

POWER PURCHASE AGREEMENT
FOR
PROCUREMENT OF 210MW POWER ON LONG TERM BASIS

Between

G20 Environmental Solutions Group ("G20ESG")

And

The New Delhi Municipal Corporation ("NDMC")

[Insert month and year]

ARTICLE 1: DEFINITIONS.....5

ARTICLE 3: CONDITIONS SUBSEQUENT..... 14

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT 15

**ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL
OPERATION..... 19**

ARTICLE 6: DISPATCH 20

ARTICLE 7: METERING 21

ARTICLE 8: INSURANCES 22

ARTICLE 9: APPLICABLE TARIFF 23

ARTICLE 10: BILLING AND PAYMENT 24

ARTICLE 11: FORCE MAJEURE 29

ARTICLE 12: CHANGE IN LAW 32

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION 33

ARTICLE 14: LIABILITY AND INDEMNIFICATION..... 37

ARTICLE 15: GOVERNING LAW AND DISPUTE RESOLUTION 40

ARTICLE 16: MISCELLANEOUS PROVISIONS..... 42

This Power Purchase Agreement is made on the Day of of 2014 at

Between

G20 Environmental Solutions Group Singapore Pte Ltd, having its registered office at Level 30, 6 Battery Road, Singapore 049909 (hereinafter referred to as "Renewable Energy Power Developer" or "REPD", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) as a Party of the first part;

And

New Delhi Municipal Corporation, having its registered office at Palika Kendra, Parliament Street, New Delhi 110017 (hereinafter referred to as "NDMC", which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) as a Party of the second part.

The REPD and NDMC are individually referred to as 'Party' and collectively referred to as 'Parties'.

Whereas:

1. NDMC is the purchasing entity for the purchase of 210MW of grid connected renewable energy generated power from Municipal Solid Waste ("MSW").
2. The REPD has been declared as a successful bidder of the 'PPP Project for three mini waste-to-energy plants in the NDMC Area': via the Global Request for Proposal, issued by NDMC in June 2014 and has been issued a Letter of Intent (LOI) No. 688 dated 17 July 2014 for the development of a waste-to-energy project, and the generation and sale of municipal solid waste-to-energy power under the above project.
3. Pursuant to the issuance of a LOI by NDMC to the REPD, the REPD has agreed to set up three mini waste-to-energy plants based on the G20ESG waste-to-energy process of three 1.7MW capacity mini power plants in the NDMC area.
4. The REPD has agreed to sign this Power Purchase Agreement with NDMC as per the terms and conditions of this Agreement.
5. NDMC has agreed to purchase such power from the REPD as an intermediary seller and sell it to Buying Utilities as per the responsibility of NDMC.
6. NDMC has agreed to sign a Power Sale Agreement with the Buying Utilities to sell such power as delivered by the REPD.

7. NDMC agrees to procure power from the REPD up to the Contracted Capacity (as defined herein) at INR 8/kWh, as per the terms of this Agreement.
8. The Parties hereby agree to execute this Power Purchase Agreement setting out the terms and conditions for the sale of power by the REPD to NDMC.

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES AND MUTUAL AGREEMENTS, COVENANTS AND CONDITIONS SET FORTH HEREIN; IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

ARTICLE 1: DEFINITIONS

1.1 Definitions

The terms used in this Agreement, unless as defined below or repugnant to the context, shall have the same meaning as assigned to them by the Electricity Act, 2003 and the rules or regulations framed thereunder, including those issued/framed by the Appropriate Commission (as defined hereunder), as amended or re-enacted from time to time.

"Act" or "Electricity Act, 2003" :	shall mean the Electricity Act, 2003 and include any modifications, amendments and substitution from time to time;
"Agreement" or "Power Purchase Agreement" or "PPA"	shall mean this Power Purchase Agreement including its recitals and schedules, amended or modified from time to time in accordance with the terms hereof;
Appropriate Commission	shall mean the Central Electricity Regulatory Commission referred to in sub-section (1) of section 76 or the State Electricity Regulatory Commission referred to in section 82 or the Joint Electricity Regulatory Commission referred to in Section 83 of the Electricity Act 2003, as the case may be;
"Bill Dispute Notice"	shall mean the notice issued by a Party raising a Dispute regarding a Monthly Bill or a Supplementary Bill issued by the other Party;
"Business Day"	shall mean with respect to the REPD and NDMC, a Day other than Sunday or a statutory holiday, on which the banks remain open for business in Delhi;
"Buying Utilities"	shall mean Discoms/State Utilities/Bulk Consumers who have signed the PSA (s) with NDMC for purchase of power;
"CERC"	shall mean the Central Electricity Regulatory Commission of India, constituted under sub-section (1) of Section 76 of the Electricity Act, 2003, or its successors;
"Change in Law"	shall have the meaning ascribed thereto in Article 12 of this Agreement;
"Commissioning"	shall have the meaning ascribed thereto in Article 5 of this Agreement;
"Commercial Operation Date (COD)"	shall mean the actual commissioning date of the full capacity of the Power Project where upon the REPD starts injecting power from the Power Project to the Delivery Point;
"Competent Court of Law"	shall mean any court or tribunal or any similar judicial or quasi-judicial body in India that has jurisdiction to adjudicate upon issues relating to this Agreement;
"Consents, Clearances and Permits"	shall mean all authorizations, licenses, approvals, registrations, permits, waivers, privileges, acknowledgements, agreements, or concessions required to be obtained from or provided by any concerned authority for the purpose of setting up of the generation facilities and/or supply of power;

"Consultation Period"	: shall mean the period of sixty (60) Days or such other longer period as the Parties may agree, commencing from the date of issuance of a REPD Preliminary Default Notice or NDMC Preliminary Default Notice as provided in Article 13 of this Agreement, for consultation between the Parties to mitigate the consequence of the relevant event having regard to all the circumstances;
"Contract Year"	: shall mean the period beginning from the Effective Date and ending on the immediately succeeding March 31 and thereafter each period of twelve (12) Months beginning on April 1 and ending on March 31 provided that: (i) in the financial year in which the Scheduled Commissioning Date would occur, the Contract Year shall end on the date immediately before the Scheduled Commissioning Date and a new Contract Year shall commence once again from the Scheduled Commissioning Date and end on the immediately succeeding March 31, and thereafter each period of twelve (12) Months commencing on April 1 and ending on March 31, and; (ii) provided further that the last Contract Year of this Agreement shall end on the last Day of the Term of this Agreement;
"Contracted Capacity"	: shall mean the 5.1MW of electricity contracted with NDMC for supply by the REPD to NDMC at the Delivery Point which has been generated from the MSW Power Project;
"Day"	: shall mean a Day, if not a Business Day, the immediately succeeding Business Day;
"Delivery Point"	: shall be the point at which the Renewable Energy Power Developer (REPD) shall deliver the power to NDMC. The metering for sale shall be done at this point. The Delivery Point is to be as agreed by the Parties and is to be located, within or at the boundary of the Project Site, as defined as the location for the Waste-to-Energy Project as per the arrangements of the Waste Concession Agreement between NDMC and the REPD for the NDMC Mini Waste-to-Energy Project. All charges and losses up to the Delivery Point shall be borne by the REPD and after the Delivery Point by NDMC or CTU / STU/Transmission Utility or the Buying Utilities;
"Delivery Facilities"	: The cost for the building and maintenance of the Delivery Facilities on the REPD side of the Delivery Point, will lie with the REPD. The Delivery Facilities on the REPD's side of the Delivery

		Point in accordance with this Agreement and which shall include, without limitation, any transmission lines to this point and associated equipment, transformers, relay and switching equipment and energy generation protective devices, and the metering system required for supply of power as per the terms of this Agreement. The cost for any construction and maintenance on the NDMC side of the Delivery Point will lie with the NDMC.
"Discoms"	:	shall mean the distribution utility or the distribution utilities who have signed the PSA (s) with NDMC for purchase of the power purchased;
"Dispute"	:	shall mean any dispute or difference of any kind between NDMC and the REPD, in connection with or arising out of this Agreement including but not limited to any issue on the interpretation and scope of the terms of this Agreement as provided in Article 16 of this Agreement;
"Due Date"	:	shall mean the thirtieth (30th) Day after a Monthly Bill or a Supplementary Bill is received by NDMC , if such Day is not a Business Day, the immediately succeeding Business Day, by which date such Monthly Bill or a Supplementary Bill is payable by NDMC;
"Effective Date"	:	shall have the meaning ascribed thereto in Article 2.1 of this Agreement;
"Electricity Laws"	:	shall mean the Electricity Act, 2003 and the rules and regulations made there under from time to time along with amendments thereto and replacements thereof and any other Law pertaining to electricity including regulations framed by the Appropriate Commission;
"Event of Default"	:	shall mean the events as defined in Article 13 of this Agreement;
"Expiry Date"	:	shall mean the date occurring twenty five (25) years from the Commercial Operation Date of the Project subject to that the supply of power shall be limited for a period of twenty five (25) years from the Unit Commercial Operation Date of each of the respective Unit(s);
"Financing Agreements"	:	shall mean the agreements pursuant to which the REPD has obtained financing for the Power Project including the loan agreements, security documents, notes, indentures, security agreements, letters of credit and other documents, as may be amended, modified, or replaced from time to time, but without in any way increasing the liabilities of NDMC;

"Force Majeure" or "Force Majeure Event"	:	shall have the meaning ascribed thereto in Article 11 of this Agreement;
"Grid Code" / "IEGC" or "State Grid Code"	:	shall mean the Grid Code specified by the CERC under Clause (h) of Sub-section (1) of Section 79 of the Electricity Act, as amended from time to time, and/or the State Grid Code as specified by the concerned State Commission, referred under Clause (h) of Sub-section (1) of Section 86 of the Electricity Act 2003, as applicable;
"Incremental Receivables"	:	shall have the same meaning as provided in Article 10.4.9 of this PPA;
"Indian Governmental Instrumentality"	:	shall mean the Government of India, Governments of the National Capital Territory in India, where the Power Project, NDMC and REPD are located] and any ministry, department, board, authority, agency, corporation, commission under the direct or indirect control of Government of India or any of the above state Government(s) or both, any political sub- division of any of them including any court or Appropriate Commission(s) or tribunal or judicial or quasi-judicial body in India;
"Insurances"	:	shall mean the insurance cover to be obtained and maintained by the REPD in accordance with Article 8 of this Agreement;
"Interconnection Facilities"	:	shall mean any and all infrastructure required between the Delivery Point to the Interconnection Point to the grid including but not limited to any transmission lines between the Delivery Point and Interconnection Point;
"Interconnection Point"	:	shall mean the point where the power is injected into the Central Transmission unit (CTU)/State Transmission Utility (STU) or any other transmission utility (including the dedicated transmission line connecting the Power Project with the CTU/STU/any other transmission utility system). The responsibility of connecting the Delivery Point with the Interconnection Point will lie with NDMC;
"Invoice" or "Bill"	:	shall mean either a Monthly Bill/Supplementary Bill or a Monthly Invoice/Supplementary Invoice raised by any of the Parties;
"Late Payment Surcharge"	:	shall have the meaning ascribed thereto in Article 10.3.3 of this Agreement;
"Law"	:	shall mean in relation to this Agreement, all laws including Electricity Laws in force in India and any statute, ordinance, regulation, notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law and shall further include without limitation all applicable rules, regulations, orders, notifications by an Indian Governmental Instrumentality pursuant to or under any of them and shall include without limitation all rules, regulations, decisions and orders of the Appropriate Commissions;
"Letter of Credit"	:	shall have the meaning ascribed thereto in Article 10.4 of this

or "L/C"	Agreement;
"Metering point"	: metering is to be conducted at the Delivery Point where the power, provided by the REPD for purchase by the NDMC;
"Month"	: shall mean a period of thirty (30) Days from (and excluding) the date of the event, where applicable, else a calendar month;
NDMC	shall refer to New Delhi Municipal Council as the purchaser of the electricity supplied by the REPD, as the Concessionaire of the Waste Concession Agreement for the NDMC Mini Waste-to-Energy Project;
NDMC Mini Waste-to-Energy Project	Shall refer to the public tender document number issued by the NDMC and Letter of Intent No. 688 as issued by NDMC to G20ESG.
"Party" and "Parties"	: shall have the meaning ascribed thereto in the recital to this Agreement;
"Payment Security Mechanism"	: shall have the meaning ascribed thereto in Article 10.4 of this Agreement;
"Power Project" or "Project"	: shall mean the MSW power generation facility of installed capacity of 70 MW, located at Arjun Das Camp in New Delhi. This includes all equipment of the Waste-to-Energy facility along with auxiliaries such as water supply, treatment or storage facilities; bay/s for transmission system in the switchyard, dedicated transmission line up to the Delivery Point and all the other assets, buildings/structures, equipment, plant and machinery, facilities and related assets required for the efficient and economic operation of the power generation facility; whether completed or at any stage of development and construction or intended to be developed and constructed for the purpose of supply of power as per this Agreement;
"Power Purchase Agreement" or "PPA"	: This agreement. The PPA is the Power Purchase Agreement entered between the REPD and NDMC for the purchase of the power generated by the Project and purchased from the REPD by the NDMC.
"Power Sale Agreement" or "PSA"	: shall mean the Power Sale Agreement entered between the Buying Utilities and NDMC (NDMC - Buying Utilities PSA) for selling the power generated by the Project.
"Preliminary Default Notice"	: shall have the meaning ascribed thereto in Article 13 of this Agreement;

Project Site	<p>Shall mean the site for the Project, defined under the terms of the Waste Concession Agreement as the land at Arjun Das Camp, made available to G20ESG as the REPD and the Concessionaire by NDMC under the terms of those Agreements.</p> <p>The Project Site also contains the Delivery Point;</p>
"Prudent Utility Practices"	<p>shall mean the practices, methods and standards that are generally accepted internationally from time to time by electric utilities for the purpose of ensuring the safe, efficient and economic design, construction, commissioning, operation and maintenance of power generation equipment and which practices, methods and standards shall be adjusted as necessary, to take account of:</p> <p>a) operation and maintenance guidelines recommended by the manufacturers of the plant and equipment to be incorporated in the Power Project;</p> <p>b) the requirements of Indian Law; and the physical conditions at the site of the Power Project;</p>
"Purchaser"	shall refer to NDMC as the purchaser of the electricity delivered by the REPD under the terms of this Agreement and in accordance with Article 9 of this Agreement;
"RBI"	shall mean the Reserve Bank of India;
"Rupees", "Rs.", "₹"	shall mean Indian rupees, the lawful currency of India;
"Scheduled Commissioning Date"	shall mean [Insert Date];
"State Transmission Utility" or "STU"	shall mean the Board or the Government company notified by the respective State Government under Sub-section (1) of Section 39 of the Act;
"Tariff"	shall have the same meaning as provided for in Article 9 of this Agreement;
"Tariff Payment"	shall mean the payments to be made under Monthly Bills as referred to in Article 10 and the relevant Supplementary Bills;
"Termination Notice"	shall mean the notice given by either Parties for termination of this Agreement in accordance with Article 13 of this Agreement;
"Term of Agreement"	shall have the meaning ascribed thereto in Article 2 of this Agreement;

"Unit"	shall mean 1.7 MW capacity of the Project located within the Project premise;
"Unit Commercial Operation Date (UCOD)"	shall mean the actual commissioning date of respective Unit(s) of the Project where upon the REPD starts supplying power from the Project to the Delivery Point;
Waste Concession Agreement	means the agreement(s) entered into between the REPD and the NDMC as the supplier of the Municipal Solid Waste required for the operation of the facility generating the power;
Waste-to-Energy Facility	means the facility constructed at the Project Site and operated by G20 Environmental Solutions Group Pte Ltd, as the Concessionaire for the NDMC Mini Waste-to-Energy Project. This facility includes all buildings/structures, equipment, plant and machinery required for waste handling, processing and storage along with any water supply, gasification, electricity generation equipment and related assets required for the efficient and economic operation of the waste-to-energy facility.
"Week"	shall mean a calendar week commencing from 00:00 hours of Monday, and ending at 24:00 hours of the following Sunday;

1.2 Interpretation

Save where the contrary is indicated, any reference in this Agreement to: "Agreement" shall be construed as including a reference to its Schedules and/or Appendices and/or Annexures;

1.2.1 An "Article", a "Recital", a "Schedule" and a "paragraph/clause" shall be construed as a reference to an Article, a Recital, a Schedule and a paragraph/clause respectively of this Agreement;

1.2.2 A "crore" means a reference to ten million (10,000,000) and a "lakh" means a reference to one tenth of a million (1,00,000);

1.2.3 An "encumbrance" shall be construed as a reference to a mortgage, charge, pledge, lien or other encumbrance securing any obligation of any person or any other type of preferential arrangement (including, without limitation, title transfer and retention arrangements) having a similar effect;

1.2.4 "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.5 A "person" shall be construed as a reference to any person, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and a person shall be

construed as including a reference to its successors, permitted transferees and permitted assigns in accordance with their respective interests;

1.2.6 "Rupee", "Rupees", "Rs" or rupee symbol "₹" shall denote Indian Rupees, the lawful currency of India;

1.2.7 The "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the Law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

1.2.8 Words importing the singular shall include the plural and vice versa;

1.2.9 This Agreement itself or any other agreement or document shall be construed as a reference to this or to such other agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;

1.2.10 A Law shall be construed as a reference to such Law including its amendments or re-enactments from time to time;

1.2.11 A time of Day shall, save as otherwise provided in any agreement or document be construed as a reference to Indian Standard Time;

1.2.12 Different parts of this Agreement are to be taken as mutually explanatory and supplementary to each other and if there is any inconsistency between or among the parts of this Agreement, they shall be interpreted in a harmonious manner so as to give effect to each part;

1.2.13 The tables of contents and any headings or sub-headings in this Agreement have been inserted for ease of reference only and shall not affect the interpretation of this Agreement;

1.2.14 All interest, if applicable and payable under this Agreement, shall accrue from Day to Day and be calculated on the basis of a year of three hundred and sixty five (365) Days;

1.2.15 The words "hereof" or "herein", if and when used in this Agreement shall mean a reference to this Agreement;

1.2.16 The terms "including" or "including without limitation" shall mean that any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

ARTICLE 2: TERM OF AGREEMENT

2.1 Effective Date

2.1.1 This Agreement shall come into effect from the date of its execution by both the Parties and such date shall be referred to as the Effective Date.

2.2 Term of Agreement

2.2.1 This Agreement subject to Article 2.3 and 2.4 shall be valid for a term from the Effective Date until the Expiry Date. This Agreement may be extended for a further period on mutually agreed terms and conditions at least one hundred eighty (180) Days prior to the Expiry Date.

2.3 Early Termination

2.3.1 This Agreement shall terminate before the Expiry Date unless NDMC or the REPD terminates the Agreement, pursuant to Article 13 of this Agreement.

2.4 Survival

2.4.1 The expiry or termination of this Agreement shall not affect any accrued rights, obligations and liabilities of the Parties under this Agreement, including the right to receive damages as per the terms of this Agreement, nor shall it affect the survival of any continuing obligations for which this Agreement provides, either expressly or by necessary implication, which are to survive after the Expiry Date or termination including those under Article 11 (Force Majeure), Article 13 (Events of Default and Termination), Article 14 (Liability and Indemnification), Article 16 (Governing Law and Dispute Resolution), Article 17 (Miscellaneous Provisions), and other Articles and Schedules of this Agreement which expressly or by their nature survive the Term or termination of this Agreement shall continue and survive any expiry or termination of this Agreement.

ARTICLE 3: CONDITIONS SUBSEQUENT

3.1 Satisfaction of conditions subsequent by the REPD

The REPD agrees and undertakes to duly perform and complete all of the following activities at the REPD's own risk and cost within two hundred and fifty (250) Days from the Effective Date, unless such completion is affected by any Force Majeure event, is the result of a breach of this Agreement, or the associated Waste Concession Agreement, or if any of the activities is specifically waived in writing by NDMC:

- (a) The REPD shall obtain all Consents, Clearances and Permits required for supply of power to NDMC as per the terms of this Agreement;
- (b) The NDMC shall be responsible for entering a Transmission Agreement with CTU/STU/Transmission Utilities confirming the evacuation and connectivity to the CTU/STU/Transmission Utilities system from the Delivery Point;
- (c) The NDMC shall produce the documentary evidence of the clear title and possession of the required land as per the terms and conditions of the Waste Supply and Site Access Agreements of the Waste Concession Agreement between the REPD as the Concession for the NDMC Mini Waste-to-Energy Project

3.2 Consequences of non-fulfilment of conditions subsequent

3.2.1 In case of a failure to submit the documents as above, NDMC shall have the right to terminate this Agreement by giving a notice to the REPD in writing of at least seven (7) Days. The termination of the Agreement shall take effect upon the expiry of the seventh (7th) Day of the above notice.

3.2.2 In case of inability of the REPD to fulfil any one or more of the conditions specified in Article 3.1 due to any Force Majeure event, the time period for fulfilment of the Conditions Subsequent as mentioned in Article 3.1, shall be extended for the period of such Force Majeure event.

ARTICLE 4: CONSTRUCTION & DEVELOPMENT OF THE PROJECT

4.1 REPD's Obligations

4.1.1 The REPD undertakes to be responsible, at REPD's own cost and risk, for:

- (a) the purposes of building and operating waste-to-energy facilities as per the requirements of the NDMC tender for the Mini Waste to Energy Project, obtaining all Consents, Clearances and Permits and maintaining all Consents, Clearances and Permits in full force and effect during the Term of this Agreement, other than those required by the NDMC for the sale and distribution of the electricity delivered by the REPD to the NDMC under the terms of this Agreement and the associated Waste Concession; and
- (b) designing, constructing, erecting, commissioning, completing and testing the Power Project in accordance with the applicable Law, the Grid Code, the terms and conditions of this Agreement and Prudent Utility Practices; and
- (c) the commencement of supply of power up to the Contracted Capacity to NDMC no later than the Scheduled Commissioning Date and continuance of the supply of power throughout the term of the Agreement; and
- (d) connecting the Power Project at the Delivery Point and constructing and commissioning the Delivery Point Facilities required on the REPD side of the Delivery Point.
- (e) maintaining its controlling shareholding (controlling shareholding shall mean not less than 51% of the voting rights and paid-up share capital (including fully, compulsory and mandatory convertible Preference shares/Debentures) prevalent at the time of signing of PPA up to a period of one (1) year for the Project after Commercial Operation Date; and
- (f) fulfilling all obligations undertaken by the REPD under this Agreement.

4.2 Information regarding Interconnection Facilities

4.2.1 The REPD shall be required to obtain all information with regard to the required Delivery Facilities as is reasonably necessary to enable it to design, install and operate all plant and apparatus on the REPD's side of the Delivery Point.

4.2.2 The responsibility of getting connectivity and open access with the transmission system owned by the STU/CTU or any other transmission utility, as may be required, will lie with NDMC. The transmission of power up to the Delivery point shall be the responsibility of the REPD. Anything required beyond the Delivery Point shall be the responsibility of the NDMC.

4.2.3 The arrangement of connectivity is to be made by the NDMC through a dedicated transmission line which the NDMC may construct itself or get constructed by STU or any other agency. The entire cost of transmission including cost of construction of line, wheeling charges, losses etc. from the Delivery Point up to the Interconnection Point will be borne by the NDMC and will not be met by the REPD. The REPD is responsible under the commercial purchasing terms of this Agreement for the supply of electricity from the Project to the NDMC at the Delivery Point.

4.3 Purchase and sale of Contracted Capacity

4.3.1 Subject to the terms and conditions of this Agreement, the REPD undertakes to sell to NDMC and NDMC undertakes to pay the REPD at the rate agreed in the PPA and the Waste Concession Agreement for all the energy supplied at the Delivery Point corresponding to the Contracted Capacity.

4.4 Right to Excess Energy Capacity

4.4.1 NDMC, at any time during a Contract Year, will be obliged to purchase any additional energy from the REPD beyond 120MWh at the agreed rate if generated from the facilities established under the terms of the 'PPP Project for Three Mini-Waste-to-Energy Plants in the NDMC Area.

4.5 Extensions of Time

4.5.1 In the event that the REPD is prevented from performing its obligations under Article 4.1 by the Scheduled Commissioning Date due to:

- (a) any NDMC Event of Default; or
- (b) Force Majeure Events affecting NDMC, or
- (c) Force Majeure Events affecting the REPD, the Scheduled Commissioning Date and the Expiry Date shall be deferred for a reasonable period but not less than 'Day for Day' basis, to permit the REPD or NDMC through the use of due diligence, to overcome the effects of the Force Majeure Events affecting the REPD or NDMC, or till such time such Event of Default is rectified by NDMC.

4.5.2 In case of extension due to reasons specified in Article 4.5.1(b) and (c), and if such Force Majeure Event continues even after a maximum period of three (3) Months, any of the Parties may choose to terminate the Agreement as per the provisions of Article 13.5.

4.5.3 If the Parties have not agreed, within thirty (30) Days after the affected Party's performance has ceased to be affected by the relevant circumstance, on the time period by which the Scheduled Commissioning

Date or the Expiry Date should be deferred, any Party may raise the Dispute to be resolved in accordance with Article 16.

4.5.4 As a result of such extension, the Scheduled Commissioning Date and the Expiry Date newly determined shall be deemed to be the Scheduled commissioning Date and the Expiry Date for the purposes of this Agreement.

4.5.5 Notwithstanding anything to the contrary contained in this Agreement, any extension of the Scheduled Commissioning Date arising due to any reason envisaged in this Agreement shall not be allowed beyond the date determined pursuant to Article 4.6.3.

4.5.6 The maximum time period allowed for commissioning of the full Project Capacity shall be limited to two hundred and fifty Days (250) from the date of signing of this Agreement and the Waste Concession Agreements, In case, the commissioning of the Power Project is delayed beyond two hundred and fifty (250) Days from the date of signing of this Agreement, by the failure of the NDMC to have in place the necessary arrangements for the receipt and purchase of the electricity supplied by the NDMC, it shall be considered as an NDMC Event of Default of the PPA and the Waste Concession Agreement.

4.6 Acceptance/Performance Test

4.6.1 Prior to synchronization of the Power Project, the REPD shall be required to get the Project certified for the requisite acceptance/performance test as may be laid down by Central Electricity Authority or an agency identified by the central government to carry out testing and certification for the Power Projects. It is incumbent on the NDMC, in collaboration with the government to ensure that the REPD is able to secure the required approvals within the agreed timeframe of the Waste Concession Agreements and the PPA.

4.7 Third Party Verification

4.7.1 The REPD shall be further required to provide entry to the Project Site free of all encumbrances at all times during the Term of the Agreement to NDMC and a third Party nominated by any Indian Governmental Instrumentality for inspection and verification of the works being carried out by the REPD at the Project Site.

4.7.2 The third party may verify the construction works/operation of the Power Project being carried out by the REPD, consistent with the access conditions and operating requirements of his Agreement and the Waste Concession Agreement, and if it is found that the construction works/operation of the Power Project is not as per the Prudent Utility Practices, it may seek clarifications from REPD or require the works to be stopped or to comply with the instructions of such third party.

4.7.3 The third party may, with the approval of the REPD, carry out checks for testing the CUF of the Power Project.

ARTICLE 5: SYNCHRONISATION, COMMISSIONING AND COMMERCIAL OPERATION

5.1 Synchronization, Commissioning and Commercial Operation

5.1.1 The REPD shall give NDMC at least sixty (60) Days advanced preliminary written notice and at least thirty (30) Days advanced final written notice, of the date on which it intends to synchronize the Power Project to the grid system.

5.1.2 Subject to Article 5.1.1, the Power Project will be synchronized by the REPD to the Grid System when it meets all the connection conditions prescribed in applicable Grid Code then in effect and otherwise meets all other Indian legal requirements for synchronization to the Grid System. It is incumbent on the NDMC, in collaboration with the Government to ensure that the REPD is able to secure the required approvals within the agreed timeframe of the Waste Concession Agreements and the PPA.

5.1.3 The REPD shall synchronize its system with the Grid System only after the approval of the synchronization scheme is granted by the head of the concerned sub-station/Grid System and checking/verification is made by the concerned authorities of the Grid System. It is incumbent on the NDMC, in collaboration with the government to ensure that the REPD is able to secure the required approvals within the agreed timeframe of the Waste Concession Agreements and the PPA.

5.1.4 The REPD shall immediately after each synchronization/tripping of generator, inform the sub-station of the Grid System to which the Power Project is electrically connected and all other concerned authorities in accordance with applicable Grid Code under intimation to NDMC.

5.1.5 The REPD shall commission the Project as detailed in "Schedule 6: Commissioning Procedure" within thirteen (13) Months of the date of signing of PPA.

ARTICLE 6: DISPATCH

6.1 Dispatch

6.1.1 The Power Project shall be required to maintain compliance to the applicable Grid Code requirements.

ARTICLE 7: METERING

7.1 Meters

7.1.1 For installation of Meters, Meter testing, Meter calibration and Meter reading and all matters incidental thereto, the REPD and NDMC shall follow and be bound by the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, the Grid Code, as amended and revised from time to time.

7.1.2. A meter shall be installed on the REPD's side of the Delivery Point that shall be used as the official meter for the purpose of invoicing between the Parties.

7.1.3. The REPD shall bear all costs pertaining to testing, calibration, maintenance, renewal and repair of the official meter.

7.2 Reporting of Metered Data and Parameters

7.2.1 The grid connected waste-to-energy power plants will install necessary equipment for regular monitoring of the electric power generated from the plant.

7.2.2 Monthly reports on the above parameters shall be submitted by the REPD to NDMC for the entire period of PPA.

7.2.3 Whilst not mandatory, should the REPD wish to use an online reporting mechanism, any costs in developing or maintaining this infrastructure would be at the cost of the REPD.

ARTICLE 8: INSURANCES

8.1 Insurance

8.1.1 The REPD shall effect and maintain or cause to be effected and maintained, at its own cost and expense, throughout the Term of PPA, Insurances against such risks, with such deductibles and with such endorsements and co-insured(s), which the Prudent Utility Practices would ordinarily merit maintenance of and as required under applicable laws.

8.2 Application of Insurance Proceeds

8.2.1 Save as expressly provided in this Agreement or the Insurances, the proceeds of any insurance claim made due to loss or damage to the Power Project or any part of the Power Project shall be first applied to reinstatement, replacement or renewal of such loss or damage.

8.2.2 If a Force Majeure Event renders the Power Project no longer economically and technically viable and the insurers under the Insurances make payment on a "total loss" or equivalent basis, NDMC shall have no claim on such proceeds of such Insurance.

8.3 Effect on liability of NDMC

8.3.1 Notwithstanding any liability or obligation that may arise under this Agreement, any loss, damage, liability, payment, obligation or expense which is insured or not or for which the REPD can claim compensation, under any Insurance shall not be charged to or payable by NDMC.

ARTICLE 9: APPLICABLE TARIFF

9.1 The REPD shall be entitled to receive the agreed purchase price of Rs. 8.00/kWh fixed for the entire term of this Agreement. This price shall be indexed annually for inflation as announced by the RBI, with effect from the Scheduled Date of Commissioning.

9.2 Any excess generation will be purchased by NDMC at the Tariff of Rs. 8.00/kWh by the NDMC.

ARTICLE 10: BILLING AND PAYMENT

10.1 General

10.1.2 From the commencement of supply of power, NDMC shall pay to the REPD the Monthly Tariff payments, in accordance with this Article and Article 9. All Tariff payments by NDMC shall be in Indian Rupees.

10.2 Delivery and Content of Monthly Bills/Supplementary Bills

10.2.1 The REPD shall issue to NDMC a signed Monthly Bill/Supplementary Bill for the immediately preceding Month. The Monthly Bill amount shall be the product of the energy as per the Energy Account and the applicable Tariff of the PPA.

10.3 Payment of Monthly Bills

10.3.1 NDMC shall pay the amount payable under the Monthly Bill/Supplementary Bill by the Due Date to such account of the REPD, as shall have been previously notified by the REPD in accordance with Article 10.3.2 (iii) below.

10.3.2 All payments required to be made under this Agreement shall also include any deduction or set off for:

- (i) deductions required by the Law; and
- (ii) amounts claimed by NDMC, if any, from the REPD, through an invoice to be payable by the REPD, and not disputed by the REPD within fifteen (15) Days of receipt of the said Invoice and such deduction or set-off shall be made to the extent of the amounts not disputed. It is clarified that NDMC shall be entitled to claim any set off or deduction under this Article, after expiry of the said fifteen (15) Days period.
- (iii) The REPD shall open a bank account (the "REPD's Designated Account") for all Tariff payments (including Supplementary Bills) to be made by NDMC to the REPD, and notify NDMC of the details of such account at least ninety (90) Days before the dispatch of the first Monthly Bill. NDMC shall also designate a bank account ("NDMC's Designated Account") for payments to be made by the REPD to NDMC, if any, and notify the REPD of the details of such account ninety (90) Days before the Scheduled Commissioning Date. NDMC and the REPD shall instruct their respective bankers to make all payments under this Agreement to the REPD's Designated Account or NDMC's Designated Account, as the case may be, and shall notify either Party of such instructions on the same Day.

10.4 Payment Security Mechanism - Letter of Credit (L/C)

10.4.1 NDMC shall provide to the REPD, in respect of payment of its Monthly Bills and/or Supplementary Bills, a Monthly unconditional, revolving and irrevocable Letter of Credit, opened and maintained which may be drawn upon by the REPD in accordance with this Article.

10.4.2 No later than one (1) Month before the start of supply, NDMC through a scheduled bank at [Identified Place] shall open a Letter of Credit in favour of the REPD, to be made operative from a date prior to the Due Date of its first Monthly Bill under this Agreement. The Letter of Credit shall have a term of twelve (12) Months and shall be renewed annually, for an amount equal to:

- i) for the first Contract Year, equal to the estimated average Monthly billing;
- ii) for each subsequent Contract Year, equal to the average of the Monthly billing of the previous Contract Year.

10.4.3 Provided that the REPD shall not draw upon such Letter of Credit prior to the Due Date of the relevant Monthly Bill and/or Supplementary Bill, and shall not make more than one withdrawal in a Month.

10.4.4 Provided further that if at any time, such Letter of Credit amount falls short of the amount specified in Article 10.4.2 due to any reason whatsoever, NDMC shall restore such shortfall within seven (7) Days.

10.4.5 NDMC shall cause the scheduled bank issuing the Letter of Credit to intimate the REPD, in writing regarding establishing of such irrevocable Letter of Credit.

10.4.6 NDMC shall ensure that the Letter of Credit shall be renewed not later than ten (10) Days prior to its expiry.

10.4.7 All costs relating to opening and maintenance of the Letter of Credit shall be borne by NDMC.

10.4.8 If NDMC fails to pay a Monthly Bill or Supplementary Bill or part thereof within and including the Due Date, then, subject to Article 10.4.6, the REPD may draw upon the Letter of Credit, and accordingly the bank shall pay without any reference or instructions from NDMC, an amount equal to such Monthly Bill or Supplementary Bill or part thereof, if applicable, in accordance with Article 10.3.3 above, by presenting to the scheduled bank issuing the Letter of Credit, the following documents:

- i) a copy of the Monthly Bill or Supplementary Bill which has remained unpaid to REPD and;
- ii) a certificate from the REPD to the effect that the bill at item (i) above, or specified part thereof, is in accordance with

the Agreement and has remained unpaid beyond the Due Date;

10.4.9 Collateral Arrangement - Incremental Receivables is the money received by NDMC on account of sale of Power under the NDMC- Buying Utilities PSA. As a further support for the NDMC's obligations, not later than (1) Month before the start of supply, the REPD and NDMC shall execute a Default Escrow Agreement (referred as "Default Escrow Agreement") in favour of the REPD, through which the Incremental Receivables of the NDMC shall be routed and used as per the terms of the Default Escrow Agreement.

10.4.10 The Default Escrow would come into operation if,

- (a) The Letter of Credit is not recouped by the NDMC to its required value by the seventh (7th) Day of its operation;
- (b) The REPD is unable to draw on the Letter of Credit on the Due Date, if the NDMC fails to pay by the Due Date.
- (c) Non-restoration of Escrow Arrangement by the seventh (7th) Day of the Due Date.

10.5 Disputed Bill

10.5.1 If a Party does not dispute a Monthly Bill or a Supplementary Bill raised by the other Party by the Due Date, such Bill shall be taken as conclusive.

10.5.2 If the NDMC disputes the amount payable under a Monthly Bill or a Supplementary Bill, as the case may be, it shall pay 95% of the disputed amount and it shall within fifteen (15) Days of receiving such Bill, issue a notice (the "Bill Dispute Notice") to the invoicing Party setting out:

- (i) the details of the disputed amount;
- (ii) its estimate of what the correct amount should be; and
- (iii) all written material in support of its claim.

10.5.3 If the REPD agrees to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, the REPD shall revise such Bill and present along with the next Monthly Bill. In such a case excess amount shall be refunded along with interest at the same rate as Late Payment Surcharge, which shall be applied from the date on which such excess payment was made by the disputing Party to the invoicing Party and up to and including the date on which such payment has been received as refund.

10.5.4 If the REPD does not agree to the claim raised in the Bill Dispute Notice issued pursuant to Article 10.5.2, it shall, within fifteen (15) Days of receiving the Bill Dispute Notice, furnish a notice (Bill Disagreement Notice) to the NDMC providing:

- (i) reasons for its disagreement;
- (ii) its estimate of what the correct amount should be; and

- (iii) all written material in support of its counter-claim.

10.5.5 Upon receipt of the Bill Disagreement Notice by the NDMC under Article 10.5.4, authorized representative(s) or a director of the board of directors/member of board of the NDMC and REPD shall meet and make best endeavors to amicably resolve such dispute within fifteen (15) Days of receipt of the Bill Disagreement Notice.

10.5.6 If the Parties do not amicably resolve the Dispute within fifteen (15) Days of receipt of Bill Disagreement Notice pursuant to Article 10.5.4, the matter shall be referred to Dispute resolution in accordance with Article 16.

10.5.7 For the avoidance of doubt, it is clarified that despite a Dispute regarding an Invoice, NDMC shall, without prejudice to its right to Dispute, be under an obligation to make payment of 95% of the Disputed Amount in the Monthly Bill.

10.6 Quarterly and Annual Reconciliation

10.6.1 The Parties acknowledge that all payments made against Monthly Bills and Supplementary Bills shall be subject to quarterly reconciliation within thirty (30) Days of the end of the quarter at the beginning of the following quarter of each Contract Year and annual reconciliation at the end of each Contract Year within thirty (30) Days to take into account the Energy Accounts, Tariff adjustment payments, Tariff Rebate, Late Payment Surcharge, or any other reasonable circumstance provided under this Agreement.

10.6.2 The Parties, therefore, agree that as soon as all such data in respect of any quarter of a Contract Year or a full Contract Year as the case may be has been finally verified and adjusted, the REPD and NDMC shall jointly sign such reconciliation statement. Within fifteen (15) Days of signing of a reconciliation statement, the REPD shall make appropriate adjustments in the next Monthly Bill. Late Payment Surcharge/interest shall be payable in such a case from the date on which such payment had been made to the invoicing Party or the date on which any payment was originally due, as may be applicable. Any Dispute with regard to the above reconciliation shall be dealt with in accordance with the provisions of Article 16.

10.7 Payment of Supplementary Bill

10.7.1 REPD may raise a ("Supplementary Bill") for payment on account of:

- (i) Adjustments required by the Energy Accounts (if applicable); or
- (iii) Change in Law as provided in Article 12, or and such Supplementary Bill shall be paid by the other Party.

10.7.2 NDMC shall remit all amounts due under a Supplementary Bill raised by the REPD to the REPD's Designated Account by the Due Date.

10.7.3 In the event of delay in payment of a Supplementary Bill by either Party beyond its Due Date, a Late Payment Surcharge shall be payable at the same terms applicable to the Monthly Bill in Article 10.3.3.

ARTICLE 11: FORCE MAJEURE

11.1 Definitions

11.1.1 In this Article, the following terms shall have the following meanings:

11.2 Affected Party

11.2.1 An affected Party means NDMC or the REPD whose performance has been affected by an event of Force Majeure.

11.3 Force Majeure

11.3.1 A 'Force Majeure' means any event or circumstance or combination of events those stated below that wholly or partly prevents or unavoidably delays an Affected Party in the performance of its obligations under this Agreement, but only if and to the extent that such events or circumstances are not within the reasonable control, directly or indirectly, of the Affected Party and could not have been avoided if the Affected Party had taken reasonable care or complied with Prudent Utility Practices:

- (a) Act of God, including, but not limited to lightning, drought, fire and explosion (to the extent originating from a source external to the Project Site), earthquake, volcanic eruption, landslide, flood, cyclone, typhoon or tornado;
- (b) Any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action; or
- (c) Radioactive contamination or ionising radiation originating from a source in India or resulting from another Force Majeure Event mentioned above excluding circumstances where the source or cause of contamination or radiation is brought or has been brought into or near the Power Project by the Affected Party or those employed or engaged by the Affected Party.
- d) An event of Force Majeure identified under NDMC- Buying Utility PSA, thereby affecting delivery of power from REPD to Buying Utility.

11.4 Force Majeure Exclusions

11.4.1 Force Majeure shall not include

- (i) any event or circumstance which is within the reasonable control of the Parties and
- ii) the following conditions, except to the extent that they are consequences of an event of Force Majeure:

- (a) Unavailability, late delivery, or changes in cost of the plant, machinery, equipment, materials, spare parts or consumables for the Power Project;
- (b) Delay in the performance of any contractor, sub-contractor or their agents;
- (c) Non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- (d) Strikes at the facilities of the Affected Party;
- (e) Insufficiency of finances or funds or the agreement becoming onerous to perform; and
- (f) Non-performance caused by, or, connected with the Affected Party's:
 - (i) Negligent or intentional acts, errors or omissions;
 - (ii) Failure to comply with an Indian Law; or
 - (iii) Breach of, or default under this Agreement.

11.5 Notification of Force Majeure Event

11.5.1 The Affected Party shall give notice to the other Party of any event of Force Majeure as soon as reasonably practicable, but not later than seven (7) Days after the date on which such Party knew or should reasonably have known of the commencement of the event of Force Majeure. If an event of Force Majeure results in a breakdown of communications rendering it unreasonable to give notice within the applicable time limit specified herein, then the Party claiming Force Majeure shall give such notice as soon as reasonably practicable after reinstatement of communications, but not later than one (1) Day after such reinstatement.

11.5.2 Provided that such notice shall be a pre-condition to the Affected Party's entitlement to claim relief under this Agreement. Such notice shall include full particulars of the event of Force Majeure, its effects on the Party claiming relief and the remedial measures proposed. The Affected Party shall give the other Party regular (and not less than Monthly) reports on the progress of those remedial measures and such other information as the other Party may reasonably request about the Force Majeure Event.

11.5.3 The Affected Party shall give notice to the other Party of (i) the cessation of the relevant event of Force Majeure; and (ii) the cessation of the effects of such event of Force Majeure on the performance of its rights or obligations under this Agreement, as soon as practicable after becoming aware of each of these cessations.

11.6 Duty to Perform and Duty to Mitigate

11.6.1 To the extent not prevented by a Force Majeure Event pursuant to Article 11.3, the Affected Party shall continue to perform its obligations pursuant to this Agreement. The Affected Party shall use its reasonable efforts to mitigate the effect of any Force Majeure Event as soon as practicable.

11.7 Available Relief for a Force Majeure Event

11.7.1 Subject to this Article 11:

- (a) no Party shall be in breach of its obligations pursuant to this Agreement except to the extent that the performance of its obligations was prevented, hindered or delayed due to a Force Majeure Event;
- (b) each Party shall be entitled to claim relief in relation to a Force Majeure Event in regard to its obligations, including but not limited to those specified under Article 4.5;
- (c) for avoidance of doubt, neither Party's obligation to make payments of money due and payable prior to occurrence of Force Majeure events under this Agreement shall be suspended or excused due to the occurrence of a Force Majeure Event in respect of such Party;
- (d) provided that no payments shall be made by either Party affected by a Force Majeure Event for the period of such event on account of its inability to perform its obligations due to such Force Majeure Events.

ARTICLE 12: CHANGE IN LAW

12.1 Definitions

In this Article 12, the following terms shall have the following meanings:

12.1.1 "Change in Law" means the occurrence of any of the following events after the Effective Date resulting into any additional recurring/non-recurring expenditure by the REPD or any income to the REPD:

- (a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;
- (b) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;
- (c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;
- (d) a change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the REPD;
- (e) any change in tax or introduction of any tax made applicable for supply of power by the REPD as per the terms of this Agreement. But shall not include
 - any change in any withholding tax on income or dividends distributed to the shareholders of the REPD, or
 - any change on account of regulatory measures by the Appropriate Commission.

12.2 Relief for Change in Law

12.2.1 The aggrieved Party shall be required to approach the Central Commission for seeking approval of Change in Law.

12.2.2 The decision of the Central Commission to acknowledge a Change in Law and the date from which it will become effective, provide relief for the same, shall be final and governing on both the Parties.

ARTICLE 13: EVENTS OF DEFAULT AND TERMINATION

13.1 REPD Event of Default

13.1.1 the failure to commence supply of power to NDMC up to the Contracted Capacity, by the end of the period specified in Article 4, or if;

- a) The REPD assigns, mortgages or charges or purports to assign, mortgage or charge any of its assets or rights related to the Power Project in contravention of the provisions of this Agreement; or
- b) the REPD transfers or novates any of its rights and/or obligations under this agreement, in a manner contrary to the provisions of this Agreement; except where such transfer:
 - is in pursuance of a Law; and does not affect the ability of the transferee to perform, and such transferee has the financial capability to perform, its obligations under this Agreement or
 - is to a transferee who assumes such obligations under this Agreement and the Agreement remains effective with respect to the transferee;
- (c) the REPD becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) Days, or
- (d) any winding up or bankruptcy or insolvency order is passed against the REPD, or
- (e) the REPD goes into liquidation or dissolution or has a receiver or any similar officer appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, provided that a dissolution or liquidation of the REPD will not be a REPD Event of Default if such dissolution or liquidation is for the purpose of a merger, consolidation or reorganization and where the resulting company retains creditworthiness similar to the REPD and expressly assumes all obligations of the REPD under this Agreement and is in a position to perform them; or
 - the REPD repudiates this Agreement and does not rectify such breach within a period of thirty (30) Days from a notice from NDMC in this regard; or
 - change in controlling shareholding before the specified time frame as mentioned in Article 4.1.1 of this Agreement; or
 - occurrence of any other event which is specified in this Agreement to be a material breach/default of the REPD.

13.2 NDMC Event of Default

13.2.1 The occurrence and the continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by the REPD of its obligations under this Agreement, shall constitute the Event of Default on the part of defaulting NDMC:

- (i) NDMC fails to pay (with respect to a Monthly Bill or a Supplementary Bill), subject to Article 10.5, for a period of ninety (90) Days after the Due Date and the REPD is unable to recover the amount outstanding to the REPD through the Letter of Credit/Default Escrow Account,
- (ii) NDMC repudiates this Agreement and does not rectify such breach even within a period of thirty (30) Days from a notice from the REPD in this regard; or
- (iii) except where due to any REPD's failure to comply with its obligations, NDMC is in material breach of any of its obligations pursuant to this Agreement, and such material breach is not rectified by NDMC within thirty (30) Days of receipt of notice in this regard from the REPD to NDMC; or if:
 - NDMC becomes voluntarily or involuntarily the subject of any bankruptcy or insolvency or winding up proceedings and such proceedings remain uncontested for a period of thirty (30) Days, or
 - any winding up or bankruptcy or insolvency order is passed against NDMC, or
 - NDMC goes into liquidation or dissolution or a receiver or any similar officer is appointed over all or substantially all of its assets or official liquidator is appointed to manage its affairs, pursuant to Law, Provided that it shall not constitute a NDMC Event of Default, where such dissolution or liquidation of NDMC or NDMC is for the purpose of a merger, consolidation or reorganization and where the resulting entity has the financial standing to perform its obligations under this Agreement and has creditworthiness similar to NDMC and expressly assumes all obligations of NDMC and is in a position to perform them; or;
- (iv) If Buying Utilities are subject to any of the above defaults and NDMC does not designate another or other Buying Utilities for purchase of Power.
- (v) Occurrence of any other event which is specified in this Agreement to be a material breach or default of NDMC.
- (vi) NDMC fails to ensure the commissioning, payment and operation of the required infrastructure, including but limited to the Interconnection Point process and equipment, as well any other infrastructure and services that are required for the REPD to supply the electricity

- generated by the REPD as the Concessionaire of the NDMC Mini Waste-to-Energy Project.
- (vii) that the required infrastructure and services are not in place within the required two hundred and fifty (250) Days as stipulated in this PPA and the Waste Concession Agreements, including adequate time for the REPD to meet all its statutory and regulatory requirements, such as permits and approvals.
 - (viii) If the necessary commercial agreements are not in place, within the required timeframe, or such that would limit or impact negatively on the ability of the REPD to supply and receive payment from the NDMC for the electricity generated by the REPD.
 - (ix) Non-force majeure delays in the receipt, or purchase by the NDMC of the electricity generated by the REPD under the terms of this PPA and the Waste Concession Agreements.
 - (x) if the NDMC breaches or is in default of the Waste Supply Agreement, Site Access Agreement or other Waste Concession Agreements associated with the REPD's performance as the Concessionaire for the NDMC's Mini Waste-to-Energy Project.

13.3 Procedure for cases of REPD Event of Default

13.3.1 Upon the occurrence and continuation of any REPD Event of Default under Article 13.1, NDMC shall have the right to deliver to the REPD, with a copy to the representative of the lenders to the REPD with whom the REPD has executed the Financing Agreements, a notice stating its intention to terminate this Agreement (NDMC Preliminary Default Notice), which shall specify in reasonable detail, the circumstances giving rise to the issue of such notice.

13.3.2 Within a period of seven (7) Days following the expiry of the Consultation Period unless the Parties shall have otherwise agreed to the contrary or the REPD Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, NDMC may terminate this Agreement by giving a written Termination Notice of thirty (30) Days to the REPD.

13.3.3 Subject to the terms of this Agreement, upon occurrence of a REPD Event of Default under this Agreement, the lenders in consultation with NDMC may exercise their rights, if any, under Financing Agreements, to seek substitution of the REPD by a selectee for the residual period of the Agreement, for the purpose of securing the payments of the total debt amount from the REPD and performing the obligations of the REPD.

13.3.4 The lenders in consultation with NDMC may seek to exercise right of substitution under Article 13.3.3 by an amendment or novation of the

PPA in favour of the selectee. The REPD may cooperate, if it agrees, with the NDMC to carry out such substitution

13.3.5 In case the lending institution exercises the right to step in or take over the Project NDMC will also have right to step in along with the lending institution.

13.4 Procedure for cases of NDMC Event of Default

13.4.1 Upon the occurrence and continuation of any NDMC Event of Default specified in Article 13.2 the REPD shall have the right to deliver to NDMC, a REPD Preliminary Default Notice, which notice shall specify in reasonable detail the circumstances giving rise to its issue.

13.4.2 Following the issue of a REPD Preliminary Default Notice, the Consultation Period of sixty (60) Days or such longer period as the Parties may agree, shall apply and it shall be the responsibility of the Parties to discuss as to what steps shall be taken with a view to mitigate the consequences of the relevant Event of Default having regard to all the circumstances.

13.4.3 During the Consultation Period, the Parties shall continue to perform their respective obligations under this Agreement.

13.4.4 After a period of seven (7) Days following the expiry of the Consultation Period and unless the Parties shall have otherwise agreed to the contrary or NDMC Event of Default giving rise to the Consultation Period shall have ceased to exist or shall have been remedied, the REPD shall be free to sell the Contracted Capacity to any third party of the REPD's choice.

Provided further that at the end of three (3) Months period from the period mentioned in this Article 13.4.4, this Agreement may be terminated by the REPD.

13.5 Termination due to Force Majeure

13.5.1 If the Force Majeure Event or its effects continue to be present beyond the period as specified in Article 4.5.3, either Party shall have the right to cause termination of the Agreement. In such an event, this Agreement shall terminate on the date of such Termination Notice.

ARTICLE 14: LIABILITY AND INDEMNIFICATION

14.1 Indemnity

14.1.1 The REPD shall indemnify, defend and hold NDMC harmless against:

- a) any and all third party claims against NDMC for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by the REPD of any of its obligations under this Agreement; and
- b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest actually suffered or incurred by NDMC from third party claims arising by reason of a breach by the REPD of any of its obligations under this Agreement, (provided that this Article 14 shall not apply to such breaches by the REPD, for which specific remedies have been provided for under this Agreement)

14.1.2 NDMC shall cause the Buying Utilities to indemnify, defend and hold the REPD harmless against:

- (a) any and all third party claims against the REPD, for any loss of or damage to property of such third party, or death or injury to such third party, arising out of a breach by Buying Utilities of any of their obligations under this Agreement; and
- (b) any and all losses, damages, costs and expenses including legal costs, fines, penalties and interest ('Indemnifiable Losses') actually suffered or incurred by the REPD from third party claims arising by reason of a breach by Buying Utilities of any of its obligations. NDMC shall incorporate appropriate covenants in the PSA for the above obligations of Buying Utilities. In so far as indemnity to REPD is concerned, Buying Utilities shall be the indemnifying party and not NDMC.

14.2 Procedure for claiming Indemnity

14.2.1 Third party claims

- a) Where the Indemnified Party is entitled to indemnification from the Indemnifying Party pursuant to Article 14.1.1(a) or 14.1.2(a), the Indemnified Party shall promptly notify the Indemnifying Party of such claim referred to in Article 14.1.1(a) or 14.1.2(a) in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the Indemnified Party becomes aware of such claim. The Indemnifying Party shall be liable to settle the indemnification claim within thirty (30) Days of receipt of the above notice. Provided however that, if:

- (i) the Parties choose to refer the dispute before the Arbitrator in accordance with Article 16.3.2; and
 - (ii) the claim amount is not required to be paid/ deposited to such third party pending the resolution of the Dispute, the Indemnifying Party shall become liable to pay the claim amount to the Indemnified Party or to the third party, as the case may be, promptly following the resolution of the Dispute, if such Dispute is not settled in favour of the Indemnified Party.
- b) The Indemnified Party may contest the claim by referring to the Arbitrator for which it is entitled to be Indemnified under Article 14.1.1(a) or 14.1.2(a) and the Indemnifying Party shall reimburse to the Indemnified Party all reasonable costs and expenses incurred by the Indemnified party. However, such Indemnified Party shall not settle or compromise such claim without first getting the consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

An Indemnifying Party may, at its own expense, assume control of the defence of any proceedings brought against the Indemnified Party if it acknowledges its obligation to indemnify such Indemnified Party, gives such Indemnified Party prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to the Indemnified Party.

14.3 Indemnifiable Losses

14.3.1 Where an Indemnified Party is entitled to Indemnifiable Losses from the Indemnifying Party pursuant to Article 14.1.1(b) or 14.1.2(b), the Indemnified Party shall promptly notify the Indemnifying Party of the Indemnifiable Losses actually incurred by the Indemnified Party. The Indemnifiable Losses shall be reimbursed by the Indemnifying Party within thirty (30) Days of receipt of the notice seeking Indemnifiable Losses by the Indemnified Party. In case of non-payment of such losses after a valid notice under this Article 14, such event shall constitute a payment default under Article 13.

14.4 Limitation on Liability

14.4.1 Except as expressly provided in this Agreement, **the REPD** or its/their respective officers, directors, agents, employees or affiliates (or their officers, directors, agents or employees), shall be liable or responsible to the other Party or its affiliates, officers, directors, agents, employees, successors or permitted assigns or their respective insurers for incidental, indirect or consequential damages, connected with or

resulting from performance or non-performance of this Agreement, or anything done in connection herewith, including claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), any increased expense of, reduction in or loss of power generation or equipment used therefore, irrespective of whether such claims are based upon breach of warranty, tort strict liability, contract, breach of statutory duty, operation of law or otherwise.

14.4.2 NDMC shall have no recourse against any officer, director or shareholder of the REPD or any Affiliate of the REPD or any of its officers, directors or shareholders for such claims excluded under this Article. The REPD shall have no recourse against any officer, director or shareholder of NDMC or Buying Utilities, or any affiliate of NDMC or any of its officers, directors or shareholders for such claims excluded under this Article.

14.5 Duty to Mitigate

14.5.1 The Parties shall endeavor to take all reasonable steps so as mitigate any loss or damage which has occurred under this Article 14.

ARTICLE 15: GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Governing Law

15.1.1 This Agreement shall be governed by and construed in accordance with the Laws of India. Any legal proceedings in respect of any matters, claims or disputes under this Agreement shall be under the jurisdiction of appropriate courts in Delhi.

15.2 Amicable Settlement and Dispute Resolution

15.2.1 Amicable Settlement

- (a) Either Party is entitled to raise any claim, dispute or difference of whatever nature arising under, out of or in connection with this Agreement ("Dispute") by giving a written notice (Dispute Notice) to the other Party, which shall contain:
 - (i) a description of the Dispute;
 - (ii) the grounds for such Dispute; and
 - (iii) all written material in support of its claim.
- (b) Within thirty (30) Days of issue of Dispute Notice by any Party pursuant to Article 16.2.1(i) Both Parties shall endeavor and make all efforts to amicably settle the Dispute.
- (c) If the Parties fail to resolve the Dispute amicably within thirty (30) Days from the later of the dates mentioned in this Article 16.2.1 (iii), the Dispute shall be referred for dispute resolution in accordance with Article 16.3.

15.3 Dispute Resolution

15.3.1 Dispute Resolution by the Appropriate Commission

- (i) Where any Dispute
 - (a) arises from a claim made by any Party for any change in or determination of the Tariff or any matter related to Tariff or claims made by any Party which partly or wholly relate to any change in the Tariff or determination of any of such claims could result in change in the Tariff, or
 - (b) relates to any matter agreed to be referred to the Appropriate Commission, such Dispute shall be submitted to adjudication by the Central Commission.
- (ii) NDMC shall be entitled to co-opt the Buying Utilities and/or the lenders (if any) as a supporting party in such proceedings before the Central Commission.

15.3.2 Dispute Resolution through Arbitration

If the Dispute arises out of or in connection with any claims not covered

in Article 16.3.1(i), such Dispute shall be resolved by arbitration under the Indian Arbitration and Conciliation Act, 1996 as under provided not settled amicably as per Article 16.2.1:

- (i) The Arbitration Tribunal shall consist of three (3) Arbitrators. Each party shall appoint one Arbitrator within thirty (30) Days of the receipt of request for settlement of dispute by Arbitration. The two appointed Arbitrators shall within thirty (30) Days of their appointment, appoint a third Arbitrator who shall act as presiding Arbitrator. In case the party fails to appoint an Arbitrator within thirty (30) Days from the date of receipt of request or the two appointed Arbitrator fails to agree on third Arbitrator within thirty (30) Days of their appointment, the appointment of Arbitrator, as the case may be, shall be made in accordance with the Indian Arbitration and Conciliation Act, 1996.
- (ii) The place of arbitration shall be Delhi. The language of the arbitration shall be English.
- (iii) The Arbitration Tribunal's award shall be substantiated in writing. The Arbitration Tribunal shall also decide on the costs of the arbitration proceedings and the allocation thereof.
- (iv) The provisions of this Article shall survive the termination of this PPA for any reason whatsoever.
- (v) The award shall be of majority decision. If there is no majority, the award will be given by the presiding Arbitrator.
- (vi) the Parties shall be entitled to co-opt Buying Utilities and/or the lenders (if any) as a supporting party in such arbitration proceedings.

15.4 Parties to Perform Obligations

15.4.1 Notwithstanding the existence of any Dispute and difference referred to the Appropriate Commission or the Arbitration Tribunal as provided in Article 16.3 and save as the Central Commission or the Arbitration Tribunal may otherwise direct by a final or interim order, the Parties hereto shall continue to perform their respective obligations (which are not in dispute) under this Agreement.

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 Amendment

16.1.1 This Agreement may only be amended or supplemented by a written agreement between the Parties.

16.2 Third Party Beneficiaries

16.2.1 This Agreement is solely for the benefit of the Parties and their respective successors and permitted assigns and shall not be construed as creating any duty, standard of care or any liability to, any person not a party to this Agreement.

16.3 Waiver

16.3.1 No waiver by either Party of any default or breach by the other Party in the performance of any of the provisions of this Agreement shall be effective unless in writing duly executed by an authorized representative of such Party:

16.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other Parties shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right under this Agreement, which shall remain in full force and effect.

16.4 Confidentiality

16.4.1 The Parties undertake to hold in confidence this Agreement and not to disclose the terms and conditions of the transaction contemplated hereby to third parties, except:

- (a) to their professional advisors;
- (b) to their officers, contractors, employees, agents or representatives, financiers, who need to have access to such information for the proper performance of their activities; or
- (c) disclosures required under Law without the prior written consent of the other Party.

16.5 Severability

16.5.1 The invalidity or unenforceability, for any reason, of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement, unless the part held invalid or unenforceable is fundamental to this Agreement.

16.6 Notices

16.6.1 All notices or other communications which are required to be given under this Agreement shall be in writing and in the English language.

16.6.2 If to the REPD, all notices or other communications which are required must be delivered personally or by registered post or facsimile or any other method duly acknowledged to the addresses below:

Address : Attention :
Email : Fax. No. : Telephone No. :

16.6.3 If to NDMC, all notices or communications must be delivered personally or by registered post or facsimile or any other mode duly acknowledged to the address(es) below:

Address : Attention :
Email : Fax. No. : Telephone No. :

16.6.4 All notices or communications given by facsimile shall be confirmed by sending a copy of the same via post office in an envelope properly addressed to the appropriate Party for delivery by registered mail. All notices shall be deemed validly delivered upon receipt evidenced by an acknowledgement of the recipient, unless the Party delivering the notice can prove in case of delivery through the registered post that the recipient refused to acknowledge the receipt of the notice despite efforts of the postal authorities.

16.6.5 Any Party may by notice of at least fifteen (15) Days to the other Party change the address and/or addresses to which such notices and communications to it are to be delivered or mailed.

16.7 Language

16.7.1 All agreements, correspondence and communications between the Parties relating to this Agreement and all other documentation to be prepared and supplied under the Agreement shall be written in English, and the Agreement shall be construed and interpreted in accordance with English language.

16.7.2 If any of the agreements, correspondence, communications or documents are prepared in any language other than English, the English translation of such agreements, correspondence, communications or documents shall prevail in matters of interpretation.

16.8 Restriction of Shareholders/Owners' Liability

16.8.1 Parties expressly agree and acknowledge that none of the shareholders of the Parties hereto shall be liable to the other Parties for any of the contractual obligations of the concerned Party under this Agreement.

16.9 Taxes and Duties

16.9.1 The REPD shall bear and promptly pay all statutory taxes, duties, levies and cess, assessed/levied on the REPD, contractors or their employees, that are required to be paid by the REPD as per the Law in relation to the execution of the Agreement and for supplying power as per the terms of this Agreement.

16.9.2 NDMC shall be indemnified and held harmless by the REPD against any claims that may be made against NDMC in relation to the matters set out in Article 17.9.1.

16.9.3 NDMC shall not be liable for any payment of, taxes, duties, levies, cess whatsoever for discharging any obligation of the REPD by NDMC on behalf of REPD.

16.10 Independent Entity

16.10.1 The REPD shall be an independent entity performing its obligations pursuant to the Agreement.

16.10.2 Subject to the provisions of the Agreement, the REPD shall be solely responsible for the manner in which its obligations under this Agreement are to be performed. All employees and representatives of the REPD or contractors engaged by the REPD in connection with the performance of the Agreement shall be under the complete control of the REPD and shall not be deemed to be employees, representatives, contractors of NDMC and nothing contained in the Agreement or in any agreement or contract awarded by the REPD shall be construed to create any contractual relationship between any such employees, representatives or contractors and NDMC.

16.11 Compliance with Law

16.11.1 Despite anything contained in this Agreement but without prejudice to this Article, if any provision of this Agreement shall be in deviation or inconsistent with or repugnant to the provisions contained in the Electricity Act, 2003, or any rules and regulations made there under, such provision of this Agreement shall be deemed to be amended to the extent required to bring it into compliance with the aforesaid relevant provisions as amended from time to time.

IN WITNESS WHEREOF the Parties have caused the Agreement to be executed through their duly authorized representatives as of the date and place set forth above.

For and on behalf of NDMC:

Name, Designation and Address

_____ Signature with seal

Witness: 1.

For and on behalf of G20 Environmental Solutions Group (REPD):

Name, Designation and Address

_____ Signature with seal

Witness: 1.