, as per all applicable laws in general and with specific focus on hygiene, safety of workers and cleanliness of the facility.
- b. Suitable work instructions/ procedures shall be prepared for each type of work and the working personnel shall be trained at regular intervals by certified trainers on safety issues.
- c. All working personnel shall be provided with appropriate and adequate personal protection and safety equipment.
- d. Operator shall arrange to carryout safety audit at regular intervals by a competent entity possessing valid certificate on safety issues and recommended remedial measures shall be adopted/ implemented in an expeditious manner.

E. Routine Maintenance Standards

In order to ensure smooth and uninterrupted operations, routine maintenance of the Project facilities shall include but not be limited to:

- a) prompt repairs of all the facilities including civil and plant & machinery;
- b) Routine and periodic maintenance of the facilities including civil works constructed by the

Authority for the Project shall be taken care of by the Operator at Operator's own cost.

- c) Operator is responsible for replacement, repair and operation and maintenance of pumps, lighting and any equipment provided by the Authority at Operator's own cost.
- d) The Operator shall adequate security round the clock to secure the site and protect the facility from theft, trespassing, vandalism, damage to property etc.
- e) replacement of equipment/consumables, maintenance and repairs to equipment, structures and other civil works which are part of the Project facilities;
- f) maintaining the shape, scope, full cross-section of the storm water drainage system;
- g) keeping the Project facilities in a clean, tidy and orderly condition and taking all practical measures to prevent damage to the Project facilities or any other property on or near the Sites;
- h) undertaking maintenance works in accordance with the O&M plan;
- i) preventing, with the assistance of law enforcement agencies, where necessary, any unauthorized entry to and exit from and any encroachments including any encroachments on the Sites;
- j) taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the site.

F. Hand over peaceful possession of the Project

- i. After the expiry of term, the Operator shall hand over the plant to the Authority in excellent condition. The Bidder shall demonstrate performance test of all the major and critical equipment to ensure compost production from the plant.
- ii. While handing over the plant, the Operator shall hand over all technical documents, literature, instruction manuals, lists of spare part & tools & tackles, and mandatory spares shall be duly tagged and stored. Operator shall also hand over all the relevant record/documents, spares and consumable required for operation and maintenance.
- iii. On completion of term, the Operator shall apply to the Authority for the issue of Handing-over Certificate and the same will be issued within 1 month of the Handing Over in all respects, after verifying from the documents and tests, and satisfying himself that the operation and maintenance has been completed.
- iv. The condition of the Project as transferred to the Authority on the expiration of the Operation Period or on the Termination Date shall be such that they are fully operational as intended under this Agreement and require only a continuation of the programme of continuous maintenance, as performed regularly by the Operator during the Operations Period, in order to maintain this fully operational condition.

SCHEDULE 3 - DESIGN SPECIFICATIONS

The facility should be designed and implemented in compliance to SWM Rules 2016. The proposed technology must conform to the following conditions:

- a. The technology shall be based on Aerobic Composting.
- b. The proposed facility shall have the capacity to process a minimum of 5 TPD bio-degradable waste to Compost meeting FCO specification for Organic Compost.
- c. The Plant shall be set up within the covered area provided by Authority as given in Schedule 4. Major alterations to the civil works provided by the Authority is not permitted.
- d. The power requirement of the proposed technology shall also be within the connected load that will be provided by the Authority.
- e. The Aerobic Composting process or curing must be done either in a container, rack or a pot etc. and shall not be done on the floor.
- f. The process shall not involve any heat treatment, incineration or burning etc. and it shall also not involve anaerobic digestion producing bio-gas.
- g. The process shall achieve at least 50% volume reduction and maximum rejects to be given back to Authority shall not exceed 20%.
- h. There shall be no leachate discharge from the facility. Suitable measures for leachate management shall be adopted.
- i. The facility shall be odour free at all times.
- j. Provide CCTV cameras at appropriate locations within the Project site to capture the tipping of waste at the tipping area and the operation of the Plant. It shall also have storage and the monitoring system.

SCHEDULE 4 - SCOPE OF AUTHORITY

Scope of Authority during various stages of the Project is given below.

A. On or before handing over of site to the Operator

- a. Construction and provision of the following facilities:
 - i. Barb wire fencing
 - ii. Approx. 750 Sq M area shed completely covered from all sides (for tipping, composting, curing, storage of compost and rejects) with a clear height of 4.5m. The dimensions of the shed shall be 15 m X 50 m. with three rows of columns providing a span of 7.5 m. It will also include toilet block with overhead tank (2 KL).The flooring will be of concrete.
 - iii. Storm water drainage
 - iv. Approach road
- b. Three phase power connection as required subject to maximum of 50 KW connected load. The power connection would be provided upto the site by the Authority complete in all respect including panels, meters etc. The internal electrification of the plant is in the scope of Operator. The Authority shall pay the connection charges. The Operator shall be responsible for payment of the electricity bill during the Term of the Project.
- c. All works related to provision of water supply connection upto the site including connection charges would be done by the Authority.

B. During implementation period

- a. Approval of the Operator's work plan for supply, installation, testing and commissioning of the Project
- b. Assistance to Operator in obtaining any approvals and clearances for implementation and operation of the Project
- c. Approval of the O&M Manual submitted by the Operator
- d. Issuance of Commissioning Certificate after the Authority is satisfied by the necessary requirements of the projects as laid down in Clause 4.1 & 4.2 of the Agreement.
- e. Payment of Capital Subsidy to the Operator on successful commissioning of the Project as per the Payment Terms mentioned in Clause 10.

C. During operation and maintenance period

i. Supply of Waste:

- a. On or before commissioning of the Project, the Authority and the Operator shall agree on the procedure for quantification of the waste in case the weigh bridge is not available for the Project. The waste quantity of 5 TPD may be arrived at on the basis of the capacity of the vehicles and number of trips proposed for transportation of waste to the Project site.
- b. The Authority shall supply 5 TPD of bio degradable waste to the site at its cost. The maximum of mixed waste shall be restricted to 30%. i.e out of 5 TPD a minimum of 3.5 TPD of pure bio-degradable waste shall be provided and a maximum of 1.5 TPD shall be mixed waste with non-biodegradable portion less than 40%. The Operator shall have the right to refuse any lot of waste delivered by BMC containing more non-biodegradable waste

ii. Transportation and Disposal of Rejects and Non-Biodegradable Waste

The Authority shall be responsible for collection and transportation of the rejects from the Facility to the designated disposal site. Rejects from the input waste containing non-biodegradable like plastic, paper etc. shall be stored separately within the plant premises as resource recovery area and will be taken back by the Authority.

SCHEDULE 5 - LIQUIDATED DAMAGES

1) Delay Liquidated Damages

Subject to Article 11.1, in the event the Operator fails to achieve the Project COD by the Project SCOD for reasons other than those set out in Article 11.1, it shall pay liquidated damages (**Delay Liquidated Damages**) to the Authority as per the following. The payment of Delay Liquidated Damages shall be as per the provisions of Article 11.3 of this Agreement.

- a) For each week of delay beyond Project SCOD and up to a maximum of four (4) weeks, the Operator shall be liable to pay Authority, Delay Liquidated Damages of an amount equal to Fifty Thousand Indian Rupees for each week of delay.
- b) Any delay beyond Thirty (30) days beyond Project SCOD, it shall be treated as Operator Event of Default and the Authority shall have the right to terminate this Agreement under Clause 16.1 and encash the Performance Security.

2) Performance Liquidated Damages

The Operator shall process 5 TPD of municipal waste everyday at the plant. If the Operator fails to operate the plant at full capacity i.e. 5 TPD, due to break down of machinery or due to any other reason other than Force Majeure or Authority Event of Default, Operator shall immediately notify Authority regarding the same and declare the reduced operational capacity of the Plant (Authority has the right to inspect the facility and confirm the same). Under such circumstances, the Operator shall be liable to pay liquidated damages as follows:

A. Partial operation of the facility (if the reduced operational capacity is greater than or equal to 2.5 TPD)

- (i) Operator shall be paid Tipping Fee to the extent of actual waste processed per day (As declared by the Operator and confirmed by the Authority).
- (ii) The Authority will supply waste only to the extent of the quantum of the waste that the plant can process during this period.
- (iii) The Operator shall pay liquidated damages @ 50% of the Tipping Fee for the portion of waste not processed by the Operator as per the Agreement. For the sake of clarity if the Operator operates only 3 TPD, then the Operator shall pay Liquidated Damages @ 50% of the Tipping Fee for 2 TPD.
- (iv) The Operator shall restore the plant to its full capacity i.e. 5 TPD within 30 days of notice by the Operator (i.e. within 30 days from the date of partial failure of the plant). If the Operator fails to restore the plant to its full capacity within 30 days, it will be considered as an Event of Default of Operator.

B. Failure to operate the facility (if the reduced operational capacity is less than 2.5 TPD)

- (i) The Authority shall not supply waste to the Plant till the Operator restores the plant to its full capacity
- (ii) No Tipping Fees shall be paid by the Authority to the Operator.
- (iii) The Operator shall pay liquidated damages @ 50% of the Tipping Fee for the period till the plant is restored to its full capacity.

- (iv) If the Operator fails to restore the plant to its full capacity within 30 days, it will be considered as an Event of Default of Operator.
- (v) If Authority observes that untreated waste is accumulated at the site for more than 2 continuous days it would be treated as “Failure to operate the facility”. The Authority shall notify the same to the Operator and Liquidated Damages as per this clause shall be applicable.

APPENDIX 1

FORMAT OF THE ESCROW AGREEMENT

(To be executed on appropriate stamp paper of appropriate value)

THIS ESCROW AGREEMENT (this **Escrow Agreement**) is entered into on _____ by and among:

1. [Commissioner], Bhubaneswar Municipal Corporation, with its principal office at _____ (hereinafter referred to as the **Authority**, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns);
2. [Name of the Selected Bidder], with its registered office at _____ (hereinafter referred to as the **Operator**, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns); and
3. _____, a bank duly constituted in accordance with the laws of India and carrying on the business of banking in India as a scheduled commercial bank, with its registered office at _____ and acting for the purposes of this Escrow Agreement through its branch office at _____ (hereinafter referred to as **Escrow Agent**, which expression shall unless repugnant to the context or meaning thereof includes its successors and permitted assigns).

The Authority, the Operator and the Escrow Agent are referred to herein collectively as **Parties** and individually as **Party**.

WHEREAS:

- A. The Authority and the Operator executed the Supply, Installation, Operation and Maintenance Agreement on _____ (**Agreement**) for developing a 5 TPD Decentralized Municipal Solid Waste Processing Plant using Aerobic Composting(the Project).
- B. As per the provisions of the Agreement, the Authority and the Operator are required to appoint an escrow agent and open an escrow account with such agent for making periodical payments to the Operator for implementing the Project.
- C. The escrow account shall be funded by the Authority in accordance with the terms of this Escrow Agreement and such account shall serve to secure the Authority's payment

obligations towards the Operator under the Agreement.

- D. The Escrow Agent is willing to serve as an escrow agent in accordance with the terms and conditions of this Escrow Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. ESCROW ACCOUNT

1.1 Appointment

The Authority and the Operator hereby appoint the Escrow Agent to serve as the escrow agent for the purposes of this Escrow Agreement and the Escrow Agent hereby accepts this appointment.

1.2 Escrow Account

Within 5 Business Days of the date hereof, the Authority and the Escrow Agent shall establish an escrow bank account denominated in Indian Rupees for the benefit of the Operator (the **Escrow Account**).

1.3 Deposit and Payment

- 1.3.1 The Authority shall transfer the 50% Capital Subsidy in the Escrow Account within 15 Business Day of entering into Escrow Agreement in accordance with the provisions of the Agreement. Within 15 Business Days, the Authority shall replenish the Escrow Account with amount equal to the next installment of Capital Subsidy as per the Agreement.

1.3.2 The Authority shall at all times on COD, fund the Escrow Account with an amount equivalent to Tipping Fee for 3 Months in relation to the Project. Within 15 days of payment released as per clauses 1.3.3, 1.3.4 and 1.3.5, the Authority shall replenish the Escrow Account with required amount.

- 1.3.3 The Authority shall issue written instructions to the Escrow Agent to release Capital Subsidy to the Operator in accordance with the provisions of Clause 10 of the Agreement. Within 1 Business Day of receipt of such written instructions, the Escrow Agent shall release the amount mentioned therein to the Operator; and

1.3.4. Within 7 Business Days from the receipt of a monthly Payment Statement, the Authority shall issue written instructions to the Escrow Agent to release 75% of the Tipping Fee to the Operator for the relevant month. Within 1 Business Day of receipt of such written instructions, the Escrow Agent shall release the amount mentioned therein to the Operator.

1.3.5 Subject to Clause 1.3.6 below, the Authority shall, within 10 days from the acceptance of a monthly Payment Statement, issue written instructions to the Escrow Agent to release the balance 25% of the Tipping Fee to the Operator for the relevant month. Within 1 Business Day of receipt of such written instructions, the Escrow Agent shall release the amount mentioned therein to the Operator.

1.3.6 If the Authority wishes to exercise its right to set-off any amount due to the Operator against

any amounts due and payable from the Operator to the Authority from the remaining 25%, it shall issue written instructions accordingly to the Escrow Agent.

1.4 Identification and Separation

The Escrow Agent shall clearly identify in its records the Escrow Account as an escrow account and shall keep the funds standing to the credit of the Escrow Account separated and segregated from the Escrow Agent's own funds or funds of any of its other customers or third parties.

1.5 Fees

1.5.1 The Operator shall pay Rs. _____ per annum as fees to the Escrow Agent for the establishment and management of the Escrow Account. The Operator shall pay such fees to the Escrow Agent within 10 Business Days of receipt of an invoice from the Escrow Agent.

1.5.2 Any payment made by the Authority under this Escrow Agreement shall be made from the following account or from such other account which the Authority may designate from time to time:

Bank:

Account number: BIC (SWIFT):

Address of Bank:

1.6 Escrow Account Statements

The Escrow Agent shall provide monthly statements regarding the Escrow Account to the Authority and the Operator.

2. ESCROW AMOUNT

2.1 Promptly upon the Escrow Amount being transferred to the Escrow Account, the Escrow Agent shall send to the Authority and the Operator a notice informing them of the transfer.

2.2 The Escrow Agent shall hold the Escrow Amount in escrow for the sole benefit of the Operator. The Escrow Agent shall not release any of the Escrow Amount to any person other than the Operator. In particular, the Escrow Agent shall not accept any requests for withdrawals or transfers of the Escrow Amount from the Authority for the benefit of the Authority or any third party, unless it is made in accordance with this Escrow Agreement.

2.3 The Escrow Agent shall not apply any right of set-off against the Escrow Amount, grant any lien over the Escrow Amount, or apply any fee or deduction in relation to the Escrow Amount.

3. EXPIRY

Upon the Transfer Date, the Authority shall send instructions to the Escrow Agent requesting it to release and transfer any due and payable amounts to the Operator and any remaining amounts to be transferred to the Authority.

4. OBLIGATIONS OF THE ESCROW AGENT

4.1 The obligations of the Escrow Agent under this Escrow Agreement are subject to the following terms:

- (a) the duties of the Escrow Agent are only as herein specifically provided, and are purely administrative in nature. Unless expressly provided in the Escrow Agreement, the Escrow Agent shall neither be liable for, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document in connection herewith, including, without limitation, the Agreement, and shall be required to act in respect of the Escrow Amount only as provided in this Escrow Agreement. This Escrow Agreement sets forth all the obligations of the Escrow Agent with respect to any and all matters pertinent to the Escrow Account contemplated hereunder and no additional obligations of the Escrow Agent shall be implied from the terms of any other agreement. The Escrow Agent shall incur no liability in connection with the discharge of its obligations under this Escrow Agreement or in connection therewith, except such liability as may arise from the Escrow Agent's negligence, wilful misconduct or otherwise from any breach of this Escrow Agreement. Such liability, however, shall not exceed the amount of the Escrow Amount outstanding at the date of the said breach by the Escrow Agent;
- (b) the Escrow Agent shall not be required to perform any acts which will violate any Applicable Laws; and
- (c) in the event of any bankruptcy proceedings or enforcement proceedings against any of the Parties pursuant to applicable laws or regulations, the Escrow Agent shall, notwithstanding the provisions of this Escrow Agreement, act and perform in accordance with Applicable Laws.

5. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that, as of the date hereof and in the foreseeable future,:

- (a) it has the authority to enter into this Escrow Agreement;
- (b) this Escrow Agreement constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms;
- (c) its entry into and/or performance under this Escrow Agreement will not be in breach of any express or implied terms of any contract with or other obligation to any third party; and

(d) it is solvent and able to perform all of its obligations under this Escrow Agreement.

6. MISCELLANEOUS

6.1 Definitions

Unless otherwise defined herein, all capitalised terms shall have the meaning ascribed to them in the Agreement.

6.2 Notices

Any notice or other communication to be given or made under this Escrow Agreement to the Parties shall be in writing. Except as otherwise provided in this Escrow Agreement, such notice, request or other communication shall be delivered by registered mail or facsimile to the Party(ies) at the following addresses:

Authority: [●]

Operator: [●]

Escrow Agent: [●]

6.3 Entire Agreement

This Escrow Agreement constitutes the entire agreement and understanding between the Parties with respect to its subject matter (i.e. escrow arrangement) and replaces and supersedes all prior agreements, arrangements, undertakings or statements regarding such subject matter.

6.4 Amendments

No variation of or amendment to this Escrow Agreement shall be effective unless made in writing and executed by all the Parties hereto.

6.5 Assignment

Neither this Escrow Agreement nor any of the rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Parties.

6.6 Severability

Whenever possible, each provision of this Escrow Agreement shall be interpreted in such a way as to be effective and valid under law, but if any provision of this Escrow Agreement is unenforceable or invalid under law, such provision shall be ineffective only to the extent of

such unenforceability or invalidity, and the remaining provisions of this Escrow Agreement shall continue to be binding and in full force and effect.

6.7 Confidentiality

Unless otherwise determined by a competent jurisdiction, the Parties, their employees, representatives and agents shall keep the provisions of this Escrow Agreement strictly confidential and, except as may be required by Applicable Laws, shall make no disclosure thereof to any person, except the Parties' respective legal counsel and professional advisers, without the prior written consent of the other Parties.

6.8 Termination

This Escrow Agreement shall be automatically terminated upon the expiry of the Term of the Agreement. It may also be terminated earlier if the Authority and Operator agree to terminate the Escrow Agreement and send a termination notice to the Escrow Agent.

6.9 Dispute Resolution Mechanism

- 6.9.1 This Escrow Agreement shall be governed by and construed in accordance with the laws of India.
- 6.9.2 If any dispute arises out of or in connection with this Escrow Agreement, this dispute shall not affect the Parties' duty to continue the performance of all of their non-disputed obligations.
- 6.9.3 If any dispute arises, either Party shall give notice to the other Parties of the same, whereupon the Parties shall meet promptly and in a good faith to attempt to reach an amicable settlement.
- 6.9.4 All disputes not settled amicably pursuant to Clause 6.9.3 above shall be heard by the High Courts of Bhubaneswar/ Cuttack.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEAL TO THESE PRESENTS ON THE DAY, MONTH & YEAR FIRST ABOVE WRITTEN IN PRESENCE OF THE FOLLOWING WITNESSES:

SIGNED, SEALED & DELIVERED

FOR AND ON BEHALF OF THE AUTHORITY

(Authorised Signatory)

FOR AND ON BEHALF OF THE OPERATOR

(Authorised Signatory)

Witnesses: 1.

2.

APPENDIX 2

FORMAT OF THE PERFORMANCE BANK GUARANTEE

(To be executed on appropriate stamp paper of appropriate value)

Bank Guarantee No. _____

THIS DEED OF GUARANTEE is executed on this [insert date] day of [insert month and year] at [insert place] by [insert name of bank] having its head/registered office at [insert address], (hereinafter referred to as the "**Guarantor**", which expression shall unless repugnant to the subject or context thereof include its successors, assigns and permitted substitutes);

IN FAVOUR OF:

[**Commissioner**], **BHUBANESWAR MUNICIPAL CORPORATION**, with its principal office at [●] (hereinafter referred to as the **Authority**, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns).

WHEREAS

- A. The Authority has entered into a Supply, Installation, Operation and Maintenance Agreement dated [insert date] (the "**Agreement**") with [Name of the Selected Bidder], with its registered office at [Registered office address] (hereinafter referred to as the **Operator**, which expression shall unless repugnant to the context or meaning thereof includes its successors and permitted assigns).
- B. In terms of Clause 9 of the Agreement, the Operator is required to furnish to the Authority, an unconditional, irrevocable, on demand bank guarantee for an amount of INR 5,00,000 as security for due performance of its obligations under the Agreement during the commencing from the date of this guarantee until the Transfer Date (**Guarantee Term**), including any amounts due and payable by it to Delay Liquidated Damages or Performance Liquidated Damages that it is liable to pay under the Agreement.
- C. At the request of the Operator and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee for the due and punctual performance/discharge by the Operator of its obligations under the Agreement during the Term, including any Delay Liquidated Damages or Performance Liquidated Damages that the

Operator is liable to pay under the Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Agreement.
2. The Guarantor hereby irrevocably and unconditionally guarantees and secures, as primary obligor and not merely as guarantor, to the Authority, the payment in full of all amounts at any time that may be due, owing or payable to the Authority from the Operator for the failure of the Operator to duly and punctually perform all of its obligations under the Agreement during the Guarantee Term ("**Guarantee**"), without any demur, reservation, protest or recourse, immediately on receipt of a demand from the Authority.

The Guarantee is given on consideration received from the Operator (the receipt and sufficiency of which is hereby acknowledged).

The Guarantor agrees that the value of the Guarantee shall at all times be maintained at the amount of INR Five Lakhs ("**Guaranteed Amount**").

The Guarantor further agrees that this Guarantee does not limit the number of claims that may be made by the Authority against the Guarantor. Upon a payment being made under this Guarantee, the amount of the Guarantee shall automatically be replenished to the full Guaranteed Amount.

Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future Taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any Applicable Law, the Guarantor shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Authority receives the full amount due hereunder as if no such withholding had occurred.

3. The Guarantor shall not go into the veracity of any breach or failure on the part of the Operator or validity of demand so made by the Authority and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provision hereof.
4. The obligations of the Guarantor herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Agreement or the insolvency, bankruptcy, re-organisation, dissolution or liquidation of the Operator or any change in ownership of the Operator or any purported assignment by the Operator or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Guarantee is in no way conditional upon any requirement that the Authority shall first attempt to procure the Guaranteed Amount from the Operator or any other Person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor

as the principal debtor. The obligations of the Guarantor under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Guarantor from any of the Guaranteed Amount or prejudice or diminish the Guaranteed Amount in whole or in part, including, whether or not known to it, or to the Authority:

- (a) any time or waiver granted to, or composition with, the Operator or any other Person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the status of the Operator or any other Person;
 - (c) any variation of the Agreement so that references to the Agreement in this Guarantee shall include each variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of any Person under the Agreement or any unenforceability, illegality or invalidity of the obligations of the Guarantor under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or Guarantee, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;
 - (e) the partial or entire release of any Guarantor or other Person primarily or secondarily liable or responsible for the performance, payment or observance of any of the Operator's obligations during the Term; or by any extension, waiver, or amendment whatsoever which may release a guarantor or Guarantor, other than performance or indefeasible payment of a Guaranteed Amount; or
 - (f) any part performance of the Agreement by the Operator or by any failure by the Authority to timely pay or perform any of its obligations under the Agreement.
6. If, and to the extent that for any reason the Operator enters or threatens to enter into any proceedings in bankruptcy or re-organisation or otherwise, or if, for any other reason whatsoever, the performance or payment by the Operator of the Guaranteed Amount becomes or may reasonably be expected to become impossible, then the Guaranteed Amount shall be promptly paid by the Guarantor to the Authority on demand.
7. So long as any amount is due from the Operator to the Authority, the Guarantor shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Operator, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of the Operator or any such other Person in competition with the Authority. If the Guarantor receives any payment or benefit in breach of this Clause 7, it shall hold the same upon trust for the Authority.
8. This Guarantee shall remain in full force and effect from the date hereof until the Transfer Date.

Notwithstanding the foregoing, this Guarantee shall continue in effect until the sums payable under this Guarantee have been indefeasibly paid in full and the Guarantor receives written notice thereof from the Authority, such notice to be issued promptly upon such occurrence.

9. The Guarantor represents and warrants to the Authority that:
 - (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorise the execution, delivery and performance by it of this Guarantee;
 - (b) the Guarantor has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;
 - (c) neither the execution, delivery or performance by the Guarantor of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Guarantor is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor's constituent documents;
 - (d) no order, consent, approval, license, authorisation or validation of, or filing, recording or registration with, except as have been obtained or made prior to the date hereof, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee; and
 - (e) this Guarantee will be enforceable when presented for payment to the Guarantor's branch in Bhubaneswar at [●].
10. This Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of the Authority in exercising any right, power or privilege hereunder and no course of dealing between the Authority and the Guarantor, or the Operator, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
11. The rights, powers and remedies expressly provided in this Guarantee are cumulative and not exclusive of any rights, powers or remedies which the Authority would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Authority to any other or further action in any circumstances without notice or demand.
12. If any one or more of the provisions contained in this Guarantee are or become invalid,

illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Guarantor shall enter into good faith negotiations with the Authority to replace the invalid, illegal or unenforceable provision.

13. The Guarantor hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Guarantee.
14. This Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Guarantor and the Authority shall constitute a single binding agreement.
15. The Authority may assign or transfer all or any part of its interest herein to any other person with prior written notice to the Guarantor. The Guarantor shall not assign or transfer any of its rights or obligations under this Guarantee.
16. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon the Authority, at [insert address]; and
 - (b) upon the Guarantor, at [insert address].
17. Any demand, notice or communication would have been deemed to have been duly served:
 - (a) if delivered by hand, when left at the proper address of services; and
 - (b) if given or made by pre-paid registered or speed post, when received.
18. Either party may change the above address by prior written notice to the other party.
19. This Guarantee shall be governed by, and construed in accordance with, the laws of India. The Guarantor irrevocably agrees that any dispute arising out of or relating to this Guarantee will be adjudicated in accordance with the provision of the Arbitration and Conciliation Act, 1996.

IN WITNESS WHEREOF the Guarantor has set its hands hereunto on the Day, Month and year first hereinabove written.

Signed and delivered by [insert name of Bank] Bank by hand

of Mr. [insert name of signatory]

its [insert designation] and duly authorised representative

authorised by [Power of Attorney dated [insert date]] or [Board resolution dated [insert date]].

APPENDIX 3

FORMAT OF THE VESTING CERTIFICATE

With respect to the Supply, Installation, Operation and Maintenance Agreement dated _____ executed between [Insert designation of the official signing the Agreement] and [Insert name of the Selected Bidder] (the **Operator**) for the implementation of the Project hereby acknowledges:

- (a) compliance and fulfillment by the Operator of its obligations set out in Clause 20;
- (b) receipt of actual possession of the Project from the Operator; and
- (c) receipt from the Operator of a certificate confirming that there are no liens or encumbrances whatsoever on the Project,

on the basis that upon the issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Operator in or about the Project shall be deemed to have vested, unto the Authority free from all Encumbrances.

Notwithstanding anything to the contrary contained hereinabove it shall be a condition of this Vesting Certificate that in the event of any defect or efficiency in any of the transfer requirements set forth in Clause 20 of the Agreement being found or discovered at any time hereafter, nothing contained in this Vesting Certificate shall be construed or interpreted as waiving the obligation of the Operator to rectify and remedy the same and/or relieving the Operator in any manner of the same.

Agreed and accepted

For the Operator

By:..... Name:

Title: Dated:

For Authority

By:..... Name:

Title: Dated: