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## SAMPLE CONTRACT AND SCHEDULES

Prepared by



for the PEGR-funded Reform Agenda on  
Institution Strengthening of the National Economic Development Authority  
and other Oversight Agencies on Value Engineering, Contract Preparation  
and Performance Monitoring of Infrastructure Projects (RA006-07)

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This sample contract is one of the following four sample contracts formulated by Castalia as part of the report for the second activity (Risk Management, Structuring of Public-Private Partnerships, Sample Contracts and Sample Bidding Documents) of the PEGR Reform Agenda RA006-07:

- 1 Urban Mass Rail Sample Contract and Schedules
- 2 Bulk Water Supply Sample Contract and Schedules
- 3 Solid Waste Management Sample Contract and Schedules**
- 4 Information and Communications Technology Sample Contract and Schedules

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# SOLID WASTE MANAGEMENT AGREEMENT

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## [NAME OF LGU] SOLID WASTE MANAGEMENT AGREEMENT

This [Name of LGU] Ecological Solid Waste Management Project Agreement (this "**Agreement**") is made this [●], 2009 (the "**Signature Date**") at [●], Philippines, by and between:

[INSERT NAME OF LGU], a duly organized and existing political subdivision of the Government of the Republic of the Philippines by virtue of [●], with principal office at [●], Philippines, represented herein by its [●], [●], hereinafter referred to as the "**LGU**";

and

[INSERT NAME OF COMPANY], a corporation duly organized and existing under the laws of [●], with its principal office at [●], represented herein by its [●], [●], hereinafter referred to as the "**Company**".

The foregoing entities are hereinafter collectively referred to as the "**Parties**".

### RECITALS:

WHEREAS, the LGU has adopted an integrated solid waste management plan pursuant to the provisions of the Ecological Solid Waste Management Act of 2000 (the "**Act**") and in line with the National Solid Waste Management Framework, to ensure the efficient management of solid waste generated within its territorial jurisdiction;

WHEREAS, under such plan, the LGU seeks to protect public health and the environment by implementing a rational, comprehensive and ecological solid waste management program that promotes waste reduction at source and waste minimization measures including the proper segregation, collection, transport, storage, treatment and disposal of solid waste;

WHEREAS, to partly implement that plan, the LGU obtained the approval of the [●] on [●], 2009, to develop and carry out the [Name of LGU] Ecological Solid Waste Management Project under a build-operate-and-transfer (BOT) contractual arrangement in accordance with Republic Act No. 6957, as amended, and its Implementing Rules and Regulations (the "**BOT Law**");

WHEREAS, the Company has been selected by the LGU to undertake the Project on the terms and conditions set forth in this Agreement as the result of a competitive public bidding conducted by the LGU under the applicable provisions of the BOT Law.

NOW THEREFORE, for and in consideration of these premises and the mutual commitments, obligations and undertakings assumed and accepted hereunder, the Parties have agreed as follows:

## 1 DEFINITIONS AND PRINCIPLES OF INTERPRETATION

### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Agreement shall have the following meanings:

**“Accounting Principles”** means the generally accepted accounting principles applicable from time to time in the Philippines, as determined by the Financial Reporting Standards Council or its successor body.

**“Act”** means the Ecological Solid Waste Management Act of 2000, or Republic Act No. 9003, and its Implementing Rules and Regulations.

**“Affiliate”** means, with respect to any specified person, any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such specified person. For purposes of this definition, “control” means the ownership, directly or indirectly, or as trustee, personal representative, or executor, of more than fifty percent (50%) of the outstanding capital stock of such person or other equity interests having the power to elect a majority of the board of directors or similar body governing the affairs of such person, or the power to direct or cause the direction of the business affairs or management of such person.

**“Agreement”** means this [Name of LGU] Ecological Solid Waste Management Agreement signed by the Parties on the Signature Date, including any amendments that may be made from time to time in accordance with its terms.

**“Auditors”** means the independent public accountants appointed by the Company with the prior written approval of the LGU.

**“Billing Month”** means (i) the period from the Provisional Operations Start Date until the last Day of the calendar month in which the Provisional Operations Start Date occurs; (ii) each successive period of one (1) calendar month thereafter, exclusive of the calendar month in which the Termination Date occurs; and (iii) the period from the first Day of the calendar month in which the Termination Date occurs until the Termination Date.

**“BOT Law”** means Republic Act No. 6957, as amended, and its Implementing Rules and Regulations.

**“Business Day”** means any Day other than a Saturday, a Sunday, and any Day which is a legal non-working holiday in [●], Philippines or any Day when commercial banks in [●], Philippines are closed.

**“Change-in-Law”** means any of the following events occurring as a result of any action by any Government Authority of the Philippines:

- (a) A change in or repeal of a Legal Requirement;

- (b) An enactment or making of a new Legal Requirement; or
- (c) A change in the interpretation or application of a Legal Requirement, which in any case was not reasonably foreseeable at the Signature Date, but not a change in Taxation and an improvement in solid waste management technology or operational policies or practices which are generally regarded by solid waste management operators and regulatory authorities in advanced jurisdictions as appropriate for operators to have to make.

***“Change of Ownership”*** means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Company, including control over (i) the exercise of voting rights conferred on those shares, (ii) the right to elect, appoint or remove directors, or (iii) the right to declare dividends; and
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a) above.

***“Claims”*** means with respect to any person, any and all suits, sanctions, legal proceedings, claims, assessments, judgments, damages, penalties, fines, liabilities, demands, reasonable out-of-pocket expenses of whatever kind (including reasonable attorneys’ fees and expenses) and losses incurred or sustained by or against such person but excluding any lost profits or other special, incidental, indirect, punitive, or consequential damages suffered by such person.

***“COA”*** means the Commission on Audit.

***“Company Event of Default”*** is defined in Section 15.1.

***“Company Invoice”*** is defined in Section 8.4.

***“Company Parties”*** is defined in Section 14.2.

***“Company Rectification Plan”*** is defined in Section 16.1.1(b).

***“Confidential Information”*** is defined in Section 21.4.1.

***“Consent”*** means any permit, license, approval, concession, right, award, registration, certification, waiver, exemption, or other authorization, including any amendments thereto, that is required from any Government Authority under the terms of or in connection with this Agreement.

***“Continuous Construction Date”*** means the date on which the Company commences continuous construction activities to build the Facilities at the Site, including clearing, earthworks, excavation, formworks, piledriving, laying of foundations, or other activities approved in writing by the LGU as constituting commencement of continuous construction activities for the Project.

**“Contract Year”** means (i) initially, the period starting on the Provisional Operations Start Date and continuing until the end of that calendar year (such initial period being **“Contract Year 1”**) and (ii) thereafter, each successive period consisting of twelve (12) consecutive monthly Billing Months (the first such period being **“Contract Year 2”** and so on), provided that the last Contract Year shall end on the Termination Date.

**“Day”** means a 24-hour period beginning and ending at midnight, Philippine time.

**“Delay Liquidated Damages”** is defined in Section 5.8(a).

**“DENR-EMB”** means the Department of Environment and Natural Resources-Environmental Management Bureau.

**“Design and Technical Specifications”** means the design and technical specifications set out in Schedule A to be followed and complied with by the Company in the design, engineering, procurement, and construction of the Project.

**“Dispute”** means any difference or disagreement of any kind whatsoever arising between the Parties in connection with, arising out of, or relating to the interpretation, implementation, breach, termination, or validity of this Agreement.

**“Dollars”, “US Dollars”, and “US\$”** means the lawful currency of the United States of America.

**“ECC”** means the Environmental Compliance Certificate issued by the DENR for the Project.

**“Effective Date”** is defined in Section 2.1.

**“EIA”** means the environmental impact assessment for the Project conducted or caused by the LGU to be conducted in line with all applicable Legal Requirements.

**“EPC Contract”** means the turnkey engineering, procurement, and construction contract made or to be made between the Company and the EPC Contractor for the design, engineering, procurement, construction, startup, testing, and commissioning of the Facilities.

**“EPC Contractor”** means the contractor or person engaged by the Company under the EPC Contract.

**“Equity”** means (i) the capital stock, of any class, of the Company subscribed to by the Shareholders of the Company, and (ii) indebtedness of the Company given to it by a Shareholder or an Affiliate of any Shareholder that is subordinated to any indebtedness incurred by the Company under the Financing Agreements.

**“Event of Default”** is defined in Section 15.



***“Event of Loss”*** means any occurrence during the term of the Financing Agreements which results in all or a substantial portion of the Facilities being damaged, destroyed, or rendered unfit for normal operation in accordance with this Agreement.

***“Expert Panel”*** is defined in Section 19.2.2.

***“Facilities”*** means the Sanitary Landfill, Materials Recovery Facility & Transfer Station, resource recovery or conservation system or program, and other facilities for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of MSW, including any and all equipment, improvements or other components thereof, to be designed, installed, provided, constructed, and operated by the Company under this Agreement.

***“Financial Model”*** means the financial base case for the Project as reflected in the computer model prepared by the Company and submitted and agreed to by the Lenders, which model incorporates the forecast cash flow statements of the Company including all expenditure, revenues, taxation and financing of the Project together with the projected income statements and balance sheets for the Company over the Operating Period, and details of all assumptions, calculations and methodology used in the compilation thereof, as amended from time to time in accordance with the Financing Agreements.

***“Financing Agreements”*** means the agreements or instruments that make available or extend loans, credit facilities, notes, bonds, subordinated debt, letters of credit, credit security, swaps, derivatives, hedging instruments, and other documents relating to the financing or refinancing of the Project provided by any Lender, including any amendments, supplements, extensions, and renewals of that financing or refinancing.

***“Force Majeure Event”*** is defined in Section 13.1.1.

***“Government Authority”*** means any government, department, commission, board, bureau, agency, regulatory body, instrumentality, fiscal, legislative, judicial, or administrative, national or local, having jurisdiction or authority over the matter in question.

***“Hazardous Waste”*** means solid waste or a combination of solid waste which because of its quantity, concentration, or physical, chemical or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible, illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Categories of hazardous waste include but are not limited to explosives, flammables, oxidizers, poisons, irritants, and corrosives.

***“Independent Verifier”*** means the person appointed by the Parties to review the detailed design and to supervise the construction of the Facilities pursuant to Section 5.4 (*Independent Verifier*) hereof.

***“Initial Shareholders”*** means all of the Shareholders of the Company as of the Signature Date, the names of which are set out in Schedule [●] (*Company Shareholders*).

***“Intellectual Property Rights”*** means all rights of ownership recognized by law in inventions, technology, copyrighted material, computer software, and firmware, including (a) patents, trade marks, service marks, rights in designs, trade names, copyrights, rights to trade secrets, proprietary information, and know-how in each case whether registered or not; (b) applications for their registration; (c) rights under licenses and consents in relation to any of them; and (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

***“Legal Requirements”*** means all laws, statutes (including the Act), orders, decrees, injunctions, Consents, agreements, EIAs, and regulations of any Government Authority having jurisdiction over the matter in question.

***“Lender”*** means any person providing loans or other financing or refinancing to the Company under the Financing Agreements, including its successors, assignees, agents and trustees, but not including any Shareholder or Affiliate of a Shareholder with respect to any indebtedness of the Company that constitutes Equity in the Company.

***“LGU Event of Default”*** is defined in Section 15.2.

***“LGU Parties”*** is defined in Section 14.1.

***“LGU Rectification Plan”*** is defined in Section 16.1.1(c).

***“LGU Step-in Rights”*** is defined in Section 18.1.

***“Lien”*** means any mortgage, pledge, lien, security interest, option agreement, claim, charge, or encumbrances of any kind.

***“Lock-in Period”*** is defined in Section 18.3.2.

***“Maintenance Schedule”*** is defined in Section 6.5.

***“Materials Recovery Facility & Transfer Station”*** or ***“MRF/TS”*** means the sorting station, drop-off center, composting and recycling, and transfer facility where recovered or recyclable material is diverted or retrieved from the waste stream free from contamination for the purpose of collection, processing, and use as a raw material in the manufacture of a recycled product and where the residual waste is transferred directly from smaller to larger vehicles for transport to the final disposal facility. For

this purpose, recovered or recyclable material shall include but shall not be limited to newspaper, ferrous scrap metal, non-ferrous scrap metal, used oil, corrugated cardboard, aluminum, glass, office paper, tin cans, plastic, and other materials that may be determined by Legal Requirements.

**“Municipal Solid Waste”** or **“MSW”** means waste produced from activities within the territorial jurisdiction of the LGU which includes a combination of discarded household, commercial, non-hazardous institutional and industrial waste and street litters but shall not include Hazardous Waste or Unacceptable Waste.

**“Non-Political Force Majeure Event”** is defined in Section 13.1.3.

**“Notice of LGU Event of Default”** is defined in Section 16.1.1(c).

**“Notice of Company Event of Default”** is defined in Section 16.1.1(b).

**“Operating Period”** means the period commencing on the Provisional Operations Start Date and ending on the Termination Date.

**“Operating Security”** is defined in Section 6.3.

**“Operating Standards and Procedures”** means the service levels and performance standards including the plans, methods and procedures for the operation of the Facilities prescribed in Schedule F (*Operating Standards and Procedures*).

**“Operations Start Date”** means the Day on which a final acceptance certificate for the Facilities is issued by the LGU to the Company in accordance with Section 5.6.2 (*Final Acceptance*).

**“Party”** means the LGU or the Company, as the case may be, and **“Parties”** means both the LGU and the Company.

**“Penalty Rate”** means [●] percent ([●]%) per annum.

**“Performance Security”** is defined in Section 5.7.

**“Performance Security Issuer”** means (i) if the Performance Security is in the form of an irrevocable standby letter of credit, a universal or commercial bank reasonably acceptable to the LGU whose issuer credit rating or long-term unsecured debt obligations are rated at least PRS A by PhilRatings, or (ii) if the Performance Security is in the form of a surety bond callable on demand, a reputable surety company reasonably acceptable to the LGU which is duly licensed and ranked by the Insurance Commission in its latest official publication to be among the top ten (10) surety firms in the Philippines in terms of net worth.

**“Peso”, “P”, and “PHP”** mean the lawful currency of the Republic of the Philippines.

***“Philippines”*** means the Republic of the Philippines.

***“Planned Downtime”*** means any normal maintenance, replacement or servicing of equipment, or other work that is planned or scheduled pursuant to Section 6.5 that causes a temporary interruption of or reduction in the volume, rate, or quality of service of the Facilities provided by the Company.

***“Planned Downtime Period”*** is defined in Section 6.5(b).

***“Political Force Majeure Event”*** is defined in Section 13.1.2.

***“Project”*** means the undertaking, in line with the terms and conditions of this Agreement and all Legal Requirements, to prepare, develop, finance, design, engineer, procure, install, supply, construct, startup, test, commission, implement, own, operate, manage, maintain, close and transfer the Facilities and to provide the Services.

***“Project Agreements”*** means:

- (a) this Agreement;
- (b) the EPC Contract;
- (c) the Shareholders’ Agreement;
- (d) the Financing Agreements; and
- (e) any other material agreement entered into by the Company pursuant to the agreements listed in sub-clause (a) through (c) above, for the purposes of the implementation of the Project, including any agreement or subcontract for the management, operation and maintenance, and provision of technical assistance for the Project.

***“Project Milestones”*** means (i) the Effective Date; (ii) the Continuous Construction Date; (iii) the Provisional Operations Start Date; and (iv) the Operations Start Date.

***“Project Milestone Schedule”*** means the timetable or required dates for completing all the Project Milestones set out in Schedule B (*Project Milestone Schedule*), as may be amended from time to time in accordance with this Agreement.

***“Project Report”*** is defined in Section 9.2 (*Project Reports*).

***“Provisional Operations Start Date”*** means the Day on which a provisional acceptance certificate is issued to the Company after successful testing and commissioning of the Facilities following the testing procedures provided in Schedule C (*Testing and Commissioning*).

***“Prudent Utility Practice”*** means applying, in relation to the manner in which the construction obligations and the performance of Services are rendered under this Agreement, the standards, practices, methods and procedures conforming to all Legal Requirements, and exercising that degree of skill, care, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and

experienced person engaged in a similar type of undertaking under similar circumstances, including including taking reasonable steps to ensure that:

- (a) adequate materials, resources, and supplies are available to meet the Facilities' needs under normal conditions and reasonably anticipated abnormal conditions;
- (b) sufficient and duly licensed operating personnel (i) are available, (ii) are adequately experienced and trained to operate the Facilities properly and efficiently taking into consideration manufacturers' guidelines and specifications in full compliance with the provisions of Section 6.4 of this Agreement, and (iii) are capable of responding to abnormal conditions;
- (c) preventive, routine, and non-routine maintenance and repairs (i) are performed on a basis that ensures reliable long-term and safe operation taking into account manufacturers' recommendations and (ii) are performed by knowledgeable, trained, and experienced personnel who are duly licensed and are using proper equipment, tools, and procedures;
- (d) appropriate monitoring and testing is done to ensure the Facilities are functioning as designed and in accordance with the Operating Standards and Procedures and to ensure that equipment will function properly under both normal and abnormal conditions; and
- (e) equipment is operated in a manner safe to workers, the general public, and the environment.

***"Required Continuous Construction Date"*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Continuous Construction Date, as such date may be changed from time to time in accordance with this Agreement.

***"Required Effective Date"*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Effective Date, as such date may be changed from time to time in accordance with this Agreement.

***"Required Operations Start Date"*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Operations Start Date, as such date may be changed from time to time following the terms of this Agreement.

***"Required Provisional Operations Start Date"*** means the date prescribed in the Project Milestone Schedule for the occurrence of the Provisional Operations Start Date, as such date may be changed from time to time in accordance with this Agreement.

***"Sanitary Landfill"*** or ***"SLF"*** means the waste disposal site to be designed, constructed, operated, managed, maintained, and closed in accordance with this Agreement where MSW is finally discharged and deposited after proper segregation, recovery and recycling of waste materials in a manner that exerts engineering control over significant potential environmental impacts arising from the development and operation of such facility.

***"SEC"*** means the Philippine Securities and Exchange Commission.

**“Services”** means the operational services to be provided by or on behalf of the Company for the LGU as set forth in Section 7 (*Supply of Services*) and Schedule F (*Operating Standards and Procedures*).

**“Shareholder”** means any person owning any of the outstanding capital stock of the Company, regardless of class, including any of the Initial Shareholders.

**“Signature Date”** means the date of signing of this Agreement as indicated in the preamble.

**“Site”** is identified in Figure [●] in Schedule A (*Design and Technical Specifications*), which satisfies the basic siting criteria for waste disposal facilities prescribed under the Act and is held by the LGU in ownership.

**“Sponsor”** means each of the Initial Shareholders and any transferee of the direct or indirect ownership of the outstanding capital stock of the Company.

**“Tax”** means any net income, gross income, gross receipts, sales, use, transfer, gains, *ad valorem*, franchise, profits, capital gains, license, value-added, withholding, payroll, employment, professional, business, excise, stamp, occupation, premium, property, environmental, windfall profit, documentary, registration, severance, custom duty, governmental fee, other like assessment or charge of any kind whatsoever imposed pursuant to the laws of any national, local, or foreign jurisdiction or by any political subdivision or taxing authority, together with any interest, penalty or other payment charged, and any liability for such amounts under all applicable laws as a result either of being a member of a combined, consolidated, unitary or affiliated group or of a contractual obligation to indemnify any person or other entity.

**“Termination Date”** means the date when any of the following events occurs first:

- (a) termination of this Agreement pursuant to Section 2.3.1 (*Termination due to Non-Occurrence of Effective Date*);
- (b) termination of this Agreement pursuant to Section 20.1 (*Termination due to an Event of Default*);
- (c) termination of this Agreement pursuant to Section 20.2 (*Termination due to Prolonged Force Majeure Events*); or
- (d) on the [●] ([●]th) anniversary of the Provisional Operations Start Date.

**“Termination Notice”** is defined in Section 16.1.1(a).

**“Tipping Fee”** is defined in Section 8.1.

**“Total Project Cost”** has the meaning given to it in the BOT Law, which amount shall be calculated on the basis of information reasonably satisfactory to the LGU that may be provided by the Company.

**“Unacceptable Waste”** means Hazardous Waste, infectious waste from hospitals, waste resulting from mining activities, or any other waste which, in the reasonable judgment of the Parties: (a) may endanger the health or safety of the public or the Parties’ employees; (b) may cause air quality or water effluent standard violations; (c) cause residue that would constitute Hazardous Waste; or (4) has a reasonable possibility of adversely affecting the operation of the Project. It shall include, but shall not be limited to: explosives, containers capable of exploding upon incineration, gasoline, solvent, paints, alcohol acids, hydraulic oil, flammable or volatile liquids, pathological, chemotherapeutic and biological waste, large animal remains, motor vehicles, or major motor vehicle parts, large machinery and equipment, liquid wastes, non-combustible construction materials and/or demolition debris, wallboard and asbestos, electronic products, and similar materials or substances.

**“Unplanned Downtime”** means any temporary loss of function of the Facilities that is not a Planned Downtime and is not the result of a breach by the Company or its subcontractors of any of its obligations under this Agreement.

**“Unplanned Downtime Period”** is defined in Section 6.6.

## **1.2 Principles of Interpretation**

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) Words importing a gender include any gender.
- (b) Words importing the singular number shall include the plural and *vice versa*.
- (c) References to persons shall include individuals, sole proprietorships, partnerships, associations, trusts, joint ventures, unincorporated organizations, corporations, States, governments and governmental entities.
- (d) References in this Agreement to any statute, law, decree, regulation, or other Legal Requirement shall be construed as a reference to such statute, law, decree, regulation, or other Legal Requirement as re-enacted, re-designated, amended, or extended from time to time, except as otherwise provided in this Agreement.
- (e) A reference to any person, Party, or entity includes its permitted successors and assigns. A reference to any government agency or authority shall include any agency or authority succeeding to such agency’s or authority’s powers and functions.
- (f) The words “include” or “including” shall be deemed to be followed by “without limitation” or “but not limited to,” whether or not they are followed by such phrases or words with the same meaning.
- (g) References to a number of days shall refer to calendar days and references to “months” shall refer to calendar months.
- (h) The division of this Agreement into articles, clauses and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

- (i) The terms "this Agreement" and similar expressions refer to this Agreement and not to any particular article, clause, section or other portion hereof and include any agreement supplemental hereto.
- (j) Unless something in the subject matter or context is inconsistent therewith, references to articles, clauses, sections and schedules are to articles, clauses, sections and schedules of this Agreement.
- (k) No provision of this Agreement shall be construed adversely to a Party solely on the ground that that Party was responsible for the preparation of this Agreement or that provision.

## ARTICLE I CONDITIONS PRIOR TO EFFECTIVE DATE

### 2 CONDITIONS PRECEDENT TO EFFECTIVE DATE

#### 2.1 Conditions Precedent to the Effective Date

This Agreement shall be effective and the Parties shall be bound by all its terms and conditions on the date (the "***Effective Date***") when the following conditions have been fully satisfied or waived by the Parties and a written notice to such effect has been jointly signed by them:

- (a) Each of the Project Agreements shall have been duly signed by the parties thereto, shall be in full force and effect, and all conditions precedent to the effectiveness of each Project Agreement shall have been satisfied. The Company shall have also delivered a true and correct copy of each Project Agreement to the LGU.
- (b) Certified true copies of resolutions adopted by the board of directors of the Company authorizing the signing, delivery, and performance of this Agreement shall have been delivered to the LGU.
- (c) True and correct copies of the articles of incorporation and by-laws (including all amendments thereto) of the Company, certified by its corporate secretary and the SEC, shall have been delivered to the LGU.
- (d) All Consents that are required to have been obtained in connection with the execution, delivery, exercise of rights, and commencement of performance of this Agreement shall have been obtained and continue to be in full force and effect, including but not limited to, the Consents listed on Schedule H (*Consents*).
- (e) A certificate in a form and substance reasonably satisfactory to the LGU shall have been issued and delivered by the Lenders to the LGU confirming that the Financing Agreements are in full force and effect and all conditions precedent under the Financing Agreements for the provision of debt financing for the Project have been satisfied.



- (f) True and complete printed and electronic copies of the Financial Model certified by the Lenders as part of the requirements to satisfy the condition described in Section 2.1(e) shall have been submitted to the LGU.
- (g) A certificate in a form and substance reasonably satisfactory to the LGU shall have been delivered by the Company to the LGU either proving the infusion of or expressing the commitment and undertaking of the Initial Shareholders to contribute the necessary equity into the Project and the Company.
- (h) A true and complete copy, certified by the corporate secretary of the Company, of the unconditional notice to proceed issued by the Company to the EPC Contractor authorizing and directing the EPC Contractor to start work under the EPC Contract.
- (i) The Performance Security required from the Company pursuant to Section 5.7 shall have been executed and delivered to the LGU and shall be in full force and effect.
- (j) Certified true copies of certificates of insurance coverage evidencing compliance with the requirements for insurance needed to be in force as of the Effective Date shall have been delivered to the LGU in line with Section 10.2 and Schedule E (*Insurance*).
- (k) The representations and warranties of the Company contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the LGU shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary of the Company.
- (l) The LGU shall have received a legal opinion from the Company's external legal counsel, in a form and substance reasonably acceptable to the LGU, concerning the due organization and corporate good standing of the Company and the validity and enforceability of each of the Project Agreements.
- (m) The Company has paid the LGU the amount of [●] as reimbursement for the professional fees of the LGU's Project transaction advisors.
- (n) No Legal Requirement shall have been enacted, entered, promulgated, or enforced by any Government Authority having jurisdiction over the matter that restrains, prohibits, or declares illegal the consummation of the transactions contemplated in any of the Project Agreements and no action, suit, inquiry, or proceeding shall have been instituted or threatened that seeks to restrain, prohibit, or declare illegal the consummation of the transactions contemplated by any of the Project Agreements. Each Party, through its respective corporate secretary or chief legal officer, shall issue a sworn statement to this effect.
- (o) Certified true copies of resolutions adopted by the governing board of the LGU authorizing the execution, delivery, and performance of this Agreement shall have been delivered to the Company.
- (p) The LGU shall have obtained all land rights and rights-of-way in respect of the Site in such form and substance sufficient to build and operate the Facilities and

complete the Project, and shall have legal, peaceful and unencumbered use and possession of and access to the Site.

- (q) The representations and warranties of the LGU contained or incorporated herein by reference shall be true and correct in all material respects on and as of the Effective Date and the Company shall have received a certificate to that effect dated as of the Effective Date and signed by the corporate secretary or chief legal officer of the LGU.
- (r) The LGU shall submit to the Company a legal opinion from the LGU's chief legal officer, in a form and substance reasonably acceptable to the Company and the Lenders, concerning the due organization and legal existence of the LGU under the laws of the Philippines and the validity and enforceability of this Agreement.

## **2.2 Reasonable Efforts to Satisfy Conditions Precedent**

- (a) Each Party shall use all reasonable efforts to satisfy the conditions enumerated in Section 2.1 on or before the Required Effective Date. On each date that a Party believes that any of the conditions precedent has been satisfied, it shall promptly give written notice of that fact to the other Party together with copies of all relevant documents which satisfy that condition.
- (b) Without prejudice to the rights of the Parties to terminate this Agreement pursuant to Section 16.2, if the occurrence of the Effective Date is delayed by a Force Majeure Event, the Parties shall confer on the effects of such delay and may mutually agree to extend or otherwise adjust the Required Effective Date equitably. The Parties shall endeavor to reschedule activities and resume the performance of their obligations in a way that will avoid or minimize any further delay in the implementation of the Project.

## **2.3 Non-Occurrence of Effective Date**

### **2.3.1 Termination due to Non-Occurrence of Effective Date**

- (a) The LGU may extend the period for the Company to comply with its obligations under Section 2.1 or may terminate this Agreement with immediate effect by giving written notice thereof to the Company at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(a) through (n) inclusive has not been satisfied on or before the Required Effective Date.
- (b) The Company may extend the period for the LGU to comply with its obligations under Section 2.1 or may terminate this Agreement with immediate effect by giving written notice thereof to the LGU at any time after the Required Effective Date (unless the Effective Date occurs before such notice is issued) if any of the conditions precedent set forth in Sections 2.1(n) through (r) and (d) (insofar as Consents that the LGU must secure are concerned) has not been satisfied on or before the Required Effective Date.

### **2.3.2 Consequences of Termination**

If this Agreement is terminated pursuant to Section 2.3.1:

- (a) As a result of the Company's failure to comply with its obligations under Section 2.1, the LGU shall be paid liquidated damages by the Company equal to [●] percent ([●]%) of the Total Project Cost unless the Company's failure to fulfill any of its conditions precedent was actually due to (i) a Political Force Majeure Event, or (ii) an LGU Event of Default. For this purpose, the LGU shall draw down the amount claimed as liquidated damages from the Performance Security posted by the Company.
- (b) As a result of the LGU's failure to comply with its obligations under Section 2.1, the provisions of Section 16.1.2 (*Default Termination Buy-out Provisions*) will apply.
- (c) This Agreement shall have no further effect. The Parties shall have no further rights and shall be released from all their obligations under this Agreement except in respect of any rights or obligations arising before the termination occurred.

## **2.4 Specific Provisions Effective on the Signature Date**

The following sections shall be binding and effective on the Signature Date and the Parties' rights or obligations under those clauses shall not be conditional on the occurrence of the Effective Date:

- (a) Section 1 (*Definitions, Principles of Interpretation, and Priority of Documents*);
- (b) Section 2 (*Conditions Precedent to Effective Date*);
- (c) Section 11 (*Representations and Warranties*);
- (d) Section 13 (*Force Majeure*);
- (e) Section 14 (*Indemnity*);
- (f) Section 16 (*Limitation of Liability*);
- (g) Section 18 (*Assignment of Rights; Ownership of the Company*);
- (h) Section 19 (*Dispute Resolution*); and
- (i) Section 21 (*General Provisions*).

## **ARTICLE II TERM OF THE AGREEMENT**

### **3 TERM OF THE AGREEMENT**

#### **3.1 Contract Term**

Subject to Section 2.4 (*Specific Provisions Effective on the Signature Date*), the term of this Agreement runs from the Effective Date until the Termination Date.

#### **3.2 Provisions In Force**

From the Signature Date until the Effective Date, the provisions enumerated in Section 2.4 (*Specific Provisions Effective on the Signature Date*) shall be in full force and effect. From the Effective Date until the Termination Date, all of the provisions of this Agreement shall be in full force and effect.

**ARTICLE III**  
**CONDITIONS AFTER EFFECTIVE DATE**

**4 PROJECT IMPLEMENTATION**

**4.1 Project Scope**

The Project shall comprise the planning, financing, development, design, engineering, and construction of the Facilities in accordance with the scope and specifications prescribed in Schedule A (*Design and Technical Specifications*), and the management, operation, repair, maintenance and closure of the Facilities and the provision of the Services by the Company during the Operating Period, including their transfer upon the Termination Date, in accordance with this Agreement and all applicable laws.

***Commentary:***

*The project scope is not limited to the description made in this sample contract but may change depending on the needs and unique circumstances of each project or transaction.*

**4.2 Grant of Rights**

On the terms and subject to the conditions set forth in this Agreement, the LGU hereby grants to the Company the sole and exclusive right and responsibility during the term of this Agreement to:

- (a) arrange financing for the Project;
- (b) plan, develop, design, build, test, commission, decommission and, when applicable, close the Facilities;
- (c) implement the Project in accordance with the Project Milestone Schedule;
- (d) manage, use, occupy, operate, repair, maintain, and refurbish the Facilities; and
- (e) provide and manage the Services.

**4.3 Land Acquisition and Right-of-Way**

- (a) The LGU shall be responsible at its own cost and expense for obtaining all land rights and permanent rights-of-way required to make the Site available for the construction and operation of the Facilities, including, without limitation, temporary rights-of-way to install and construct the Facilities.
- (b) The Company shall assist the LGU, using reasonable efforts, to acquire temporary rights-of-way or construction easements which the Company needs for the construction and operation of the Facilities in addition to those that the LGU may have already obtained on or before the Effective Date.

- (c) The Company shall be responsible for obtaining all other land rights which it needs that have not been acquired pursuant to Section 2.1 (p) and paragraphs (a) and (b) above.

#### **4.4 Consents and Approvals**

Except for the Consents that the LGU is required to secure in accordance with Schedule H including all permanent rights-of-way or other land rights described in Section 4.3(a) above, the Company shall at its cost be responsible for obtaining all other Consents required for the financing, supply, installation, construction, operation, maintenance, ownership, closure, and transfer of the Facilities and the Project.

#### **4.5 Equipment**

The LGU shall not be responsible for providing any equipment to the Company (by sale, lease, or otherwise) and all equipment used by the Company in connection with the performance of the Company's obligations under this Agreement shall be owned by the Company or leased from persons other than the LGU.

#### **4.6 Title and Risk of Loss**

- (a) Title to the Site will vest in the LGU for the entire term of this Agreement. The LGU, however, will turnover the use and possession of the Site by way of lease in favor of the Company from the Effective Date until the Termination Date. Possession, custody and risk of loss over the Site will vest in the LGU on the Termination Date.
- (b) Subject to the terms of the Financing Agreements, title to the Facilities will vest in the Company during the Operating Period. Such title including possession, custody and risk of loss will vest in the LGU on the Termination Date.
- (c) Title to all MSW shall remain vested in the LGU when it is disposed of at the Facilities. However, the Company may conduct recyclable solid waste operation and composting at the Facilities at its cost, and retain any revenues received as a result.

### **5 CONSTRUCTION, TESTING AND COMMISSIONING**

#### **5.1 Construction Responsibilities of the Company**

The Company shall design, engineer, procure, and construct the Facilities in compliance with:

- (a) the Design and Technical Specifications;
- (b) Prudent Utility Practice;
- (c) all relevant design, engineering, and construction standards and practices in the Philippines;
- (d) all applicable Legal Requirements; and
- (e) the Project Milestone Schedule.

## **5.2 Further Responsibilities Related to Construction**

For the purpose of performing its obligations under Section 5.1 (*Construction Responsibilities of the Company*), the Company shall, among other things, have the right to and be responsible for:

- (a) calling for tenders and awarding contracts with or without tender subject to the Financing Agreements and the provision on transactions with Affiliates of the Company set forth in Section 12.7 (*Transaction with Affiliates*);
- (b) causing the preparation of final engineering designs and approving or rejecting the same;
- (c) appointing and removing consultants and professional advisors;
- (d) purchasing and installing the Facilities;
- (e) hiring, organizing, removing and directing staff to manage and supervise the Project;
- (f) entering into contracts for the supply, purchase or lease of materials, equipment and services including the connection to all utilities needed during construction and operation at the Site;
- (g) taking the necessary measures to protect people and property, avoid unnecessary interference caused by people and vehicles, minimize traffic, prevent any nuisance and unreasonable noise and disturbance, and ensure that emissions, discharges, and effluents from the Company's construction activities comply with all Legal Requirements; and
- (h) doing all other things necessary or desirable for the timely completion of the Facilities.

## **5.3 Warranties on Design and Construction**

### **5.3.1 General Warranties**

The Company expressly warrants that the design and construction of the Facilities including the works to be performed by the EPC Contractor and its subcontractors will conform to the Design and Technical Specifications in all respects and will be free from design, manufacturing, or other defects and deficiencies.

### 5.3.2 Duration

The Company's warranties under this Section 5.3 (*Warranties on Design and Construction*) shall commence on the Effective Date and shall extend for a period of two (2) years after the Operations Start Date. If repairs or replacements are made by the Company to rectify any defects found during the original warranty period, the part repaired or replaced will be covered by the same warranty but with a new two (2)-year warranty period starting on the date that part has been retested and commissioned, and accepted by the LGU.

### 5.3.3 Breach

The LGU will notify the Company of any breach of the general warranties referred to in Section 5.3.1 (*General Warranties*) specifying in as much detail as possible the circumstances of the breach and providing supporting data and records that may be available. At the Company's expense and within a reasonable period to be mutually agreed upon by the Parties, the Company shall rectify all such breaches. Nevertheless, the Company's obligations under this Section 5.3 (*Warranties on Design and Construction*) are not conditional on notice being given by the LGU of such breach and the LGU's failure to send such notice should not be construed as a waiver of any general warranty.

## 5.4 Independent Verifier

### 5.4.1 Role

The Parties shall appoint an independent verifier with the appropriate national or international standing having relevant experience in the planning, design, development, construction, and operation of similar projects (the "**Independent Verifier**"), to review the detailed design to be submitted by the Company to the LGU pursuant to Section 5.5 (*Design, Drawings and Other Documents*) and to monitor and check the progress of the construction of the Facilities.

### 5.4.2 Appointment Process

The Independent Verifier shall be appointed through an open, transparent and competitive bidding process to be conducted by the Parties as follows:

- (a) Within thirty (30) Days from the Effective Date, the LGU shall prepare the terms of reference and request for proposals for the selection of the Independent Verifier, and shall submit those documents to the Company for comment and approval, which approval shall not be unreasonably withheld.
- (b) The LGU shall publish an open invitation for qualified persons to apply for eligibility and to submit bids.
- (c) The LGU shall receive all proposals submitted by candidates for appointment as Independent Verifier and a group comprising an equal number of representatives from the LGU and the Company shall evaluate such proposals.

- (d) The candidate submitting the most responsive proposal shall be selected as the Independent Verifier for the Project.
- (e) Any dispute between the Parties arising from the selection of the Independent Verifier shall be resolved following the procedures for the settlement of disputes stipulated in Section 19.

#### **5.4.3 Specific Tasks**

The Independent Verifier shall carry out all tasks assigned to it under this Agreement, including the following:

- (a) review of and determining whether the detailed designs meet the Design and Technical Specifications;
- (b) supervision, monitoring, and inspection of the state and progress of the construction including performance by the LGU of its construction-related obligations under this Agreement;
- (c) participation in testing and commissioning, and deciding whether the Company should be issued a provisional or final acceptance certificate;
- (d) determination of any time extensions for completing the Project Milestones; and
- (e) submission of reports and analyses that the LGU or the Company may reasonably request.

#### **5.4.4 Access and Confidentiality**

- (a) The contract for the retention of the Independent Verifier shall include confidentiality and non-disclosure provisions that provide a level of protection for the intellectual property and other proprietary information of the Company and the Agency, which shall be commensurate with the level of protection provided in Section 21.4 of this Agreement.
- (b) The Company shall provide the Independent Verifier with access to all job sites, installations, documents, personnel and such other information as the Independent Verifier may request for the purposes of carrying out its tasks provided in this Agreement and as more specifically described in Section 5.4.3.

#### **5.4.5 Cost**

The fees and expenses of the Independent Verifier shall be shared and paid equally by the LGU and the Company.

### **5.5 Design, Drawings and Other Documents**

#### **5.5.1 Submission**

The Company shall provide the LGU and the Independent Verifier with four (4) printed copies and one (1) electronic copy each of the final detailed engineering designs and



plans not later than [●] Days prior to the Required Continuous Construction Date. These main drawings and technical plans shall include the following:

- (a) final drawings for the general layout of the Project including permanent access roads;
- (b) general and detailed drawings of the Facilities, including all ancillary facilities, structures and civil works;
- (c) final arrangements of plans for the general layout of machineries and equipment; and
- (d) test procedures that meet the requirements for testing provided in Schedule C (*Testing and Commissioning*).

#### **5.5.2 Review and Comment**

- (a) The LGU may, but shall have no obligation to, raise comments or questions on any of the documents submitted in line with this Section 5.5 (*Design, Drawings and Other Documents*) within [●] Days from their submission, provided that such comments or questions relate to compliance of the documents with the Design and Technical Specifications including Prudent Utility Practice or the other engineering and design requirements of this Agreement. Following the receipt of those comments or questions, the Company shall modify the documents and submit the revised documents to the LGU within [●] Days for its final review.
- (b) If a written comment is not received by the Company on the original or revised design plans, the LGU shall be deemed to have no comments or further questions thereon.
- (c) The Independent Verifier shall be fully engaged by the Parties in the review, evaluation and analysis of the design plans to ensure that they comply with the Design and Technical Specifications. The Company shall consider the findings of the Independent Verifier in any revision of the documents regardless of the fact that the LGU may not have made any comments on the original design plans. If there is an inconsistency in the findings of the Independent Verifier and the comments of the LGU, the matter shall be resolved through mutual discussion involving the Parties and the Independent Verifier.

#### **5.5.3 Disclaimer**

The submission of design plans for comment and the review by the LGU of such plans shall not constitute an approval or a warranty on its part of the technical soundness of the final detailed engineering design done by the Company. The Company acknowledges that the LGU does not assume any responsibility for the engineering or construction soundness, safety, or reliability of any part of the Facilities or the Project. A review done by the LGU or the Independent Verifier shall not relieve the Company of any obligation or liability under this Agreement or any other Project Agreement. It shall not also be construed as a waiver by the LGU of any of its rights under this Agreement. Neither the LGU nor the Independent Verifier shall have any liability to the Company or

any other person by reason of its review of the design plans in line with this Section 5.5 (*Design, Drawings and Other Documents*).

## **5.6 Testing and Commissioning**

### **5.6.1 Testing Procedure; Provisional Acceptance**

- (a) The Company shall carry out the testing and commissioning of the Facilities at its cost in accordance with Schedule C (*Testing and Commissioning*). The Company shall give the LGU and the Independent Verifier not less than thirty (30) Days' prior written notice before commencing any testing and commissioning of the Facilities.
- (b) Within five (5) Business Days of the Company carrying out the testing and commissioning, the Independent Verifier shall be required to determine whether the testing has been done in accordance with the relevant testing and commissioning procedures and whether or not the Facilities has satisfied the applicable commissioning and acceptance standards provided in Schedule C (*Testing and Commissioning*). The determination made by the Independent Verifier shall be final and binding on the Parties, except in case of fraud or manifest error.
- (c) If the Independent Verifier certifies that the Facilities fully meet the commissioning and acceptance standards, the LGU shall issue a provisional acceptance certificate in favor the Company within five (5) Business Days from the receipt of such certification.
- (d) If the Independent Verifier certifies that the Facilities do not fully meet the commissioning and acceptance standards, it shall issue a report to the Parties detailing the reasons why the Facilities do not comply with the commissioning and acceptance standards and specifying the actions that the Company must take to meet such standards.
- (e) The Company shall immediately take the remedial actions necessary to ensure that the Facilities meet the commissioning and acceptance standards, taking into account the report of the Independent Verifier, and shall notify the LGU and the Independent Verifier when they have been carried out. As soon as reasonably practicable, the Company shall conduct further testing and commissioning until a provisional acceptance certificate has been issued.
- (f) If the Company fails to obtain a provisional acceptance certificate on or before the Required Provisional Operations Start Date, such failure shall constitute a delay and a Company Event of Default.

### 5.6.2 Final Acceptance

If the Facilities meet the Operating Standards and Procedures after a period of six (6) months from the Provisional Operations Start Date as certified by the Independent Verifier, the LGU shall issue a final acceptance certificate and the Facilities shall thereafter be operated by the Company in accordance with the Operating Standards and Procedures.

### 5.7 Performance Security

- (a) On or before the Signature Date, the Company shall provide and deliver to the LGU an unconditional and irrevocable standby letter of credit substantially in the form set out in Schedule D (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Signature Date until the Provisional Operations Start Date (the “**Performance Security**”). The Performance Security shall have a value equivalent to two percent (2%) of the Total Project Cost and shall be issued by a Performance Security Issuer in favor of the LGU.
- (b) The Performance Security shall be reduced proportionately as each Project Milestone is completed following Schedule B (*Project Milestone Schedule*) and unless forfeited or otherwise called on by the LGU in accordance with this Agreement, shall be returned to the Company on the date on which the provisional acceptance certificate is issued but only after submitting an Operating Security in exchange pursuant to Section 6.3 (*Operating Security*).
- (c) In the event the Project Milestone Schedule is extended in accordance with this Agreement, the term of the Performance Security shall also be extended accordingly.

### 5.8 Liquidated Damages for Delay in Meeting Project Milestones

- (a) The Company undertakes to complete the Facilities and start the Services on or before the Required Provisional Operations Start Date. If the Provisional Operations Start Date does not occur on or before the Required Provisional Operations Start Date, the Company shall pay the LGU liquidated damages in the amount of PHP[●] representing the necessary, reasonable and expected cost of the LGU in ensuring adequate and proper disposal of MSW, for each Day of delay from the Day immediately following the Required Provisional Operations Start Date to and including the Day on which the Provisional Operations Start Date occurs (“**Delay Liquidated Damages**”).
- (b) The LGU shall claim payment of Delay Liquidated Damages accruing under Section 5.8(a) above through invoices. The Company shall pay any amount due not later than thirty (30) Days after its receipt of each invoice, which may be issued no more frequently than every fifteen (15) Days. If the Company fails to pay on the due date, then the LGU shall be entitled to draw from the Performance Security the amount of Delay Liquidated Damages due. Notwithstanding Section 15.1

(*Company Events of Default*), if the Company's liability for Delay Liquidated Damages exceeds the amount available to be drawn under the Performance Security, the Company shall pay the excess upon written demand by the LGU. The LGU shall also have the right to deduct any unpaid amount from any amount otherwise due the Company under this Agreement.

## **5.9 Project Milestone Schedule**

### **5.9.1 Compliance with Project Milestone Schedule**

The Company undertakes to complete the construction and commissioning of the Project in accordance with the Project Milestone Schedule, as they may be amended in line with Section 5.9.2 below. To meet the timetable, the Company shall cause the EPC Contractor to immediately start work on the Project when the Effective Date occurs.

### **5.9.2 Extension of Project Milestone Schedule**

- (a) Dates in the Project Milestone Schedule may be extended only if any of the following events causes or will cause a material delay in achieving one or more Project Milestones:
  - (i) an LGU Event of Default;
  - (ii) a Force Majeure Event;
  - (iii) a delay or failure on the part of the LGU to carry out an obligation under this Agreement, other than an obligation related to payments by the Agency, and which failure or delay directly and proximately prevents the Company from completing a Project Milestone unless the delay or failure on the part of the Agency is excused under this Agreement or is attributable to an action or inaction of the Company, its subcontractors, or agents that is inconsistent with this Agreement; or
  - (iv) in case of discovered articles described in Section 5.10 (*Discovered Heritage Resources*).
- (b) When any of the foregoing events occurs, the Company shall promptly submit to the Agency and the Independent Verifier a written report setting forth in detail reasonably satisfactory to the Agency the reasons for and the expected length of the delay. The Company shall also recommend measures to minimize the period of the delay and provide a supplemental plan that demonstrates that the Project will be completed within the shortest period possible taking into account the effects of the delay. After submission of the report, the Parties and the Independent Verifier shall meet within five (5) days to consult about the delay and the supplemental plan. The Parties may thereafter agree to equitably adjust the Project Milestone Schedule to the extent that the Company is able to demonstrate that such delay is attributable to any of the events listed in Section 5.9.2 (a).

## **5.10 Discovered Heritage Resources**

If the Company, the EPC Contractor or any subcontractor finds any a fossil, antiquity or other object having artistic, cultural, historic or monetary value or importance discovered on the Site during construction, the Company shall promptly notify the LGU

of such discovery and shall take all reasonable steps (including temporary stoppage of work) to prevent its loss, removal or damage. The Company shall also consult with the LGU before incurring any substantial cost in relation to the discovered articles. If the Project Milestone Schedule is affected as a result of any direction given by the LGU or Government Authority, then the Project Milestone Schedule shall be equitably extended. The Company shall be reimbursed for any additional costs reasonably incurred in order to prevent the loss, removal or damage of the discovered articles.

## **6 OPERATION AND MAINTENANCE**

### **6.1 Operation and Maintenance Responsibilities of the Company**

The Company shall be responsible for the management, operation, maintenance, safety and repair of the Facilities from the Provisional Operations Start Date until the Termination Date and shall ensure during such period that the Facilities operate in accordance with all Legal Requirements, Prudent Utility Practice, and the Operating Standards and Procedures.

### **6.2 Operation Manual**

#### **6.2.1 Submission of Operation Manual**

- (a) The Company shall prepare an operation and maintenance manual for the Facilities consistent with Prudent Utility Practice and Legal Requirements that also incorporate the operating and maintenance procedures specified or recommended by equipment or materials suppliers and manufacturers and that will enable the Company to comply with Schedule F (*Operating Standards and Procedures*).
- (b) The Company shall submit the operation and maintenance manual to the LGU not later than one hundred eighty (180) Days before the expected Provisional Operations Start Date. The LGU shall review and may comment on the manual following the same steps provided in Section 5.5.2 (*Review and Comment*).

#### **6.2.2 Disclaimer – Operation Manual**

The review or approval by the LGU of the operation and maintenance manual shall not relieve the Company from any liability under this Agreement or any other Project Agreement nor shall it be considered a waiver by the LGU of any of its rights. The LGU and the Independent Verifier shall not be liable to the Company or any other person by reason of any review or approval of such manual.

### **6.3 Operating Security**

Within five (5) Days from the Operations Start Date, the Company shall provide and deliver to the LGU a surety bond callable on demand in the form set out in Schedule D (*Form of Performance Security*) as security for the performance by the Company of its obligations under this Agreement from the Provisional Operations Start Date until the

Termination Date (the “**Operating Security**”). The Operating Security shall have a value equivalent to PHP[●] and shall be issued by a Performance Security Issuer in favor of the LGU. The Company shall ensure that the Operating Security is always valid and regularly renewed or extended.

#### **6.4 Company Staff**

The Company shall assign personnel to perform operations on the Facilities on such Days and during such hours that MSW is being delivered, treated and disposed of on the premises. The Company shall ensure that a sufficient number of its personnel or those of its subcontractors with the necessary qualifications, expertise and experience most appropriate to provide the Services are on duty at the Facilities in accordance with Prudent Utility Practice and the Operating Standards and Procedures.

#### **6.5 Planned Downtime; Maintenance Program and Schedule**

- (a) The Company shall conduct all regularly scheduled maintenance of the Facilities, including repairs, overhauls, improvements, and replacements, in accordance with the maintenance plans and schedules developed pursuant to this Section 6.5.
- (b) The Company shall submit to the LGU, not later than sixty (60) Days prior to the start of each Contract Year (in the case of Contract Year 1, prior to the Required Provisional Operations Start Date), a maintenance plan and schedule for the Facilities for that Contract Year. The maintenance schedule for a Contract Year shall indicate the dates and times during which the normal delivery of Services will be interrupted for each Planned Downtime during that Contract Year (the “**Planned Downtime Period**” for such Planned Outage). The Planned Downtime Period during any Contract Year shall not exceed [●] hours.
- (c) A Planned Downtime shall be confirmed by the Parties sixty (60) Days prior to such downtime and reconfirmed twenty-one (21) Days in advance. The LGU may request the Company to reschedule a Planned Downtime for any valid reason and the Company shall make reasonable efforts to accommodate the request consistent with Prudent Utility Practice. If the Company cannot accommodate the request, it shall inform the LGU in writing as early as possible, which should not be later than fifteen (15) Days after its receipt of a request for rescheduling any Planned Downtime.

#### **6.6 Unplanned Downtime**

In case any Unplanned Downtime occurs or is foreseen to occur, the Company shall immediately notify the LGU in writing specifying the date and time of the commencement of the Unplanned Downtime and its expected duration. The period of time from the commencement of an Unplanned Downtime until the resumption of normal delivery of the Services shall be termed as an “**Unplanned Downtime Period**”. Any Unplanned Downtime Period with a duration of more than [●] hours shall be treated as a Non-Political Force Majeure Event affecting the Company.

## **7 DELIVERY OF MSW; SUPPLY OF SERVICES**

### **7.1 Delivery of MSW**

The LGU shall deliver or cause to be delivered Municipal Solid Waste that it has collected within its territorial jurisdiction, to the Company at the Facilities following the agreed volume, delivery schedule, size and type of delivery equipment, and other conditions for the delivery and acceptance of such waste provided in Schedule F (*Operating Standards and Procedures*).

### **7.2 Supply of Services**

The Company shall, at its cost, perform and deliver the following Services relating to the Facilities for the duration of the Operating Period:

- (a) in accordance with this Agreement and all Legal Requirements, accept and process Municipal Solid Waste delivered by the LGU at the Materials Recovery Facility & Transfer Station and dispose of any residual Municipal Solid Waste at the Sanitary Landfill based on the agreed volume, rates of acceptance, and delivery schedule specified in Schedules F (*Operating Standards and Procedures*) and G (*Delivery Volume*), *provided*, that the Company may reject Unacceptable Waste delivered in violation of this Agreement;
- (b) develop and implement a recyclable or reusable materials recovery program, and carry out a system for the recovery of such recyclable or reusable materials from the waste stream at the Materials Recovery Facility & Transfer Station following the relevant policies and procedures provided in Schedule F (*Operating Standards and Procedures*);
- (c) operate the Materials Recovery Facility & Transfer Station to be strategically located at or near the Site, with a capacity of [●] metric tons per Day of MSW and capable of receiving MSW from various sizes and types of collection vehicles;
- (d) transport MSW from the Materials Recovery Facility & Transfer Station to the Sanitary Landfill;
- (e) operate and maintain the Sanitary Landfill with the capacity to receive a maximum delivery of [●] metric tons per Day of MSW over the Operating Period using leading and legally acceptable waste disposal technologies and systems that meet the Design and Technical Specifications and comply with applicable Legal Requirements; and
- (f) decommission and close the Facilities in accordance with the closure plan described in Section 16.3 (*Closure and Post-Closure*).

These Services shall not be offered to third parties nor shall the Facilities be used to accept MSW generated outside the intended Service zone without the prior written consent of the LGU.

### 7.3 Service Level and Quality

The Company shall operate the Facilities and provide the Services in accordance with the Operating Standards and Procedures. If the Company fails to operate the Facilities in line with the Operating Standards and Procedures, the LGU shall be entitled to impose a penalty provided for in Schedule F and may enforce payment through the Operating Security if the Company is unable to pay the penalty when due.

### 7.4 Quality Assessment

The Company shall implement a quality control or assessment and environmental management and monitoring system which meets the requirements of Prudent Utility Practice and any other applicable standards to ensure that the delivery of Services satisfies all Operating Standards and Procedures and Legal Requirements.

### 7.5 Landfill Gas Recovery by the LGU

The Parties recognize that landfill gas recovery and utilization may be feasible at the Sanitary Landfill. The LGU shall retain the landfill gas rights, and may enter into a separate contract with a third party for landfill gas control, recovery and utilization. Management of any landfill gas recovery contract entered into with a third party shall be done by the LGU at no cost to the Company. In the event a separate contract for such purpose is executed, a provision will be inserted in that contract requiring cooperation and non-interference in the Company's operation and performance of obligations under this Agreement.

## 8 PAYMENT

### 8.1 Tipping Fee

In consideration for the provision of the Services by the Company, the LGU will pay the Company a tipping fee, expressed in PHP per metric ton, for each Billing Month which shall be computed by applying the formulas and procedures described in Section 8.2 below (the "**Tipping Fee**"). The Tipping Fee, as computed, shall include the value-added tax that the Company may be required to pay in relation to the sale and delivery of the Services to the LGU.

### 8.2 Calculation of Payment; Guaranteed Delivery

#### 8.2.1 Payment for Services

The Tipping Fee for every metric ton of MSW delivered to and accepted by the Company for each Billing Month shall be calculated using the following formula:

$$T_j = VC_j + FC_j$$

where:

$$T_j = \text{Tipping Fee for Billing Month } j, \text{ expressed in PHP per metric ton}$$



$VC_j$  = Variable Charge for Billing Month  $j$ , expressed in PHP per metric ton  
 $FC1_j$  = Fixed Charge for Billing Month  $j$ , expressed in PHP per metric ton

**Commentary:**

*The tipping fee structure should be clear and transparent. Typically, the tipping fee would have a capital cost (or availability payment) and an operating cost component (which is variable). Fixed payments would be based on the capacity made available to the Agency covering the capital works that are useable. Variable payments would be based on the cost of the actual service and its various elements.*

*The payment to the Company will be equivalent to the tipping fee multiplied by the volume of MSW (in metric tons) recorded on the scales of the weighing system at the entrance of the MRF/TS and the SLF, less the waste transported by the Company from the MRF/TS to the SLF.*

### 8.2.2 Guaranteed Delivery

The LGU shall deliver to the Company the minimum volume of MSW per Billing Month provided in Schedule G (*Delivery Volume*). In case of any shortfall in the minimum delivery of MSW for any given Billing Month as indicated in the Company Invoice, the LGU shall pay the Tipping Fee equivalent to the minimum delivery volume for such Billing Month (computed as the Tipping Fee per metric ton multiplied by the minimum delivery volume of MSW for that Billing Month).

### 8.3 Tipping Fee Adjustment

The Tipping Fee shall be adjusted every [●] following the formula and procedures indicated below:

[●]

where:

[●].

**Commentary:**

*The procedure, timing of and frequency of reviewing possible adjustments to the tipping fee must be specified.*

*Such adjustments may be necessary to reflect changes in inflation and cost of service elements (such as fuel, electricity and other utilities, imported materials or chemicals, or other supplies). Local cost inflation indices would be a reasonable benchmark. Extraordinary events that may trigger changes to the tipping fee structure should be clearly identified as well. Planned additional capital expenditures may also result in a change to the tipping fee structure.*

*A separate assessment for special wastes like liquid or bulky wastes may be provided.*

*In addition, the mechanism and frequency of adjustments to account for foreign exchange fluctuations on specific cost components that are affected should be incorporated in the formula.*

*Procedures for appealing adjustments to tipping fees should be set out in the contract. The process for resolving disputes under the Agreement may apply in this situation.*

*An example of a tipping fee adjustment provision in a waste disposal contract for a municipal government is presented below:*

The disposal fee will be subject to adjustment annually every [●]. The first adjustment may be made on [●]. The maximum increase allowable any one year will be equal to the percentage change in the Consumer Price Index (CPI).

Said change shall be equal to the change in the CPI for all urban consumers for the [●] Metropolitan Area, as published by the [●]. Such change shall be measured for the 12-month period January to December. The first increase shall be effective [●], based upon changes in the CPI formula for the period between January 200[●] through December 200[●].

#### **8.4 Invoices**

At the end of each Billing Month, the Company shall submit to the LGU an invoice (each, a “**Company Invoice**”) in the form set out in Schedule K (*Form of Company Invoice*) showing the computation for the Tipping Fee and stating the total amount due and payable from the LGU for the previous Billing Month.

#### **8.5 Payment Terms**

The LGU shall pay the amount due in each Company Invoice within (30) Days after the date of receipt by the LGU of such invoice. If the last day for payment is not a Business Day, then payment shall be made on the next Business Day.

#### **8.6 Manner of Payment**

All sums payable by the LGU under this Agreement shall be paid in Pesos and remitted in same-day funds on the due date to an account maintained in a bank doing business in [●], Philippines to be specified in writing by the Company to the LGU.

#### **8.7 Value-added Tax**

Any value-added tax on the sale of the Services shall be passed on by the Company to the LGU and shall be separately stated in the Company Invoices.

#### **8.8 No Set-Off or Deductions**

All payments made by the LGU under this Agreement shall be made free and clear of and without deduction for or on account of any setoff, counterclaim, Taxes, or otherwise, except those particularly allowed under the Civil Code of the Philippines or deductions required by Legal Requirements.

#### **8.9 Penalty for Late Payment**

Any amount due which is not paid by the LGU within the period indicated in this Section 8 shall bear interest at the Penalty Rate from the due date until payment is received by the Company.

#### **8.10 Disputed Invoices**

- (a) If the LGU disputes an amount or a computation in a Company Invoice, the LGU shall: (i) send a written notice to the Company informing it of such fact and detailing the basis for the dispute; and (ii) pay the undisputed portion not later than its due date.
- (b) The Parties shall endeavor to settle the billing dispute within thirty (30) Days after receipt by the Company of the LGU's notice following the steps for the settlement of disputes provided in Section 19. If the dispute is resolved in the Company's favor, then the amount disputed shall bear interest at the Penalty Rate from the original due date until payment is received by the Company.

### **9 CONTRACT MANAGEMENT, MONITORING AND EVALUATION**

#### **9.1 Contract Management Body**

Within five (5) Business Days after the Signature Date, each Party shall form a contract management body, either through the appointment of a contract manager or the creation of a contract management unit, which shall be responsible for monitoring, managing and evaluating the full implementation of the Project ("**Contract Management Body**"). Within two (2) Business Days from its creation, each Party shall immediately send written notice to the other naming the members of its Contract Management Body.

## 9.2 Project Reports

- (a) Within fifteen (15) Business Days from receipt of the notice referred to in Section 9.1, the Contract Management Bodies of the Parties shall meet and agree on the form of the report which the Parties shall use as a tool to exchange information and to monitor, manage and evaluate the implementation of the Project (***“Project Report”***). At the same meeting, the Parties shall also agree on:
  - (i) the method for monitoring and obtaining the information required;
  - (ii) the Party responsible for monitoring and reporting on each of the indicators; and
  - (iii) the frequency that each indicator should be monitored and reported.
- (b) The Parties shall ensure that Project Report will have the following basic information:
  - (i) performance indicators to determine the Company’s compliance with its obligations under the Agreement;
  - (ii) performance indicators to determine the LGU’s compliance with its obligations under the Agreement;
  - (iii) major risk factors for the Project and the indicators to determine how such risk factors are affecting the Project;
  - (iv) the costs of the Project and the Services measured against their expected costs;
  - (v) any information required by relevant Government Authorities including government oversight agencies and public regulators in accordance with applicable Legal Requirements;
  - (vi) significant contract management actions taken by each Party;
  - (vii) any event or condition that has occurred which materially affects the Project or a Party’s ability to comply with its obligations under the Agreement or if any of the representations made or warranties given by a Party ceases to be true in any material respect; and
  - (viii) all other material information that may be included by the Parties.

## 9.3 Monitoring and Reporting Obligations

- (a) The Parties shall comply with their monitoring and reporting obligations mutually agreed upon pursuant to this Section 9 and embodied in the Project Report.
- (b) For this purpose, the Company shall establish appropriate monitoring and reporting systems to obtain data and perform calculations in order to measure

compliance with the Operating Standards and Procedures and other key performance indicators provided in the Project Report.

- (c) Performance of the Facilities and compliance with the Operating Standards and Procedures shall be measured and calculated by the Company on a [●] basis. The Company shall gather the results and make them available to the Contract Management Bodies.
- (d) The Project Reports shall be prepared in English and shall be submitted within [●] Business Days after the end of the calendar month to which they apply. Source data applicable to a Project Report shall be retained by the Parties for a period of at least sixty (60) months after the report is submitted and shall be furnished to the other Party upon demand. All reports and source data for purposes of validation shall also be stored electronically by the Parties.
- (e) Where a Project Report shows that the operation of the Facilities is below the Operating Standards and Procedures or other performance indicators, the Company shall also separately submit with the report: (i) a full explanation of the reasons for the below-target performance; (ii) the steps that it has or will be taking to ensure that performance is improved to meet the standard; and (iii) the timeframe for their implementation. In case the cause of the below-target performance is not entirely the responsibility of the Company, it shall include a recommended solution in its report that identifies the proposed steps to remedy the other factors that contributed to the below-target performance.
- (f) At the request of the LGU, the Company shall prepare and submit supplemental reports related to the performance of the Facilities or compliance with the Operating Standards and Procedures.

## **9.4 Financial Reports**

### **9.4.1 Fiscal Year; Accounting Principles**

The Company shall have a fiscal year ending on December 31 of each year. The Company shall at all times comply with the Accounting Principles and maintain proper books and records in accordance with applicable Legal Requirements.

### **9.4.2 Financial Reports**

- (a) The Company shall keep accurate records of all receipts and expenses related to the operation of the Facilities and to any activity performed on the Facilities by the Company.
- (b) It shall prepare unaudited quarterly financial statements in accordance with the Accounting Principles consistently applied. The quarterly unaudited financial statements shall be duly signed by the Company's chief accountant and shall be

submitted to the LGU within thirty (30) Business Days after the end of each quarter for the duration of the Operating Period.

- (c) The Company shall prepare audited annual financial statements in accordance with the Accounting Principles consistently applied. The annual financial statements shall be audited by the Auditors. Within one hundred twenty (120) Business Days after the end of each fiscal year for the duration of the Operating Period (including the fiscal year in which the Termination Date occurs), the Company submit to the LGU an annual report on the Company's management, operations, and finance during the preceding year, including copies of the audited financial statements with the Auditors' notes and comments.
- (d) In addition to the foregoing reports, the Company shall provide the Company at its request and on a timely basis all financial information in respect of the Company's operations reasonably required to permit the LGU to satisfy its financial, tax, and other reporting requirements.

#### **9.5 Other Reporting Requirements for Public Audit**

The Company acknowledges that the LGU is subject to public audit by the Commission on Audit ("**COA**"). For this purpose, the Company shall provide on a timely basis pertinent information as may be requested by the LGU or COA for purposes of such audit.

#### **9.6 Regular Meetings**

The Contract Management Bodies of the Parties shall meet once a month or more frequently if necessary to discuss the progress of the Project, in particular:

- (a) the performance indicators and other material information covered by the Project Report;
- (b) any problems or issues in the implementation of the Project and preventive or remedial actions that should be taken;
- (c) methods for managing significant Project risks; and
- (d) lessons learned from carrying out the Project and any adjustments that are necessary or can be made in its implementation to help improve Project outcomes.

#### **9.7 Right to Inspect and Monitor**

- (a) The LGU shall be entitled to inspect, check, test and monitor the construction of the Facilities, and the extent and quality of the provision of any Service including any part of the Facilities at any time after the Provisional Operations Start Date. The purpose of such monitoring shall be to determine whether the Facilities are being designed, constructed, tested, commissioned, operated and maintained in accordance with the terms of this Agreement.

- (b) The Company shall allow the LGU and the Independent Verifier or their duly authorized representatives to conduct such inspection and monitoring during normal business hours upon reasonable prior written notice to the Company. The monitoring and review shall be conducted in the presence of a duly designated representative of the Company. All costs incurred by the LGU in exercising its monitoring rights pursuant to this Section shall be borne solely by the LGU.
- (c) The Parties shall use all reasonable efforts to minimize any disruption to the delivery of the Services during a Service inspection.
- (d) The Company shall ensure that the LGU or its agent or representative is given sufficient access to any part of the Facilities to carry out a Service inspection. For this purpose, the Company shall:
  - (i) provide assistance and make available equipment or materials as may be reasonably required;
  - (ii) not make any part of the Facilities inaccessible; and
  - (iii) promptly correct any deficiency identified by the LGU or its agent during such Service inspection.

## **10 INSURANCE**

### **10.1 Required Insurance Policies; Endorsements**

- (a) The Company at its cost shall obtain and maintain or cause its subcontractors to obtain, at a minimum, the insurance coverage and policies described in Schedule E (*Insurance*) and required by the Financing Agreements, Legal Requirements, and Prudent Utility Practice. The Company may procure additional insurance coverage not called for under this Agreement.
- (b) The insurance policies required to be obtained by the Company shall be issued by reputable and financially sound insurers or reinsurers duly licensed by the Insurance Commission and reasonably acceptable to the LGU. All policies shall have the endorsements and other terms set out in Schedule E (*Insurance*) but the Company shall not be required to obtain any insurance policy at a time when such policy or coverage is not available on reasonable commercial terms in the international or domestic insurance market.

### **10.2 Insurance Certificates**

The Company shall provide the LGU with true and certified copies of insurance policies or certificates of coverage required to be obtained in accordance with this Agreement within ten (10) Days after the date such insurance policies are obtained or renewed.

### **10.3 Failure to Secure and Maintain Required Insurance**

If the Company fails to obtain or maintain any insurance policy or endorsement required by this Agreement, the LGU shall have the right but not the obligation to procure such insurance policy or endorsement at the Company's expense. If the Company fails to reimburse the LGU within seven (7) Days after being notified of the LGU's payment of any insurance premium to obtain the needed insurance cover, the LGU can enforce reimbursement from the Performance or Operating Security in effect at that time. If the Performance or Operating Security is insufficient, the LGU shall deduct the cost of insurance from any amount due and payable by the LGU to the Company under this Agreement.

### **10.4 Application of Insurance Proceeds**

#### **10.4.1 Loss While the Financing Agreements are Effective**

If all or a portion of the Facilities is damaged, destroyed, or rendered unfit for normal operation, all insurance proceeds received under any insurance policy (other than proceeds of business interruption insurance) shall be applied in accordance with the applicable terms of the Financing Agreements.

#### **10.4.2 Loss After the Financing Agreements Have Expired**

If after the expiration of the Financing Agreements all or a portion of the Facilities is damaged, destroyed, or rendered unfit for normal operation, the Company shall apply the insurance proceeds (except the proceeds of business interruption insurance) in accordance with the following provisions:

- (a) If the Company determines that the Facilities can be rebuilt, repaired, and restored to permit operation on a commercially viable basis and the insurance proceeds are sufficient to restore such Facilities, then all the proceeds shall be applied toward the cost of rebuilding, repairing, and/or restoring the Facilities.
- (b) If the Company determines that the Facilities cannot be rebuilt or can only be partially rebuilt, repaired, and restored or that the insurance proceeds are insufficient to restore such Facilities, then either Party may elect to terminate this Agreement in accordance with Section 16.2.3 (*Termination by Either Party*) and all of the insurance proceeds shall be distributed in the following order of priority:
  - (i) to the payment of any amount that may be due the LGU under this Agreement; then,
  - (ii) any remaining amount from such proceeds shall be given to the Company or its successors or assigns or to whomever may be lawfully entitled to receive it.

## **11 REPRESENTATIONS AND WARRANTIES**

Each Party represents and warrants to the other Party that as of the Signature Date and the Effective Date:



### **11.1 Corporate Existence and Authority**

It is a juridical person duly organized and validly existing under the laws of the Philippines and it has all requisite legal power and authority to conduct its business, to own its properties, and to execute, deliver and implement this Agreement.

### **11.2 Government Consents and Approvals**

All Consents required to authorize the execution, delivery, and performance of this Agreement have been obtained and are in full force and effect except for those consents and approvals identified in Schedule H that the Parties have agreed to obtain at a later time.

### **11.3 Non-contravention of Legal Requirements**

The execution, delivery, and performance of this Agreement do not conflict with any Legal Requirements applicable to such Party.

### **11.4 Validity and Enforceability of Agreement**

This Agreement constitutes its legal, valid, and binding obligation, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or other similar laws affecting creditors' rights generally.

### **11.5 No Adverse Litigation**

There is no litigation, arbitration, investigation or proceeding pending, or to its best knowledge, threatened, against or affecting such Party that could reasonably be expected to materially adversely affect its ability to fulfill its obligations under this Agreement or that may affect the legality, validity, or enforceability of this Agreement.

### **11.6 Due Authorization & Non-contravention of Other Agreements**

The execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action, and will not: (i) require any further consent or approval of its board of directors, shareholders, or any other third party, other than those that have been obtained, or (ii) violate its charter or incorporation documents, or other agreement or instrument to which it is a party or by which it or its property may be bound, or violate any law, judgment, order, writ, injunction, determination, or award presently in effect and applicable to it.

### **11.7 Continuing Representations and Warranties**

The representations and warranties in Sections 11.1 to 11.6 shall be deemed to be repeated by each Party as of the Effective Date and as of December 31 of each Contract Year. Each Party shall immediately notify the other Party in writing if any of the representations and warranties given under Sections 11.1 to 11.6 ceases to be true in any material respect.

## **12 COMPANY COVENANTS**

### **12.1 Conduct of Company**

The Company shall exercise complete control over its employees, contractors and subcontractors and require them to comply with this Agreement, all Legal

Requirements, and all applicable policies of the Company. The Company shall also require its employees, contractors and subcontractors to conform to the highest standards of professionalism and ethical conduct. To the extent permitted by applicable Legal Requirements, the Company shall dismiss or discipline any of its employees, contractors or subcontractors who do not conform to such standards and shall take immediate action at its own expense to correct any violations of such standards.

## **12.2 Compliance with Legal Requirements and Consents**

The Company shall comply with applicable Legal Requirements and shall comply in all material respects and shall keep in full force and effect all Consents required to be in its name for the performance of its obligations under this Agreement.

## **12.3 No Other Business**

Except with the prior written consent of the LGU, the Company shall not (a) engage in any business activity except those which are reasonably required to implement this Agreement, (b) enter into any merger, consolidation, or amalgamation with any entity or person, or (c) dispose of all or substantially all of its assets except as may be required by the Lenders to enforce any security interest permitted to be granted by the Company to such Lenders pursuant to Section 18.2 of this Agreement.

## **12.4 Local Content**

In cases where goods or services required for the Project are available from both Philippine and non-Philippine suppliers, the Company shall, and shall cause each of its contractors and subcontractors to, assure the participation of such Philippine suppliers, in the call for tenders. When the goods or services of such Philippine suppliers are reasonably comparable in cost, quality, and delivery time to non-Philippine suppliers of goods or services, the Company, or its contractors or subcontractors, shall acquire such goods or services from such Philippine suppliers.

## **12.5 Company's Employees**

### **12.5.1 Employment of Philippine Nationals**

The Company shall employ qualified Philippine citizens to the maximum extent possible. The Company shall cause its EPC Contractor to do the same.

### **12.5.2 Status of Company's Employees upon Termination of Agreement**

The LGU shall have no obligation to employ or hire any employees of the Company upon the termination of this Agreement. The Company shall be liable for all costs and expenses associated with the termination of the employment or contract of the Company's employees.

### **12.5.3 Education and Training**

The Company shall implement education and training programs designed to upgrade the skills of its employees to a level or standard that meets or exceeds the requirements of Prudent Utility Practice.

## **12.6 Anti-Corruption Warranty**

The Company warrants that neither it nor its representatives have offered any officer, official or employee of any Government Authority any consideration or commission for this Agreement nor has it or its representatives exerted or utilized any corrupt practice or unlawful influence to secure or solicit this Agreement for any consideration or commission. The Company shall not subcontract any portion or portions of its obligations under this Agreement to any public officer or LGU official or employee or to persons known by the Company to be relatives within the third degree of consanguinity or affinity of any public officer or LGU official or employee directly or indirectly involved in the award of this Agreement or the implementation of the Project. If any consideration or commission is paid to any private person, the Company shall disclose the name of the person and the amount paid. Any breach of the warranties and undertakings in this Section 12.6 shall constitute sufficient ground for the rescission or cancellation of this Agreement or the deduction of the consideration or commission paid from payments otherwise owed to the Company under this Agreement, without prejudice to the filing of civil or criminal actions against the Company and/or its representatives and officials and employees of the LGU under the Anti-Graft and Corrupt Practices Act and other applicable laws.

## **12.7 Transactions with Affiliates of Company**

Any contract or other transaction entered into by the Company with any of its Affiliates in connection with the Project, whether for the purchase of goods or services or otherwise, shall be entered into on an arms length basis and on commercial terms that would reasonably be expected to apply in the open market between contracting parties that are not Affiliates. Without limiting the generality of the foregoing, in no event shall the Company, directly or indirectly, pay more than the fair market value for goods or services supplied to it by its Affiliates.

## **13 FORCE MAJEURE**

### **13.1 Force Majeure Events**

#### **13.1.1 Definition of Force Majeure Event**

A “**Force Majeure Event**” means any event, condition, or circumstance and the effects thereof not within the reasonable control, directly or indirectly, of the Party affected, but only if and to the extent that:

- (a) such event, condition, or circumstance is not the direct or indirect result of the breach by such Party of any of its obligations under this Agreement or the fault or negligence of such Party, its Affiliates, or any person under the Party’s or its Affiliates’ reasonable control;
- (b) despite the exercise of reasonable diligence, such event, condition, or circumstance cannot be prevented, avoided, or removed by such Party;
- (c) such event, condition, or circumstance has a material adverse effect on the ability of such Party to perform all or a material portion of any of its obligations under this Agreement, and such Party has taken all reasonable precautions, due care,

and alternative measures in order to avoid or mitigate the effects of such event on such Party's ability to perform its obligations under this Agreement; and

- (d) such Party has given the other Party notice in accordance with Section 13.2.1 (*Notice of Force Majeure Event*).

#### **13.1.2 Political Force Majeure Event**

Subject to Section 13.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a "**Political Force Majeure Event**"): war (declared or not); hostilities or belligerence; blockade; revolution or insurrection; riot or public disorder; Change-in-Law, expropriation, requisition, confiscation, or nationalization; export or import restrictions other than any in effect as of the Signature Date; closing of harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation of or within any place; rationing or allocation, whether imposed by law, decree, or regulation by, or by compliance of industry at the insistence of, any Government Authority.

#### **13.1.3 Non-Political Force Majeure Event**

Subject to Section 13.1.1 (*Definition of Force Majeure Event*), Force Majeure Events may include any of the following (each, a "**Non-Political Force Majeure Event**"): fire; unusual flood or drought; earthquake, volcano, storm, lightning, tide (other than normal tides), tidal wave, unusually severe weather conditions; perils of the sea; accidents of navigation or breakdown or injury of vessels; accidents to harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation; epidemic or quarantine; strikes or combination of workmen, lockouts, or other labor disturbances (other than those solely affecting the Party claiming the same as a Force Majeure Event); or any other cause similar to the foregoing that meets the requirements of Section 13.1.1.

### **13.2 Responsibilities of the Parties during Force Majeure Event**

#### **13.2.1 Notice of Force Majeure Event**

The Party seeking to be excused from any delay in the performance of its obligations (other than the payment of money) under Section 13 of this Agreement shall advise the other Party in writing of the date of commencement of such Force Majeure Event, the nature and expected duration thereof, and the actions to be taken to try to prevent or reduce the effects of such event. The notice shall be sent by such Party not later than ten (10) Days after the date on which such Party first gains knowledge of such Force Majeure Event. If it fails to deliver such notice in accordance with this provision, such Party shall not be entitled to invoke the benefits of this section.

#### **13.2.2 Mitigation**

Each Party shall exert all reasonable efforts in accordance with Prudent Utility Practice or other applicable standard to prevent or mitigate the consequences of the Force Majeure Event on the performance of its obligations under this Agreement. The Parties shall consult with each other in good faith and shall use all reasonable endeavors to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued implementation of the Project. The Parties shall exert all reasonable efforts to resume the performance of their obligations as soon as practicable following the declaration of a Force Majeure Event.

### **13.2.3 Additional Information about Force Majeure Event**

Within three (3) Days following the termination of any Force Majeure Event, the Party having invoked such Force Majeure Event as a cause for the failure or delay in the performance of any obligation under this Agreement (other than the payment of money) shall submit to the other Party reasonable proof of the cause and nature of such delay and its effect upon the performance of the obligations of such Party under this Agreement.

## **13.3 Effect of Force Majeure Events**

### **13.3.1 Delayed Performance Excused**

The affected Party shall be excused from performance and shall not be in default of any obligation under this Agreement for so long as its failure to perform such obligation is due to a Force Majeure Event, provided that:

- (a) The affected Party makes continuous diligent efforts to prevent or mitigate the effects of the Force Majeure Event;
- (b) The LGU shall not be entitled to the benefit of this Section 13.3.1 in case of Political Force Majeure Events;
- (c) The Party claiming a Force Majeure Event shall not be entitled to suspend performance or be excused for delayed performance under this Agreement for any greater scope or longer duration than is required by the Force Majeure Event or the delay occasioned thereby, and there shall be no presumption that a Party is entitled to or limited by a day-for-day extension of time equal to the period of the Force Majeure Event;
- (d) Neither Party shall be relieved of or excused from its obligations under this Agreement solely because there may be increased costs or other adverse economic consequences incurred through the performance of such obligations; and
- (e) The provisions of this Section 13.3.1 shall not excuse:
  - (i) Late payment of money;
  - (ii) Late performance by either Party due to such Party's fault or negligence; or
  - (iii) Delays resulting from an event, condition, or circumstance which is reasonably foreseeable such as but not limited to (A) weather conditions that are no more severe than any weather condition reported in or predictable from weather data for the period of fifty (50) years prior to the date of this Agreement or (B) unsuitable ground conditions (other than earthquakes or other geologic calamities).

### **13.3.2 Force Majeure Events prior to Operations Start Date**

If a Force Majeure Event occurs prior to the Provisional Operations Start Date that results or will result in a delay in achieving that Project Milestone, then, immediately after the giving of the notice required under Section 13.2.1, the Project Milestone Schedule shall be equitably adjusted upon the written agreement of the Parties. If the

Parties are unable to agree on an equitable adjustment to the Required Provisional Operations Start Date or other affected Project Milestones within a period of sixty (60) Days after the giving of the notice required in Section 13.2.1, such inability to agree shall be considered a Dispute and either Party thereafter shall be entitled to bring such Dispute to arbitration in accordance with this Agreement.

### **13.3.3 Force Majeure Events on or after Operations Start Date**

If a Force Majeure Event occurs on or after the Provisional Operations Start Date, the Tipping Fee payable to the Company shall be reduced accordingly to correspond to the level of Services actually rendered to the LGU during the period that such Force Majeure Event was persisting. The adjustment to the Tipping Fee shall be done in accordance with Section 8.3 (*Tipping Fee Adjustment*) hereof.

## **14 INDEMNITY**

### **14.1 Indemnification by the Company**

The Company shall indemnify, defend, and hold harmless the LGU, its directors, officers, employees, and representatives, its Affiliates, agents, advisors, contractors, or licensees and their respective directors, officers, and employees (the “**LGU Parties**”), from and against all Claims asserted against the LGU or any LGU Party by any third party as a result of the following:

- (a) For any loss of or damage to property or death or injury to persons (except for workers’ compensation claims), resulting from any negligent act or omission of the Company or any Company Parties that results from the performance of this Agreement;
- (b) Failure of the Company to comply with any Legal Requirement in the performance of its obligations under this Agreement;
- (c) Failure of the Company to comply with its representations and warranties under Section 11 of this Agreement; or
- (d) Failure of the Company to comply with its covenants under Section 12 of this Agreement.

The Company shall not be obliged to indemnify the LGU to the extent that any of the matters referred to in paragraphs (a) to (d) above is caused by the negligence, misconduct, or breach of this Agreement by the LGU or any LGU Parties or arises as a direct result of the Company acting upon the instruction of the LGU.

### **14.2 Indemnification by LGU**

The LGU shall indemnify, defend, and hold harmless the Company, its shareholders, directors, officers, employees, and representatives, its Affiliates, agents, contractors, or licensees and their respective directors, officers, and employees (the “**Company Parties**”), from and against all Claims asserted against the Company or any Company Parties for any loss of or damage to property or death or injury to persons (except for workers’ compensation claims) resulting from any negligent act or omission of the LGU or any LGU Parties that results from the performance of this Agreement by the LGU, except to the extent such loss, damage, injury, or death is attributable to the

negligence, misconduct, or breach of this Agreement by the Company or any Company Parties.

### **14.3 Indemnification Procedures**

#### **14.3.1 Notice of Claim**

Each Party shall provide the other Party with written notice of any matter constituting or that may lead to a Claim under this Agreement which may give rise to a request for indemnification under this Section 14 as soon as such Party becomes aware of the potential Claim.

#### **14.3.2 Defense of Claim**

- (a) The indemnifying Party may, at its option and at its expense, control the contest and defense of any claim with respect to which it is or may be obligated to indemnify the indemnified Party under this Agreement and with respect to which it or the indemnified Party is named as a party.
- (b) If the indemnified Party is also named as a party to any such proceeding, the indemnified Party shall have the right to retain its own counsel at its own expense. Except when the interests of the Parties with respect to such Claim are adverse, the indemnifying Party shall (i) keep the indemnified Party and its counsel reasonably informed as to the progress of such contest and defense, (ii) to the extent reasonably practicable give the indemnified Party and its counsel the opportunity to review and comment in advance on all written submissions and filings relevant to the Claim, and (iii) consider in good faith any reasonable suggestions made by the indemnified Party or its counsel or permit the indemnified Party and its counsel to submit documentation or attend those portions of any meetings and proceedings that relate to the Claim.

#### **14.3.3 Payment of Claim**

The indemnifying Party shall pay the indemnified Party within thirty (30) Days after notice to the indemnifying Party of the actual payment of a Claim by the indemnified Party.

## **15 EVENTS OF DEFAULT**

### **15.1 Company Events of Default**

The occurrence of any of the following events shall constitute a “**Company Event of Default**”:

- (a) The Provisional Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Provisional Operations Start Date.
- (b) The Operations Start Date has not occurred by one hundred eighty (180) Days after the Required Operations Start Date.
- (c) The Company fails to perform any of its obligations under this Agreement (other than a failure that constitutes a Company Event of Default under any other clause of this Section 15.1) which materially and adversely affects the performance of the Services.

- (d) At any time prior to the Operations Start Date, the aggregate amount of all costs, expenses, and liabilities incurred or reasonably expected to be incurred in order to achieve the Operations Start Date exceeds the amount available to the Company under the Financing Agreements and any other sources of funding including Equity that are unconditionally available to the Company.
- (e) The Company (i) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors; (ii) does not, is unable, or admits in writing its inability to pay its debts when due or as they mature; or (iii) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and, in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company or any such guarantor of the Company as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.
- (f) The Company, or its contractors or agents, abandons the engineering, design, construction, operation, or maintenance of the Facilities for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (g) The Company ceases to provide all or a substantial part of the Services in accordance with this Agreement for more than fifteen (15) Business Days within any period of twenty (20) consecutive Business Days.
- (j) The Company defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the Company of a notice in writing from the LGU of the amount due and payable.
- (k) The Company fails to provide a suitable replacement Performance Security Issuer with the required qualifications under this Agreement within sixty (60) Days when such Performance Security Issuer (i) fails to satisfy the requirements for the Performance Security Issuer set out in Section 1.1 (*Definition of "Performance Security Issuer"*) of this Agreement, (ii) becomes voluntarily or involuntarily the subject of rehabilitation, receivership, or suspension of payment proceedings under any bankruptcy or insolvency law or other law or procedure for the relief of financially distressed debtors, (iii) does not or is unable to pay its debts when due or as they mature, or (iv) becomes insolvent, takes or suffers any action for its liquidation or dissolution, or has a receiver or liquidator appointed for all or any substantial part of its assets and, in the event any such occurrence is involuntary, it results in the entry of an order for relief or the adjudication of the Company's guarantor as bankrupt or insolvent and it remains undismissed or undischarged for a period of thirty (30) Days.
- (l) The Company breaches any provision of Section 12.6 (*Anti-Corruption Warranty*).
- (m) The Company assigns or transfers any of its rights or obligations under this Agreement, except as permitted by Section 18.2 (*Permitted Assignment to Financing Parties*).



- (n) There is a transfer of an interest in the Company that does not comply with Section 18.3 (*Ownership of Company*).
- (o) The Operating Security originally provided pursuant to Section 6.3 or any replacement Operating Security has been fully drawn and the Company has failed to procure within twenty-one (21) Business Days thereafter a replacement Operating Security in the amount of PHP[●] and otherwise satisfying the requirements of Section 6.3.

## **15.2 LGU Events of Default**

The occurrence of any of the following events shall constitute an “**LGU Event of Default**”:

- (a) The Company is ready, willing, and able to perform the Services but the LGU refuses to accept them without justifiable reason or completely obstructs the Company’s ability to perform the Services.
- (b) The LGU defaults in the payment of any amount due and payable (which amounts are not in dispute) under this Agreement, which amount exceeds the sum of PHP[●] and such default continues unremedied for a period of sixty (60) Days from receipt by the LGU of a notice in writing from the Company of the amount due and payable.
- (c) The LGU fails to perform any of its material obligations under this Agreement which prevents or renders it impossible for the Company to perform its own obligations under this Agreement for a continuous period of sixty (60) Days.
- (d) There is an expropriation, sequestration or requisition of a material part of the Project assets and/or shares of the Company by the LGU or other Government Authority.
- (e) There is a breach by the LGU of Section 18.1 (*No Assignment*).

## **16 LIMITATION OF LIABILITY**

### **16.1 Limitation of Consequential Damages; Other Rights and Remedies**

Neither Party shall be liable to the other Party whether in contract, tort, negligence, warranty, strict liability, breach of a statutory duty, or otherwise for (i) any special, consequential, moral, or punitive damages, (ii) indirect losses, costs, or expenses, or (iii) loss of actual or anticipated profits, loss of opportunities (including opportunities to enter into arrangements with third parties), or loss of use or production. However, this Section shall not limit the liquidated damages specifically provided for in this Agreement and the termination payments set forth in Schedule I (*Termination Buy-Out and Transfer Provisions*).

### **16.2 Limitation of Liability for Liquidated Damages**

- (a) The total liability of the Company for liquidated damages if the LGU terminates this Agreement pursuant to Sections 2.3.1 and 2.3.2 due to non-occurrence of the Effective Date on or before the Required Effective Date shall be the amount of the Performance Security.

- (b) The total liability of the Company for Delay Liquidated Damages pursuant to Section 5.8 (*Liquidated Damages for Delay in Meeting Project Milestones*) shall be not more than PHP[●].

## **17 LGU STEP-IN RIGHTS**

### **17.1 Step-in Rights**

- (a) The LGU shall have the option to assume operational responsibility for the Facilities (in the capacity of an operator only) in order to continue operation of the Facilities or complete any necessary repairs to assure the continued delivery of the Services ("***LGU Step-in Rights***"). LGU Step-in Rights shall arise only upon the occurrence and continuance of a Company Event of Default that could reasonably be expected to materially adversely affect the Company's ability to operate and maintain the Facilities in accordance with this Agreement.
- (b) The LGU shall notify the Company in writing of the following:
  - (i) its intention to exercise LGU Step-in Rights
  - (ii) the reason for its exercise of LGU Step-in Rights; and
  - (iii) the date it will commence exercise of LGU Step-in Rights.
- (c) The LGU may only exercise the LGU Step-in Rights under the following conditions:
  - (i) Any applicable cure period specified in Section 15 (*Events of Default*) and Section 16 (*Termination*) has expired, unless the LGU is requested by the Lenders to step in earlier on their behalf pursuant to the Financing Agreements.
  - (ii) For so long as the Financing Agreements remain in effect, the LGU must first obtain the consent of the Lenders.
- (d) During the period of the LGU's exercise of the LGU Step-in Rights, the LGU shall be the operator of the Facilities. The Company's obligation to provide part of the Services covered by the exercise of the LGU Step-in Rights shall be suspended, but the LGU shall retain the right to terminate the Agreement due to a Company Event of Default. The exercise of the LGU Step-in Rights shall not be deemed as or result in a transfer of title to the Facilities or a transfer of the Company's obligations as owner of the Facilities.

### **17.2 Implementation of LGU Step-in Rights**

#### **17.2.1 LGU's Contracts, Consents, etc.**

- (a) Within three (3) Days of the Company's receipt of the LGU's notice of its exercise of LGU Step-in Rights, the Company shall assign to the LGU the Company's rights under all agreements necessary to operate the Facilities, provided that such assignment shall automatically cease upon the reversion of operation responsibility to the Company.
- (b) The Company shall promptly take all steps necessary to permit the LGU to exercise as operator of the Facilities the Company's rights under all Consents to the extent such rights are necessary for the LGU to operate the Facilities during

the LGU's exercise of LGU Step-in Rights. The Company shall give the LGU access to all design manuals, construction drawings, and other documentation required to operate the Facilities.

#### **17.2.2 Payments to Company and LGU**

- (a) During any period in which the LGU exercises the LGU Step-in Rights, the LGU shall continue making payments to the Company in accordance with the terms of this Agreement.
- (b) During the exercise of the LGU Step-in Rights, the LGU shall be entitled to remuneration for the LGU's reasonable costs as an operator.

#### **17.2.3 Payment of Company's Obligations**

- (a) The LGU shall have the right to make any payments due from and on behalf of the Company which are necessary to operate the Facilities, including payments for materials, supplies, utilities, fuel, maintenance, repairs, insurance, taxes, and other operating costs of the Facilities, together with all regularly scheduled payments under the Financing Agreements (pro-rated for the amount attributable to such period), but only to the extent that the Company is unable to meet any such payments.
- (b) The Parties shall cooperate with each other and shall execute and deliver all documents necessary or desirable to make those payments in a timely and proper manner. The remuneration and payments referred to in Section 18.2.2(b) and Section 18.2.3(a) that become payable during this period shall be regarded as funds advanced by the LGU to the Company. The LGU shall send invoices for such amounts and the Company shall promptly reimburse the LGU. The Parties shall resolve disputed amounts on the same terms and conditions as the settlement of disputed invoices provided in Section 8.10 (*Disputed Invoices*). Notwithstanding the provisions of Section 8.8, the LGU may obtain payment by making deductions from any amounts due to the Company pursuant to this Agreement, provided that such payments shall be subordinated to sums owed to the Lenders.

#### **17.2.4 Standards of Operation**

During any period when the LGU is operating the Facilities, the LGU shall operate and maintain the Facilities in accordance with Prudent Utility Practice. The Company shall have the right to monitor the LGU's operation of the Facilities to the extent reasonably required to ascertain whether the LGU is operating and maintaining the Facilities in accordance with that standard. The LGU shall have no more liability to the Company than would a third party operation and maintenance contractor with respect to the operation and maintenance of the Facilities by the LGU during the exercise of such step-in rights.

#### **17.2.5 Reversion of Operational Responsibility to Company**

The LGU shall return operational responsibility for the Facilities to the Company following any exercise by the LGU of the LGU Step-in Rights (i) reasonably promptly following the cure of the Company Event of Default that led to the exercise of the LGU Step-in Rights, or (ii) at the sole discretion of the LGU, after fifteen (15) Days' prior written notice to the Company stating that the LGU will return operational

responsibility over the Facilities back to the Company. The LGU shall return the Facilities to the Company in a physical condition no worse than the condition of the Facilities at the time the LGU assumed operational responsibility for the Facilities pursuant to such exercise of the LGU Step-in Rights, ordinary wear and tear excepted. The LGU shall not be responsible for or have any liability resulting from any condition of the Facilities or the Site that existed prior to such exercise of LGU Step-in Rights.

## **18 ASSIGNMENT OF RIGHTS; OWNERSHIP OF THE COMPANY**

### **18.1 No Assignment**

Neither Party may sell, assign, or transfer its rights or obligations under or pursuant to this Agreement without the prior written consent of the other Party, except that the Company may assign its rights to the Lenders in accordance with Section 18.2 (*Permitted Assignment to Lenders*).

### **18.2 Permitted Assignment to Lenders**

- (a) The LGU consents to the collateral assignment of the Company's rights under this Agreement to the Lenders pursuant to the Financing Agreements and agrees:
  - (i) To afford the Lenders a reasonable opportunity to remedy any default by the Company or any other event or occurrence which gives the LGU the right to terminate or suspend this Agreement;
  - (ii) In the event of a default under the Financing Agreements and a foreclosure sale of the Company's interest in the Facilities, to accept the purchaser of the Company's interest as the successor to the Company under this Agreement, provided that such purchaser (A) if the Operations Start Date has not occurred, has reasonable access to funding necessary to achieve the Operations Start Date on or before the Required Operations Start Date, and (B) meets all legal, technical, and financial qualifications of an operator set by the LGU for the Project, assumes the performance of the Company's obligations under this Agreement (except those obligations that by their nature cannot be performed by any person other than the Company), cures all outstanding payment defaults of the Company under this Agreement, and makes provision reasonably satisfactory to the LGU for the cure of all other outstanding defaults of the Company under this Agreement; and
  - (iii) In the event of an acceleration of the loans under the Financing Agreements, to enter into, at the request of the Lenders, a replacement agreement substantially similar to this Agreement but that in no event increases the LGU's liabilities with the Lenders or their designee.

The Company acknowledges and agrees that any collateral assignment to the Lenders pursuant to the Financing Agreements shall not relieve the Company of its obligations to the LGU under this Agreement.

- (b) The LGU agrees to enter into an acknowledgment and consent agreement with the Lenders as to the foregoing matters and as to such other matters of a type customarily dealt with in a consent to an assignment for security purposes of a borrower's interest in a contract as the Lenders may reasonably request.

### **18.3 Ownership of Capital Stock of Company**

#### **18.3.1 Company's Capital Stock**

Subject to the rights of the Lenders under the Financing Agreements and except as otherwise provided in Section 18.3.2 (*Restrictions on Transfer of Capital Stock of Company*), the Company covenants that:

- (a) The proportionate direct and indirect ownership of the capital stock of the Company held by each of the Sponsors shall be as set out in Schedule J (*Ownership Interests in Company*);
- (b) Each Initial Shareholder is the registered, legal, and beneficial owner of the number of shares of the Company set out opposite its name in Schedule J (*Ownership Interests in Company*);
- (c) All issued shares shall, when issued, have been authorized, allotted, and called-up and validly issued and registered and fully paid; and
- (d) There are no outstanding Liens, options, warrants, rights, calls, commitments, conversion rights, rights of exchange, plans, or other agreements of any character (including rights of first refusal or rights of first offer of any Initial Shareholder with respect to other Initial Shareholders) providing for the purchase, issuance, or sale of any shares of the capital stock in, or the voting of, the Company, other than as created under the Financing Documents.

#### **18.3.2 Restriction on Transfer of Capital Stock of Company**

- (a) From the Signature Date until the second (2<sup>nd</sup>) anniversary of the Operations Start Date (the "**Lock-in Period**"), no Change of Ownership may occur, except a Change of Ownership arising as a consequence of:
  - (i) the grant or enforcement of security in favor of the Lenders over or in relation to any of the shares of the Company pursuant to the terms of the Financing Agreements;
  - (ii) any transfer by an Initial Shareholder to its Affiliate of such Initial Shareholder's capital stock in the Company; or
  - (iii) any change in legal or beneficial ownership of any shares that are listed on a registered securities exchange.
- (b) After the Lock-in Period, any Initial Shareholder may transfer its direct and indirect ownership interests in the capital stock of the Company, provided, however, that collectively and at any given time the Company's Shareholders shall have the legal, financial, and technical capabilities of successfully carrying out the implementation and operation of the Project that are equal to or better than those of the Initial Shareholders' legal, financial, and technical qualifications.

- (c) If a Shareholder desires to transfer any part of its direct or indirect ownership of the capital stock of the Company, the Company must first submit to the LGU a description of:
  - (i) The proposed transfer of the Shareholder's direct or indirect interest in the capital stock of the Company;
  - (ii) The identity of the proposed transferee; and
  - (iii) If applicable, any proposed amendment to the articles of incorporation and by-laws of the Company.

The LGU may request the Company to and the Company shall provide the LGU within five (5) Days following such request, any additional information that the LGU considers necessary for its evaluation of the proposed transfer.

## **19 DISPUTE RESOLUTION**

### **19.1 Mutual Discussions**

In case any Dispute occurs, the Parties shall attempt in good faith to settle such Dispute by mutual discussions between the Parties held at the principal office of the LGU and beginning not later than seven (7) Days after the receipt by one Party of a written notice from the other Party of the existence of the Dispute.

### **19.2 Expert Proceedings**

#### **19.2.1 Referral of Disputes to Expert Panel**

If a Dispute cannot be settled by mutual discussion within thirty (30) Days or such longer period as may be agreed in writing by the Parties after the commencement of such discussions under Section 19.1, then the Dispute shall be referred to the Expert Panel for determination.

#### **19.2.2 Establishment and Operation of Expert Panel**

- (a) Not later than sixty (60) Days after the Signature Date, each Party shall nominate [***number of experts***] independent experts comprising: [***selected expertise of Expert Panel***] (the "***Expert Panel***"). The Parties will agree on the panel of experts selected from the experts so nominated by the Parties. The Expert Panel shall be constituted and called upon only when required within thirty (30) Days from receipt of a Party of the written notice of the other Party's decision to refer a matter to the Expert Panel. If the Parties are unable to agree on the composition of the Expert Panel within such thirty (30)-Day period, then either Party may request the International Chamber of Commerce's International Centre for Expertise to appoint an expert.
- (b) Decisions of the Expert Panel shall be made by simple majority vote of the members. The members of the Expert Panel shall develop their own internal conduct and procedural rules based upon principles of transparency, impartiality, and efficiency. Proceedings of the Expert Panel shall not be required to follow the procedural laws related to arbitrations. The Expert Panel need not be bound by strict rules of law where it considers the application thereof to particular matters

to be inconsistent with the spirit of this Agreement and the underlying intent of the Parties.

- (c) All costs incurred in connection with the convening of the Expert Panel and the referral and resolution of a Dispute before it, including reasonable compensation of the members of the Expert Panel, shall be equally shared by the Parties.

#### **19.2.3 Decisions of Expert Panel**

Except as otherwise expressly provided in this Agreement, all decisions of the Expert Panel shall be taken within not more than sixty (60) Days after the receipt by the Expert Panel of a request by either Party for a decision of the Expert Panel pursuant to this Agreement or by such later time as may be agreed by the Parties.

#### **19.3 Arbitration**

If a Dispute cannot be settled by mutual discussion within thirty (30) Days after the commencement of such discussions under Section 19.1 and either:

- (a) The Parties agree in writing to refer the Dispute to arbitration rather than to the Expert Panel, or
- (b) There was fraud or manifest error in connection with the decision of the Expert Panel,

then either Party may submit such Dispute to arbitration in [●] in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) for the time being in force, which rules are deemed to be incorporated by reference in this Agreement. The arbitration proceedings shall be conducted in the English language. The Parties agree that the arbitrators may apply equitable principles if they consider their application to particular matters to be consistent with the spirit of this Agreement and the underlying intent of the Parties.

#### **19.4 Expert Panel and Arbitral Award**

All Expert Panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The awards shall be final and binding on the Parties. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be entered by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

#### **19.5 Enforcement of Award**

By execution and delivery of this Agreement each Party hereby accepts and consents to the jurisdiction of the aforesaid Expert Panel and arbitral panel and, solely for purposes of the enforcement of an Expert Panel and arbitral award under this Section 19, to the jurisdiction of any court of competent jurisdiction, for itself and in respect of its property, and waives in respect of both itself and its property any defense it may have as to or based on sovereign immunity, jurisdiction, improper venue, or inconvenient forum. Each Party hereby irrevocably consents to the service of any process or other papers by the use of any of the methods and to the addresses set for the giving of notices in Section 21.1. Nothing herein shall affect the right of any Party to serve such process or papers in any other manner permitted by law.

## 19.6 Continuing Obligations

Pending settlement of any Dispute pursuant to this Section 19, the Parties shall continue to comply with and perform their obligations under this Agreement without prejudice to a final adjustment in accordance with a final award rendered by the Expert Panel or by an arbitral panel in accordance with this Section 19.

## 19.7 Exclusive Procedure for Resolving Disputes

This Section 19 sets forth the sole procedures for resolving any Dispute between the Parties, and neither Party may commence or maintain any suit or legal or equitable proceeding concerning a Dispute hereunder until the Dispute has been determined in accordance with the arbitration procedure provided for herein, and then only to enforce or facilitate the execution of the award rendered in such arbitration. The Parties agree to waive, to the maximum extent permitted by Legal Requirements, the right of appeal to a court of law.

# ARTICLE IV CONTRACT TERMINATION

## 20 TERMINATION

### 20.1 Termination due to an Event of Default

#### 20.1.1 Termination Procedure

Upon the occurrence of a Company Event of Default or an LGU Event of Default, the following procedure shall apply:

- (a) The non-defaulting Party may give a notice (a ***“Termination Notice”***) to the defaulting Party, specifying in reasonable detail the Event of Default and the date on which the non-defaulting Party proposes to terminate this Agreement. Except in the case of paragraphs (b) and (c) below, the Agreement may be terminated on any date specified by the non-defaulting Party in the Termination Notice.
- (b) If a Company Event of Default occurs under Section 15.1(c) or Section 15.1(d), the LGU may provide written notice of default to the Company (a ***“Notice of Company Event of Default”***) within five (5) Days of becoming aware of the Company Event of Default. The Company shall have thirty (30) Days from its receipt of the Notice of Company Event of Default in which to cure such Company Event of Default. If the Company needs more than that period to cure the default, the Company shall deliver to the LGU a plan (the ***“Company Rectification Plan”***) within ten (10) Days from the receipt of the Notice of Company Event of Default (or within such longer time as the LGU may approve), specifying the remedial actions the Company plans to take and the number of Days necessary to correct such Company Event of Default. The Company Rectification Plan shall be subject to the LGU’s prior written approval, which should not be unreasonably withheld. If (i) such Company Event of Default is not cured within the thirty (30)-Day period (or such longer period as the LGU may have approved), (ii) the Company is not consistently striving to cure such Company Event of Default, or (iii) the LGU



withholds its approval of the proposed Company Rectification Plan for valid reasons after not less than ten (10) Days following its submittal, the LGU shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the Company, which termination shall be effective as of the date specified by the LGU in the Termination Notice, which shall be not less than thirty (30) Days from the date the Company receives the Notice of Company Event of Default.

- (c) If an LGU Event of Default occurs under Section 15.2 (a) or Section 15.2 (c) the Company may provide written notice of default to the LGU (a “**Notice of LGU Event of Default**”) within five (5) Days of becoming aware of the LGU Event of Default. The LGU shall have thirty (30) Days from its receipt of the Notice of LGU Event of Default in which to cure such LGU Event of Default. If the LGU needs more than that period to cure the default, the LGU shall deliver to the Company a plan (the “**LGU Rectification Plan**”) within ten (10) Days from the receipt of the Notice of LGU Event of Default (or within such longer time as the Company may approve), specifying what remedial actions the LGU plans to take and the number of Days necessary to cure such LGU Event of Default. The LGU Rectification Plan shall be subject to the Company’s prior written approval, which should not be unreasonably withheld. If (i) the LGU Event of Default is not cured within the thirty (30)-Day period (or such longer period as the Company may approved), (ii) the LGU is not consistently working to cure such LGU Event of Default, or (iii) the Company reasonably withholds its approval of the proposed LGU Rectification Plan after not less than ten (10) Days following its submittal, the Company shall have the immediate right to terminate this Agreement by delivering a Termination Notice to the LGU, which termination shall be effective as of the date specified by the Company in the Termination Notice, which shall be not less than thirty (30) Days from the date the LGU receives the Notice of LGU Event of Default.

#### **20.1.2 Default Termination Buy-Out Provisions**

- (a) In the event of termination of this Agreement by the LGU under this Section 16.1 due to a Company Event of Default, the LGU shall allow the Lenders to enforce their rights under the Financing Agreements. If the Lenders do not exercise their rights under the Financing Agreements or if the Financing Agreements are no longer effective, the LGU shall have the right in its sole discretion to take over and purchase all of the Company’s right, title, and interest in the Facilities and the Project for the purchase price and in accordance with the procedures set forth in Schedule I (*Buy-Out and Transfer at Termination Provisions*).
- (b) In the event of termination of this Agreement by the Company due to an LGU Event of Default, the LGU shall purchase from the Company, and the Company shall transfer to the LGU, all of the Company’s right, title, and interest in the Facilities and the Project (including all amounts deposited in the escrow account mentioned in Section 16.3) for the buyout price and following the procedures set forth in Schedule I (*Buy-Out and Transfer at Termination Provisions*).
- (c) Section 16.1 (*Termination due to an Event of Default*) does not preclude either Party from resorting to dispute resolution pursuant to Section 19.

## **20.2 Termination due to Prolonged Force Majeure Event**

### **20.1.1 Termination by Company**

The Company may terminate this Agreement if a Force Majeure Event prevents either Party from performing any of its material obligations under this Agreement for a continuous period of one hundred eighty (180) Days. The LGU may require the Agreement to continue if the LGU pays the Company the Tipping Fee and complies with the procedures in the second paragraph of Section 16.2.4 (*Termination Procedure*).

### **20.1.2 Termination by LGU**

The LGU may terminate this Agreement if:

- (a) A Non-Political or Political Force Majeure Event prevents the LGU from performing any of its material obligations under this Agreement for a continuous period of more than one hundred eighty (180) Days;
- (b) A Political Force Majeure Event prevents the Company from performing any of the Services for a continuous period of more than one hundred eighty (180) Days.

### **20.2.3 Termination by Either Party**

Either Party may terminate this Agreement if an Event of Loss prevents the Company from rebuilding, repairing, and restoring the Facilities or the affected portion thereof as determined in accordance with Section 10.4.2 (*Loss After the Financing Agreements Have Expired*).

### **20.2.4 Termination Procedure**

If a Party has the right to terminate this Agreement pursuant to this Section 16.2 (*Termination due to Prolonged Force Majeure Event*), it may give notice to the other Party specifying the date on which this Agreement shall terminate, which date shall not be less than ninety (90) Days from the date of such notice. When such date occurs, subject to the satisfaction of any payment or other obligations hereunder, this Agreement shall terminate and shall no longer be binding.

### **20.2.5 Force Majeure Termination Buy-Out Provisions**

Except for termination of this Agreement as a result of an Event of Loss caused by a Non-Political Force Majeure Event, in case of termination of this Agreement in accordance with the provisions of this Section 16.2 (*Termination due to Prolonged Force Majeure Event*), the LGU shall purchase from the Company, and the Company shall transfer to the LGU, the Facilities and the Project (including all sums deposited in the escrow account described in Section 16.3) for the buyout price and following the procedures set forth in Schedule I (*Buy-Out and Transfer at Termination Provisions*).

## **20.3 Closure and Post-Closure at Termination**

- (a) At least one (1) year prior to the Termination Date occurring under Section 3.2(d) of this Agreement, the Company shall submit a closure plan to the LGU for the installation of final cover, the management of landfill gas and leachate, and the preparation, rehabilitation and restoration of the Sanitary Landfill site for alternative use or development. The LGU shall review the plan and may provide

comments following the procedure described in Section 5.5.2. The submission of the closure plan for comment and the review by the LGU of such plan shall not constitute an approval or a warranty on its part of the technical soundness of the closure plan devised by the Company.

- (b) The Company shall secure all Consents necessary including the authority to close and the approval of the DENR-EMB for the closure and post-closure aftercare of the Facilities.
- (c) The Company shall carry out and complete the closure action plan within 180 Days from the Termination Date and before the physical handover of the Facilities to the LGU in accordance with Section 3.3 (*Transfer of Facilities*), Schedule I (*Termination Buy-Out and Transfer Provisions*), and all applicable Legal Requirements. For this purpose, the Independent Verifier shall issue a certification verifying that closure has been completed in accordance with the closure plan.
- (d) The costs necessary for closure and post-closure activities including long-term aftercare, maintenance and monitoring of all Facilities after closure shall be set aside by the Company and deposited in an escrow account opened and maintained for such purpose to be built up annually during the Operating Period. The amount to be set aside annually by the Company at the end of each fiscal year shall be equivalent to PHP[●]. All interest earned shall accrue to such account. The terms for the creation and operation of the fund to be put in escrow shall be mutually agreed to by the Parties in a separate and definitive escrow fund agreement.
- (e) The LGU at its cost shall implement post-closure care to include maintaining the integrity and effectiveness of any final cover, and maintaining and operating the gas monitoring and leachate collection systems. The LGU may redevelop any part of the Site after such transfer for any public or commercial purpose in accordance with the approved closure plan and all applicable Legal Requirements.

#### **20.4 Transfer of Facilities at Termination**

When the Termination Date occurs and after the Company has implemented the closure action plan described in Section 16.3 (*Closure and Post-Closure*), if applicable, the Company shall transfer the Facilities to the LGU in accordance with Schedule I (*Termination Buy-Out and Transfer Provisions*). The Company shall, at its cost, take all the advanced steps necessary to ensure that the Facilities are fully transferable on the Termination Date.

**ARTICLE V  
GENERAL PROVISIONS**

**21 GENERAL PROVISIONS**

**21.1 Notices**

**21.1.1 Addresses**

All notices, requests, agreements, or consents shall be in writing and in English and shall be deemed to have been duly given: (i) upon delivery if delivered by hand against written acknowledgment of receipt; (ii) on the Business Day following confirmed transmission if sent by e-mail or facsimile; *provided* that such e-mail or facsimile transmission shall be followed by notification by mail postmarked within three (3) Days; and (iii) upon delivery if sent by certified, registered (return receipt requested), or express mail, first-class postage prepaid, or by an express courier service, marked for overnight delivery. The word “notify” shall be construed accordingly. All notices shall be addressed as follows:

To the LGU:

[Full LGU Name]

[LGU Address]

Telephone: [●]

E-mail: [●]

Facsimile: [●]

Attention: [●]

To the Company:

[Full Company Name]

[Company Address]

Telephone: [●]

E-mail: [●]

Facsimile: [●]

Attention: [●]

**21.1.2 Change of Address**

A Party may change its address by giving the other Party written notice of such change pursuant to Section 21.1.1, provided that any such change shall not be effective until notice of such change has been received by the other Party in accordance with Section 21.1.1.

**21.2 Entire Agreement**

This Agreement, together with its Schedules, constitutes the entire agreement between the Parties with respect to the transactions contemplated herein. All previous documents, undertakings, and agreements, whether oral, written or otherwise, between the Parties concerning the subject matter of this Agreement are hereby

cancelled and shall not affect or modify any of the terms or obligations set forth in this Agreement.

### **21.3 Waivers**

The failure of a Party to insist upon a strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right thereafter to insist upon a strict adherence to that term or any other term of this Agreement. No waiver by a Party of any default or breach of this Agreement shall be construed as a waiver of any other provision, condition, or term hereof or of any other default or breach of the same provision, condition, or term. No delay in the exercise and no single or partial exercise by a Party of any right, remedy, or power hereunder, in equity, or at law, shall preclude any other or further exercise thereof or the exercise of any other right, remedy, or power existing hereunder, in equity, or at law. Any waiver must be in writing and signed by a duly authorized representative of the Party issuing the waiver.

### **21.4 Confidentiality and Disclosure**

#### **21.4.1 Confidentiality**

Each Party shall hold in strict confidence from any other person all documents and information concerning any other Party or any of its Affiliates furnished to it or its advisors, consultants, contractors, or agents by the other Party in connection with this Agreement or the transactions contemplated hereby ("**Confidential Information**"), unless the information or that Party is:

- (a) Required to disclose any such information by judicial or administrative process (including in connection with obtaining from Government Authorities the necessary approvals of this Agreement and the transactions contemplated by it) or by other Legal Requirements including the obligation to submit or publish the Agreement or any of the reports contemplated in Section 9;
- (b) Disclosed to persons providing or proposing to provide financing to Seller; or
- (c) Disclosed in an action or proceeding brought by either Party in pursuit of its rights or in the exercise of its remedies under the Agreement.

Notwithstanding the foregoing, this Section 21.4.1 shall not apply to such documents or information that were (i) previously known by the Party receiving such documents or information, (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of such receiving Party, or (iii) later acquired by such receiving Party from another source so long as such receiving Party is not aware that such source is under an obligation to the other Party to keep such documents and information confidential.

#### **21.4.2 Required Disclosure**

Any Party required by any Legal Requirement or in the course of administrative or judicial proceedings or in accordance with required disclosures of publicly-listed companies by registered securities exchanges to disclose information that is otherwise required to be maintained in confidence pursuant to Section 21.4.1, may disclose such information notwithstanding the provisions of Section 21.4.1; *provided, however*, that the Party making the disclosure shall give prior notice to the other Party of the

requirement and its terms and shall cooperate to the maximum extent legally possible to minimize the disclosure of the information. The Party disclosing such information shall use reasonable efforts, at the other Party's cost, to obtain proprietary or confidential treatment of such information by the third party to whom the information is disclosed, and to the extent such remedies are available, shall use reasonable efforts to seek protective orders limiting the dissemination and use of the information at the other Party's cost. For avoidance of doubt, this Agreement does not alter the rights of the Parties to object to the Legal Requirement or proceedings requiring the disclosure.

#### **21.5 Further Assurances**

The Parties will do, execute, and deliver, or will cause to be done, executed, and delivered, all such further acts and such other things as each Party may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties, and covenants of this Agreement.

The Parties further assure that they shall perform their obligations in a highly professional and diligent manner, with due efficiency and economy and timely execution of works and other obligations, in all respects with that degree of skill, diligence, prudence and foresight required from them, and with due attention to the need for fairness, openness and good faith in their dealings.

#### **21.6 Severability**

The validity of the remaining articles, clauses, provisions, terms, and parts of this Agreement shall not be affected by a court, administrative board, or other proceeding of competent jurisdiction deciding that an article, section, provision, term, or part of this Agreement is illegal, unenforceable, in conflict with any law, or contrary to public policy. In such event the Parties hereto shall, by amendment of this Agreement, properly replace such provision by a reasonable new provision or provisions that, as far as legally possible, approximate what the Parties intended by such original provision and the purpose thereof.

#### **21.7 Language**

This Agreement is being executed in the English language only. All documents, notices, waivers, and all other communications written or otherwise between the Parties in connection with this Agreement shall be in the English language. Any translation of this Agreement or any such communication, if any, shall be for convenience only and shall not be binding upon the Parties.

#### **21.8 Counterparts**

This Agreement may be executed in one or more duplicate counterparts and when signed by each of the Parties shall constitute an original and a single binding agreement. Any Party hereto may execute this Agreement by signing any such counterpart (including by facsimile). Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same counterpart.

#### **21.9 Remedies Cumulative**

Except with respect to liquidated damages payable pursuant to this Agreement for non-occurrence of the Effective Date and for delay in achieving the Provisional Operations Start Date, no remedy or right herein conferred is intended to be exclusive of any other remedy or right, but every such remedy or right shall be cumulative and shall be in addition to every other remedy or right herein conferred or now or hereafter existing at law or in equity.

#### **21.10 Amendments**

No amendments or modifications of this Agreement shall be valid except by written agreement signed by duly authorized representatives of the Parties. Minutes of meetings or other informal documents shall not constitute a written agreement for purposes of the preceding sentence.

#### **21.11 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of the Philippines and shall for all purposes be conclusively deemed to be a Philippine contract.

#### **21.12 Survival**

All express representations, warranties, indemnities, and limitations of liability included in this Agreement shall survive its completion or termination for any reason.

[The remainder of this page has been intentionally left blank.]

## **SOLID WASTE MANAGEMENT – SCHEDULES**

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## SCHEDULE A

### DESIGN AND TECHNICAL SPECIFICATIONS

#### Definitions

Except as otherwise defined in this Schedule A, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Project Agreement between the LGU and the Company to which this Schedule A is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a Section beginning with the letter “A” is a reference to a Section within this Schedule A.

#### Overview

The Facilities shall be designed and constructed to (1) take MSW to be delivered by the LGU using different types of collection vehicles at the Materials Recovery Facility, (2) sort and recover recyclable or reusable materials from the waste stream, (3) transport the residual waste to the Sanitary Landfill, and (4) accept and process or otherwise dispose of MSW according to the volume, rates of acceptance, and delivery schedule agreed between the LGU and the Company within the limits set out in Table [●] of Schedule [●] (*Delivery Schedule and Operating Procedures*).

#### Components and Capacities of the Facilities

The Facilities shall be located at the sites shown in Figure A-1 (collectively, the “**Site**”) and shall include the following major components:

- Materials Recovery Facility/ Transfer Station
- Sanitary Landfill
- Access and On-site Roads
- Segregation, Composting, Transport, and Waste Disposal Equipment
- *[specify other Project components or facilities.]*

#### **Materials Recovery Facility/ Transfer Station (MRF/TS)**

The MRF/TS shall be a solid waste transfer station or sorting station, drop-off center, composting and recycling facility where recovered or recyclable material is diverted or retrieved from the municipal solid waste delivered by the LGU for the purpose of collection, processing, and use as a raw material in the manufacture of a recycled product. The MRF/TS shall be capable of handling different types of recovered or recyclable material including newspaper, ferrous scrap metal, non-ferrous scrap metal, used oil, corrugated cardboard, aluminum, glass, office paper, tin cans, plastic, and other materials.

*[Provide specific technical descriptions of the MRF/TS. For this purpose, it is important to have a medium to long term Materials Recovery Policy (MRP). The MRP should set goals that seek to limit the volume of waste to be landfilled over time. The MRP and the type of curb side waste (recycling) collection will determine the characteristics of the MRF/TS which can function as a*

*picking and selection center, classification center, or a true recovery, packing or pre-processing center.*

*Setting up a transfer station facility as part of the MRF will depend largely on the size of the town, the volume of waste generated, the distance to the SLF, and the cost of transport. A rule-of-thumb is that a cost-benefit analysis should be done when the SLF is more than 20 km away.]*

### **Sanitary Landfill**

The Sanitary Landfill shall be a Category [●] final disposal facility applied to LGUs with net residual waste generated greater than [●] tons per day (TPD). It shall also apply to a cluster of LGUs with a collective disposable residual waste greater than [●] TPD. It shall have the development and operational features indicated in the table below.

Features	Requirement
Daily and Intermediate Soil Cover or Cap	[●]
Embankment/ Cell Separation	[●]
Storm water drainage	[●]
Gas Venting/ Methane collection	[●]
Leachate Collection	[●]
Leachate Treatment	[●]
Leachate Recirculation	[●]
Bottom clay liner and/or synthetic liner	[●]
Groundwater Monitoring Stations	[●]

The waste disposal facility must meet the basic siting criteria stated in Section 40 of RA 9003 and its IRR, and should meet the following operating requirements:

- Planned capacity with phased cell development
- Site preparation and containment engineering
- Compaction of waste to minimum specified target densities
- Specified operational procedures to protect amenities
- Fence, gate and other site infrastructure with surfaced primary access road
- Full record of waste volumes, types and source
- Facility operation by a pool of fully-trained staff
- Prohibition of open burning
- Provision for aftercare following site restoration and closure
- Prohibition of waste pickers at the immediate disposal site.

*[Provide other technical specifications for the sanitary landfill. An SLF is typically developed in phases.]*

#### **Access and On-site Roads**

*[Provide technical specifications for access and on-site roads.]*

#### **Segregation, Composting, Transport and Waste Disposal Equipment**

*[Provide technical specifications for equipment.]*

#### **Other Components**

*[Provide technical specifications for other Project components. This may include the reservation of an area to function as a “Security Cell” for the deposit of hazardous and hospital waste. The development of this Cell can be done through a separate contracting process in which the Company may also participate. If a separate contractor is engaged for the development and operation of the Security Cell, the Company must not restrict the operation of that facility or service in any way.]*

#### **Compliance and Compatibility**

##### **Compliance with Legal Requirements**

The Company shall design, construct, operate and maintain, and close the Facilities in accordance with all applicable Legal Requirements (including all applicable Legal Requirements arising as the result of a Change-in-Law), Prudent Utility Practice, best international practice and standards, and manufacturers’ recommendations, and, without limitation, the Philippine and international standards listed below.

##### **Non-Exclusive List of Philippine and International Standards**

###### **Philippine Standards**

- Philippine National Standards (PNS)
- National Structural Code of the Philippines (NSCP)
- National Building Code (NBC)
- National Plumbing Code (NPC)
- Philippine Sanitation Code (PSC)
- Philippine Electrical Code (PEC)
- Bureau of Products Standards (BPS)
- National Electric Code of the Philippines (NECP)
- Regulations of the National Fire Protection Association (NFPA)

###### **International Standards**

- U. S. Environmental Protection Agency (EPA)
- American Water Works Association (AWWA)
- American Society for Testing and Materials (ASTM)
- American Concrete Institute (ACI)

- American Society of Sanitary Engineering (ASSE)
- Uni-Bell PVC Pipe Association (UBPPA)
- Underwriters Laboratories (UL)
- American National Standards Institute (ANSI)
- American Institute of Steel Construction (AISC)
- National Electrical Manufacturers Association (NEMA)
- Uniform Plumbing Code (UPC)
- American Welding Society (AWS)
- International Standard Organization (ISO)
- International Electromechanical Commission (IEC)
- US Bureau of Reclamation (USBR)
- American Association of the State Highway and Transportation Officials (ASSHTO)
- Other equivalent international standards

#### ***Environment Laws and Regulations***

- RA 9003 and IRR
- DENR DAO 98-50, Adopting the Landfill Site Identification and Screening Criteria for Municipal Solid Waste Disposal Facilities
- DENR DAO 2006-10, otherwise known as the Guidelines on the Categorized Final Disposal Facilities (Sanitary Landfills)
- DENR DAO 2006-09, General Guidelines on the Closure and Rehabilitation of Waste Disposal Facilities
- DENR-DOH Joint Memorandum Circular 05-02, Policies and Guidelines on the Proper and Effective Handling, Collection, Transport, Storage, Treatment and Disposal of Health Care Wastes
- RA 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990)
- DENR DAO 96-37 and DAO 2003-30, otherwise known as the Revised Implementing Rules and Regulation of PD 1586 (Environmental Impact System)
- PD 984 and related issuances such as DAO 35 (Revised Effluent Regulation of 1990) and DAO 34 (Revised Water Usage and Classification/Water Quality Criteria)
- RA 8749 (Philippine Clean Air Act of 1999) and IRR
- RA 9275 (Philippine Clean Water Act of 2004) and IRR

#### ***Resolution of Conflict between Standards***

- (a) In the event of conflict between the foregoing standards, the regulations of the appropriate Government Authority in the Philippines shall take precedence.

- (b) Any reference to a specification, standard, or publication shall be understood to refer to the latest edition of the specification, standard, or publication in effect as of the Signature Date. Internationally accepted standards equal to or better than specified standards or specifications are acceptable.

## **Structural Design Specifications**

### ***Design Loads***

The Company shall select the appropriate design loads or pressures that the civil structures must be able to withstand. In no case, however, shall the design loads and factor of safety be less than the appropriate values specified in the references or standards listed on this Schedule.

### ***Design for Durability***

Components of the Facilities shall be designed to have the following economic life:

<b>System Components</b>	<b>Economic Life (years)</b>
Material Recovery Facility/Transfer Station	[●]
Sanitary Landfill	[●]
Access and On-site Roads	[●]
Equipment	[●]
Others	[●]

The Company shall not use any materials or equipment without any proven track record of economic life. For this purpose, the Company shall submit to the LGU evidence of such track record showing that the proposed materials have an expected working life of at least [●] times the economic life specified in the table above. All materials shall be designated by the appropriate industry standard quality classification.

## **Construction Methods and Quality Assurance System**

*[Describe construction methods and procedures to be submitted to the LGU which should comply with the Quality Assurance System, the Health and Safety Management Program, and the Environmental Management Program provided below.]*

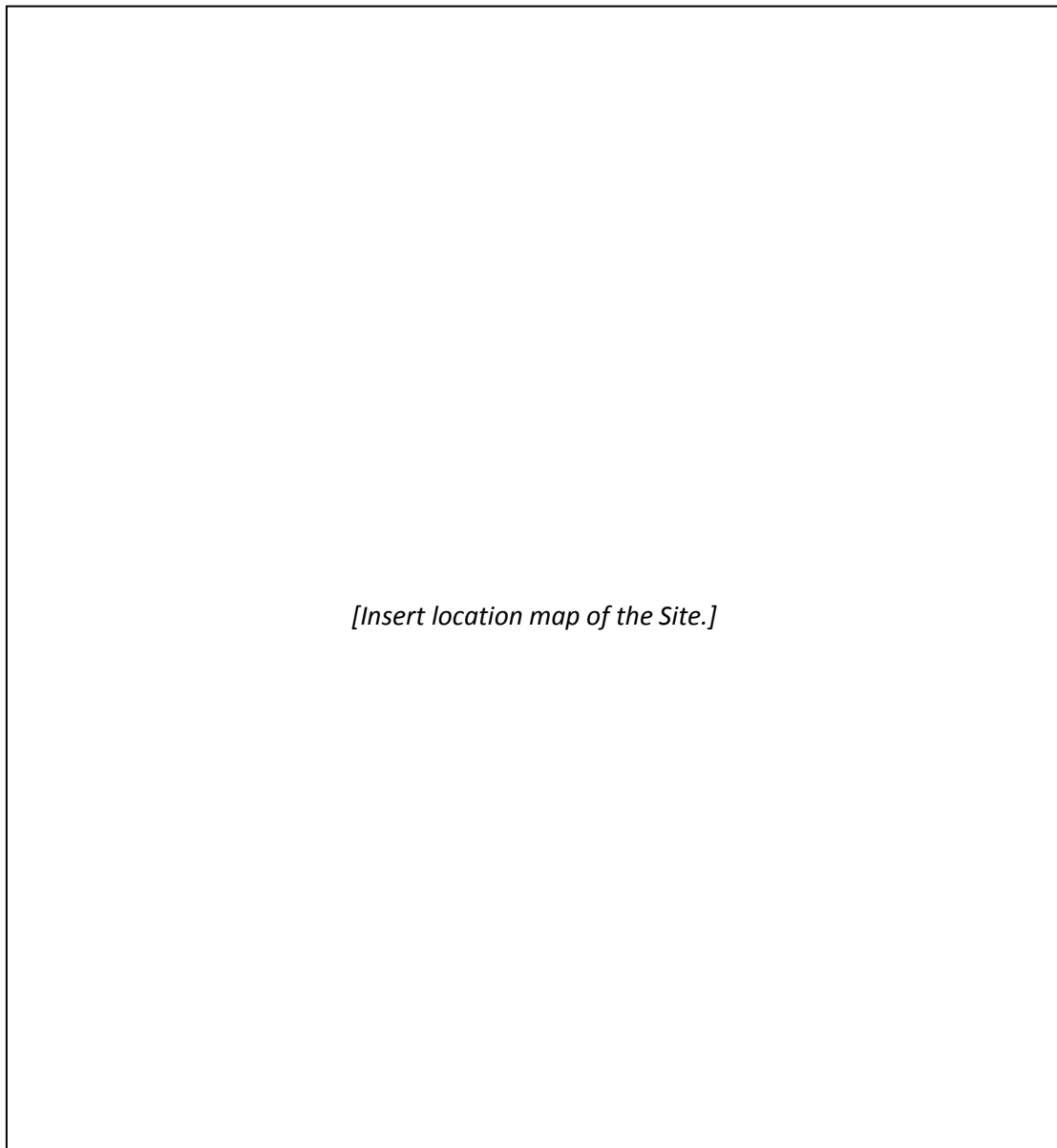
### **Health and Safety Management Program**

*[Describe the Health and Safety Program to be submitted under this Section which should be in accordance with the Occupational Health and Safety Standards (ISO 18001) being enforced by the Philippine Department of Labor and Employment.]*

### **Environmental Management Program**

*[Describe the Environmental Management Program shall be in accordance with all Legal Requirements including the terms of the ECC.]*

**Figure A-1. The Site**



## SCHEDULE B

### PROJECT MILESTONE SCHEDULE

#### B.1 Definitions

Except as otherwise defined in this Schedule B, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Project Agreement between the LGU and the Company to which this Schedule B is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “B” is a reference to a Section of this Schedule B.

#### B.2 Project Milestones

The Project Milestones and the required dates for their completion as of the Signature Date (which may be amended only following the terms of the Agreement) are as follows:

Project Milestone	Required Completion Date (As of the Signature Date)
Required Effective Date	[●] months after Signature Date
Required Continuous Construction Date	[●] months after Signature Date
Required Provisional Operations Start Date	[●] months after Signature Date
Required Operations Start Date	[●] months after Signature Date

## SCHEDULE C

### TESTING AND COMMISSIONING

#### C.1 Definitions

Except as otherwise defined in this Schedule C, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Project Agreement between the LGU and the Company to which this Schedule C is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “C” is a reference to a Section of this Schedule C.

#### C.2 Construction Completion

*[Describe the steps and procedures for determining completion of all construction activities including civil works and structures, buildings, installation of mechanical and electrical equipment, and instrumentation, communication and control systems.]*

#### C.3 Commissioning Tests

*[Describe the steps and procedures to demonstrate that all items of infrastructure, plant, equipment and systems that form part of the Facilities are capable of operating in accordance with this Agreement. There can be separate pre-commissioning and commercial operation tests.]*

#### C.4 Provisional Operations Start Date and Operations Start Date

*[Describe the particular events, circumstances and test results that will lead to the issuance of the provisional and final acceptance certificate by the LGU in accordance with the Agreement.]*



## SCHEDULE D

### FORM OF PERFORMANCE SECURITY

#### D.1 Definitions

Except as otherwise defined in this Schedule D, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule D is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “D” is a reference to a Section of this Schedule D.

#### D.2 Form of Performance Security

The forms of the Performance Security and the Operating Security are set forth beginning on the following page.

[The remainder of this page has been intentionally left blank.]

## SCHEDULE D-1

### PERFORMANCE SECURITY

#### FORM OF IRREVOCABLE STANDBY LETTER OF CREDIT

*[Letterhead of Bank]*

Name of LGU

Address

Standby Letter of Credit No.

Date:

Dear Sirs:

**KNOW ALL MEN BY THESE PRESENTS** that we, [●], a corporation organized and existing under the laws of the Republic of the Philippines (the “**Issuer**”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “**Letter of Credit**”) in your favor and for the account of *[insert name of the Company]* (the “**Company**”) relating to the obligations of the Company under the [name of LGU] Ecological Solid Waste Management Agreement dated [●] (the “**Agreement**”) between yourselves and the Company. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Agreement except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is [●] Pesos (PHP [●]) (the “**Stated Amount**”). The Stated Amount shall be reduced from time to time by drawings made hereunder and by express notice in writing from the LGU to the Issuer, in each case as hereinafter provided.
2. Subject to the other provisions of this Letter of Credit, the LGU is hereby irrevocably authorized to make one or more drawings under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the LGU in substantially the form attached as Annex A, duly completed, and that is in the form of an original letter on the LGU’s letterhead signed by any of its authorized signatories.
3. Multiple drawings may be made hereunder, provided that each drawing honored by the Issuer hereunder shall reduce the amount available under this Letter of Credit. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the “**Designated Account**”) designated by the LGU in accordance with Annex A. Forthwith upon any such drawing being honored, this Letter of Credit shall be deemed to be amended to effect a reduction in the Stated Amount hereunder equal to the amount of such drawing. Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
4. We hereby agree to honor each drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the first or second Business Day succeeding the date of such demand. As used herein, the term “**Business Day**” means any day other than (i) a Saturday or Sunday or (ii) a day

on which banking institutions in [●], Philippines are authorized or obligated by law or executive order to remain closed.

5. If a demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to the LGU that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire (unless otherwise extended in accordance with the provisions hereof) on the earliest of (i) 5:00 p.m. at the place of presentation on [*insert date no less than one year from date of the Letter of Credit*], (ii) the date on which we receive confirmation from you that the Stated Amount has been reduced to zero, and (iii) the date on which we have honored a drawing or drawings in an aggregate amount equal to the Stated Amount (the “**Expiration Date**”); provided, however that with respect to subclause (i), on the Business Day immediately preceding such Expiration Date, the Expiration Date shall be automatically extended to the date one year after such Expiration Date (or, in the event that such date is not a Business Day, the Business Day immediately preceding such date), unless the Issuer notifies the LGU in writing not less than fourteen (14) Days prior to such Expiration Date that such Expiration Date will not be extended; and provided, further, that upon notification that this Letter of Credit will not be extended the LGU may draw hereunder for the full undrawn portion of this Letter of Credit by the LGU’s written certificate of demand for payment hereunder in substantially the form of Annex A hereto and signed by one of the LGU’s authorized representatives, provided that such demand is received by the Issuer before the then current Expiration Date.
7. All documents presented to the Issuer in connection with any drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above (or at such other address as the Issuer shall have specified in writing to the LGU):
8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and the LGU.
9. This Letter of Credit sets forth our undertaking and our agreement with you and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to the LGU if the Applicant fails at any time to pay any amounts which may from time to time to be due and payable by it to the Issuer in relation to this Letter of Credit.

11. References in this Letter of Credit to the Agreement or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Agreement and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the Uniform Customs and Practice for Documentary Credits, 1993 revision, International Chamber of Commerce Publication No. 500 ("**UCP 500**"), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit and excluding Article 41 (Installment Shipments/Drawings) and Article 48 (Transferable Credit) in their entirety, excluding the last sentence of Article 17 (Force Majeure) and substituting therefor the following: If this Letter of Credit should expire during an interruption of our business as described in Article 17, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.
13. To the extent that the provisions of this Letter of Credit are not governed by UCP 500 this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

**IN WITNESS WHEREOF**, we, Issuer, have caused these presents to be executed in our name and our corporate seal to be affixed by our attorney-in-fact on this [ ] day of [ ].

**[ISSUER]**

By:

Name:

Title:

**DEMAND FOR SIGHT PAYMENT**

To: [Name of Issuer]  
[Address]

Attn: [•]

Re: Irrevocable Standby Letter of Credit No. [•]

The undersigned, the duly elected local chief executive of the LGU, a political subdivision of the Government of the Republic of the Philippines, with its principal office at [•], Philippines (together with its successors and assigns in such capacity, the “**LGU**”) make reference to the [name of the LGU] Ecological Solid Waste Management Agreement dated as of [•] between the LGU and [•], a corporation duly organized and existing under the laws of [•] having its principal office at [•], Philippines (the “**Company**”) (the “**Agreement**”).

1. The LGU hereby demands payment (the “**Drawing**”) under the Letter of Credit in the aggregate amount of [•] Pesos (PHP [•]) in order to satisfy liabilities of the Company under the Agreement for one or more of the following reasons:
  - (a) [•]; and/or
  - (b) [•]; and/or
  - (c) Issuer has notified the LGU pursuant to Section 6 of the Letter of Credit that Issuer will not extend the Expiration Date (as defined in the Letter of Credit) and the LGU is entitled to draw the full Stated Amount.
2. The amount of the Drawing does not exceed the Stated Amount, as the Stated Amount has been reduced by all prior Drawings made under the Letter of Credit and honored by Issuer.

Please wire transfer the amount of the Drawing to [account details to be inserted by the LGU] (the “**Designated Account**”).

IN WITNESS WHEREOF, the LGU has executed and delivered this certificate as of the [•] day of [•], 2009.

**LGU**

By:

\_\_\_\_\_  
Name:

Title:

## SCHEDULE D-2

### OPERATING SECURITY

#### SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, **[the COMPANY]**, a corporation duly organized and existing under and by virtue of the laws of *[country]*, with office address at *[address]* and represented by *[name of representative]*, as **PRINCIPAL**, and **[PERFORMANCE SECURITY ISSUER]**, a corporation duly organized and existing under and by virtue of the laws of *[country]*, with office address at *[address]* and represented by *[name of representative]*, as **SURETY**, are held and firmly bound unto *[name of the LGU]* ("**LGU**") in the sum of PHP[●] for the payment of which sum well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

The conditions of this Surety Bond are as follows:

WHEREAS, PRINCIPAL, on *[date]*, executed the *[name of LGU]* Ecological Solid Waste Management Agreement (the "**Agreement**") with the LGU to develop, finance, design, engineer, procure, construct, startup, test, commission, own, operate, manage and maintain facilities required to accept and process or otherwise dispose of Municipal Solid Waste delivered by the LGU based on the agreed volume, rates of acceptance, and delivery schedule provided in the Agreement;

WHEREAS, except as otherwise defined in this Surety Bond, capitalized terms used herein shall have the meanings assigned to them in the Agreement;

WHEREAS, Section 6.3 of the Agreement requires PRINCIPAL to post and deliver a surety bond callable on demand in favor of the LGU for the faithful performance by PRINCIPAL of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date of the Agreement;

NOW THEREFORE, if PRINCIPAL shall faithfully perform all the undertakings, covenants, terms, conditions and agreements under the Agreement from Provisional Operations Start Date until the Termination Date of the Agreement, then this Surety Bond shall be null and void; otherwise, it shall remain in full force and effect.

This bond is a penal bond callable on demand by the LGU upon the failure of PRINCIPAL to faithfully perform its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date.

The LGU is hereby irrevocably authorized to make one or more claims for payment against this Surety Bond by presenting to SURETY, at its address set forth above, a written notice, in substantially the form attached as Annex A hereof, that PRINCIPAL, or its assignees,

transferees or agents, has failed to faithfully perform any of its obligations under the Agreement from the Provisional Operations Start Date until the Termination Date; *Provided* that the aggregate amount of all claims for payment made by the LGU shall not exceed PHP[●].

Upon receipt of a written notice, SURETY shall pay the amount specified in the notice at the opening of business on the first or second Business Day succeeding the date of such claim for payment notwithstanding any objection which PRINCIPAL might raise against the LGU's entitlement to payment.

The liability of SURETY under this Surety Bond shall expire on *[termination of the Agreement]* and SURETY does not assume responsibility for any liability incurred or created thereafter. This Surety Bond will be cancelled ten (10) days after the expiration unless SURETY is notified in writing of any existing obligation hereunder.

This Surety Bond shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

IN WITNESS WHEREOF, we have set our hands and signed our names on the *[date]* day of *[month]* 2009 at *[city/province]*, Philippines.

***[THE COMPANY]***

**Principal**

**By:**

***[THE PERFORMANCE SECURITY ISSUER]***

**Surety**

**By:**

**Authorized Representative**

**Authorized Representative**

## ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES                    )  
[City/Province]                                        ) S.S.

**BEFORE ME**, a Notary Public for and in [City/Province] this [date] day of [month] 2009 personally appeared:

	Government ID No.	Date of Issue	Place of Issue
[The Company] [Authorized Representative of the Company] [The Performance Security Issuer] [Authorized Representative of Performance Security Issuer]			

all known to me and to me known to be the same persons who executed the foregoing Surety Bond and they acknowledged to me that the same is their own free voluntary act and deed.

**WITNESS MY HAND AND SEAL**, on the date, year and place written above.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2009.

**Annex A**

**Surety Bond**

## NOTICE OF DEMAND



To: **[THE PERFORMANCE SECURITY ISSUER]**  
[Address]

Attn: [●]

Re: Surety Bond No. [●]

The undersigned, the duly elected local chief executive of the LGU, a political subdivision of the Government of the Republic of the Philippines, with its principal office at [●], Philippines (together with its successors and assigns in such capacity, the "**LGU**") make reference to the [name of the LGU] Ecological Solid Waste Management Agreement dated as of [●] between the LGU and [●], a corporation duly organized and existing under the laws of [●] having its principal office at [●], Philippines (the "**Company**") (the "**Agreement**").

THE LGU hereby demands payment under the Surety Bond in the amount of [●] (P[●]) Philippine Currency as penalty payment by [the Company] under the Agreement for one or more of the following reasons:

[specify breach by the Company]

The aggregate amount of this claim and the other previous claims paid under the Surety Bond do not exceed the amount of PHP[●].

IN WITNESS WHEREOF, THE LGU has executed and delivered this notice on the [date] day of [month] 2009 at [city/province], Philippines.

**LGU**

By:

**[Name of Local Chief Executive]**  
[Title]

## SCHEDULE E

### INSURANCE

#### E.1 Definitions

Except as otherwise defined in this Schedule E, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule E is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “E” is a reference to a Section of this Schedule E.

The insurance policies, endorsements, and terms required to be obtained and maintained by the Company in accordance with Section 10 of the Agreement are as follows:

#### E.2 Insurance Policies and Terms

##### E.2.1 Insurance Coverage during the Construction Period

*[List all required insurances during the construction period which may include:*

- *Marine cargo/transit*
- *Delay in start-up*
- *Construction/erection all risks*
- *Third party liability*
- *Workmen’s compensation/employer’s liability*
- *Motor vehicle and other personal property.]*

*For each type of insurance, specify the following:*

<b>Minimum Cover:</b>	<b>[●]</b>
<b>Minimum Sum Insured:</b>	<b>[●]</b>
<b>Minimum Sub-limits:</b>	<b>[●]</b>
<b>Maximum Deductible:</b>	<b>[●]</b>
<b>Period of Cover:</b>	<b>[●]</b>
<b>Insured Parties:</b>	<b>[●]</b>
<b>Required Coverage:</b>	<b>[●]</b>
<b>Required Extensions:</b>	<b>[●]</b>
<b>Permitted Exclusions:</b>	<b>[●]</b>

##### E.2.2 Insurance Coverage after Operations Start Date

The insurance coverage under this Section E.2.2 shall be reviewed [●] Days before the Required Operations Start Date.

*[List all required insurances during the Operating Period which may include:*

- *All risks insurance*
- *Business interruption*
- *Comprehensive general liability*

- *Terrorism*
- *Workmen's compensation/employer's liability*
- *Motor vehicle and other personal property.]*

*For each type of insurance, specify the following:*

<b>Minimum Cover:</b>	<b>[●]</b>
<b>Minimum Sum Insured:</b>	<b>[●]</b>
<b>Minimum Sub-limits:</b>	<b>[●]</b>
<b>Maximum Deductible:</b>	<b>[●]</b>
<b>Period of Cover:</b>	<b>[●]</b>
<b>Insured Parties:</b>	<b>[●]</b>
<b>Required Coverage:</b>	<b>[●]</b>
<b>Required Extensions:</b>	<b>[●]</b>
<b>Permitted Exclusions:</b>	<b>[●]</b>

### **E.3 Insurance Policy endorsements**

[State the provisions or other clauses which should be incorporated in the insurance policies required under the Agreement]

## SCHEDULE F

### OPERATING STANDARDS AND PROCEDURES

#### F.1 Definitions

Except as otherwise defined in this Schedule F, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule F is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “F” is a reference to a Section of this Schedule F.

#### F.2 Operating Standards and Procedures

*[Describe the operation and maintenance policies, standards and procedures for the following activities:*

- *Delivery and acceptance of MSW, including:*
  - *method of storage*
  - *type of collection vehicle*
  - *frequency and timing*
  - *weighing of loads*
- *Recycling and composting including transporting and disposing of rejects*
- *Transfer, including:*
  - *measurement of weight or the number of loads*
  - *cleaning of the facility at the end of each day*
  - *covering of all loads at entry and departure, and*
  - *verification of vehicle arrivals and compliance with routes*
- *Disposal, including:*
  - *hours and days of operation*
  - *signs and traffic*
  - *measurement and recording/reporting of incoming loads*
  - *inspection of the composition and nature of the waste*
  - *reporting processes*
  - *cell preparation and operation*
  - *segregation and safe disposal of difficult waste*
  - *Unacceptable Waste procedures*
  - *storm water runoff management*
  - *soil cover*
  - *use of equipment*

- *leachate management and monitoring*
- *surface water monitoring and control*
- *litter control*
- *pest control*
- *dust control*
- *fire protection*
- *erosion control*
- *security, and*
- *maintenance of access and on-site roads, among others*
- *Management of personnel, including:*
  - *use of uniforms and identification cards*
  - *level of hygiene*
  - *personal protection and use of safety gear*
  - *proper behavior and attitude.]*

### **F.3 Violations Subject to Penalties**

*[List offenses or violations that would result in the imposition of penalties for non-compliance with the Operating Standards and Procedures, Prudent Utility Practice, and Legal Requirements.]*

<b>No.</b>	<b>Offense or Violation</b>	<b>Penalty</b>
1	Not fulfilling the hours, frequency and routes for waste transport	[●]
2	Not completing maintenance or repairs on equipment and vehicles	[●]
3	Company does not supply the materials, equipment or personnel necessary to fulfill its obligations	[●]
4	Unloading without reception	[●]
5	<i>[Specify other offenses]</i>	[●]

## SCHEDULE G

### DELIVERY VOLUME

#### G.1 Definitions

Except as otherwise defined in this Schedule G, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule G is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “G” is a reference to a Section of this Schedule G.

#### G.2 Guaranteed Delivery Volume

The LGU shall deliver or cause to be delivered MSW to the Company at the Facilities at the minimum volumes indicated in Table G-1 below.

Table G-1. Minimum Delivery Volume

Month	Guaranteed Delivery Volume (in tons per day)
1	[●]
2	[●]
3	[●]
4	[●]
5, and so on	[●]

*[Operating standards may be taken from available technical manuals such as the MSW Landfill Criteria Technical Manual which can be downloaded from <http://www.epa.gov/osw/nonhaz/municipal/landfill/techman/>.]*

## SCHEDULE H

### CONSENTS

#### H.1 Definitions

Except as otherwise defined in this Schedule H, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule H is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “H” is a reference to a Section of this Schedule H.

#### H.2 LIST OF ANTICIPATED CONSENTS

The list of Consents that the Parties anticipate as of the Signature Date will be required for the implementation of the Project is set out in Table H-1. The Parties acknowledge and agree that (i) this list is illustrative and not exclusive and that other Consents may be required in order to implement the Project, and (ii) the Party responsible for securing the Consent shall also undertake the cost and expense for obtaining and maintaining them, including any Consents that are not listed in Table H-1 that may be required.

TABLE H-1

## LIST OF ANTICIPATED CONSENTS

CONSENT	PARTY RESPONSIBLE
Project and contract approval from the NEDA-ICC or Regional Development Council	LGU
Environmental Compliance Certificate from the DENR-EMB	LGU
Landfill site clearance from DENR-EMB and Mines and Geosciences Bureau	LGU
Company registration with the SEC	Company
Registration with the Social Security System	Company
Registration with Philhealth	Company
Registration of business name with the Department of Trade and Industry	Company
Registration with the Bureau of Internal Revenue as corporate income taxpayer, withholding agent, VAT, etc.	Company
Registration with the Home Development Mutual Fund (Pag-IBIG)	Company
Registration of remittance of foreign investment with the Bangko Sentral ng Pilipinas	Company
Business/Mayor's permit and license	Company
Sanitary/plumbing permit	Company
Electrical, mechanical permit	Company
Building, excavation permit	Company
Health/sanitation certificate	Company
Water permit for the use of ground or surface water from the National Water Resources Board	Company
Approval by the Monetary Board of foreign loan obtained for the Project	Company
Registration for investment incentives with the Board of Investments	Company
Authority to construct air pollution source and control facilities from the DENR	Company
Authority to construct water treatment facilities from the DENR	Company
Clearance or proof of payment of customs duties for imported capital equipment from the Bureau of Customs	Company
Approval of closure plan by the DENR-EMB	Company
<i>[List other consents]</i>	LGU or Company



## SCHEDULE I

### BUY-OUT AND TRANSFER AT TERMINATION PROVISIONS

#### I.1 Definitions

##### I.1.1 Terms Defined in the Agreement

Except as otherwise defined in this Schedule I, all capitalized terms used in this Schedule shall have the respective meanings assigned to them in the [Name of LGU] Ecological Solid Waste Management Agreement between the LGU and the Company to which this Schedule I is annexed (the “**Agreement**”). Unless otherwise specified, any reference to a section without any other attribution is a reference to a Section of the Agreement and any reference to a section beginning with the letter “I” is a reference to a Section of this Schedule I.

##### I.1.2 Terms Defined Herein

In this Schedule I, the following terms shall have the meanings indicated below:

“**Accrued Interest**” means interest accrued on the Principal Amount as of the Calculation Date under the Financing Agreements; provided, however, that for the purpose of calculating the amounts due and payable by the LGU under this Schedule I, Accrued Interest shall not include default interest unless such default interest has accrued as the result of late payment or non-payment by the LGU.

“**Future Value**” means the future value calculated as of the Calculation Date using a rate of [●].

“**Present Value**” means the present value calculated as of the Calculation Date using a discount rate of [●].

“**Breakage Costs**” means an amount equal to the sum as of the Calculation Date of any reasonable (a) interest period breakage costs and (b) interest rate swap breakage costs, in each case due to or on behalf of the Lenders under the Financing Agreements upon termination of this Agreement, provided that any positive payments received by or on behalf of the Lenders as a result of such breakage shall reduce the amount of the relevant Buy-Out Prices calculated in accordance with the this Schedule I.

“**Buy-Out Price**” means Buy-Out Price A, Buy-Out Price B, or Buy-Out Price C, as the context may require.

“**Buy-Out Price A**” means:

- (a) The Senior Debt Amount, minus
- (b) The amount by which the Equity Commitment exceeds the Equity Amount, minus
- (c) The Cash Amount, minus
- (d) Any unpaid amounts due to the LGU under the Project Agreements through the Calculation Date.

“**Buy-Out Price B**” means:

- (a) The Senior Debt Amount, plus
- (b) The Equity Amount, plus
- (c) An amount equal to the Rate of Return on the Equity Amount compounded annually from the Effective Date (or, if later, the date any portion of the Equity

Amount was actually contributed to the Company) until the earlier of (i) the Calculation Date and (ii) the Required Operations Start Date, plus

- (d) Termination Costs, minus
- (e) The Cash Amount, minus
- (f) Any unpaid amounts due from the Company to the LGU under the Project Agreements through the Calculation Date.

**“Buy-Out Price C”** means:

- (a) The Senior Debt Amount, plus
- (b) The Equity Amount, plus
- (c) An amount equal to the Future Value of the Rate of Return on the Equity Amount from the Effective Date (or, if later, the date any portion of the Equity Amount was actually contributed to the Company) until the Calculation Date, plus
- (d) An amount equal to the Present Value of the Rate of Return on the Equity Amount from the Calculation Date to a date that is the lesser of (i) number of calendar years from the Calculation Date to the [●]th anniversary of the Provisional Operations Start Date and (ii) seven (7) calendar years after the Calculation Date, minus
- (e) The Future Value of dividends and distributions made by the Company to its shareholders (including interest paid on shareholder loans) from the Provisional Operations Start Date until the Calculation Date; plus
- (f) Termination Costs, minus
- (g) the Cash Amount, minus
- (h) any unpaid amounts due from the Company to the LGU under the Project Agreements through the Calculation Date;

A sample computation is provided in Schedule I-1.

**“Calculation Date”** means the date specified for termination in the Termination Notice issued pursuant to Section 16 of the Agreement, provided that if (a) such date stated in the Termination Notice is deferred following the terms of the Agreement and (b) during such deferred period the Parties continue to honor their payment and other contractual obligations, the Calculation Date shall mean the Termination Date.

**“Cash Amount”** means the aggregate amount of cash held by the Company as of the Calculation Date, including cash on hand and the credit balance of any deposit, money market, reserve, escrow, or securities accounts maintained with any bank or other financial institution.

**“Equity Amount”** means the amount of cash capital actually contributed or caused to be contributed by the Shareholders or their Affiliates to the Company (including indebtedness for money borrowed by the Company from a Shareholder or any Affiliate of a Shareholder which by its terms is subordinated to any indebtedness for borrowed money incurred by the Company under any Financing Agreement) as of the Calculation Date, provided that, for purposes hereof, the amount shall not exceed the Equity Commitment.

**“Equity Commitment”** means the cash amount required to be paid by or on behalf of the Shareholders for shares of the Company and to be provided by or on behalf of the Shareholders through loans to the Company, in accordance with the Financing Agreements.

**“Principal Amount”** means the amount required to repay the principal amount of the Senior Debt outstanding at the Calculation Date to the extent such principal amount was actually applied for the purpose of financing the Project.

**“Rate of Return”** means simple interest at the rate of [●] per cent per annum.

**“Senior Debt Amount”** means an amount equal to the sum of (a) the Principal Amount, (b) Accrued Interest, and (c) Breakage Costs.

**“Senior Debt”** means all amounts required to be repaid by the Company (excluding any indebtedness constituting Equity and any amounts to be paid or repaid in respect thereof) pursuant to the Financing Agreements in effect at the Effective Date, as those may be changed or amended following an event of default under such Financing Agreements to reflect any rescheduling or refinancing of the Senior Debt, *provided* that such rescheduling or refinancing does not increase the Senior Debt Amount the LGU would have been required to pay under this Schedule I if not for such rescheduling or refinancing.

**“Termination Costs”** means: (a) all Taxes imposed on the Company by any Government Authority of the Philippines as a result of the termination of this Agreement, the transfer of rights, title, and interest in the Facilities and the Project to the LGU, and the payment of the purchase price therefor; (b) all amounts payable by the Company with respect to the EPC Contractor’s termination costs for the termination of subcontracts entered into by the EPC Contractor under the EPC Contract subject to a maximum of one-half of one percent (0.5%) of the total price of the subcontracts; and (c) all amounts payable by the Company to the EPC Contractor upon termination of the EPC Contract with respect to work completed by the EPC Contractor but not yet paid for by the Company (including out of the proceeds of Equity or Senior Debt).

## **I.2 Buy-Out Price upon Termination by the Company**

If the Company terminates this Agreement:

- (a) Pursuant to Section 16.1. (*Termination due to an Event of Default*) due to an LGU Event of Default or
- (b) Pursuant to Section 16.2.1 (*Termination by Company*) due to a prolonged Force Majeure Event,

then the LGU shall purchase all of the Company’s rights, title, and interest in the Facilities and the Project for a price equal to (i) Buy-Out Price B if such termination occurs prior to the Operations Start Date, or (ii) Buy-Out Price C if such termination occurs on or after the Operations Start Date; provided, in either case, that in the event of termination by the Company due to a prolonged Non-Political Force Majeure Event, the relevant Buy-Out Price shall be reduced by the amount of any payment received by the Company from insurance covering such Non-Political Force Majeure Event.

## **I.3 Buy-Out Price upon Termination by the LGU**

- (a) If the LGU terminates this Agreement pursuant to Section 16.1 (*Termination due to an Event of Default*) due to a Company Event of Default and exercises its option pursuant to Section 16.1.2(a), then the LGU shall purchase all of THE Company’s rights, title, and interest in the Facilities and the Project for a price equal to Buy-Out Price A.

- (b) If the LGU terminates this Agreement pursuant to Section 16.2.2 (*Termination by the LGU*), then the LGU shall purchase all of the Company's rights, title, and interest in the Facilities and the Project for a price equal to (i) Buy-Out Price B if such termination occurs prior to the Operations Start Date, or (ii) Buy-Out Price C if such termination occurs on or after the Operations Start Date.

#### **Termination at end of [●]<sup>th</sup> Anniversary of Provisional Operations Start Date**

If the Termination Date occurs pursuant to Section 3.2(d) of the Agreement, the Company shall transfer the Facilities and the Project to the LGU at no cost to the LGU.

#### **I.5 Computation and Payment of Buy-Out Price**

- (a) All amounts payable pursuant to this Schedule I shall be paid in Pesos in immediately available funds within ninety (90) Days of the date of termination of this Agreement, provided that all of the Company's rights, title, and interest in the Facilities and the Project are transferred to the LGU, free and clear of all Liens and encumbrances, concurrently with the payment of the proper Buy-Out Price.
- (b) In the event that Buy-Out Price A shall be a negative number, the Company shall pay such amount to the LGU concurrently with the transfer of the Company's rights, title and interest in the Facilities and the Project to the LGU.
- (c) It is understood that there shall be no double-counting in the calculation of any Buy-Out Price or any other amount payable pursuant to this Schedule I.

#### **I.6 Termination Costs**

The Parties agree to carry out the transfer of the Company's rights, title, and interest in the Facilities and the Project and the payment of the Buy-Out Price in a way that would minimize Termination Costs.

#### **I.7 Transfer of Facilities and Project**

##### **I.7.1 Assets to be Transferred**

If the Company's rights, title, and interest in the Facilities and the Project is required to be transferred to the LGU pursuant to this Agreement, then immediately upon the termination of this Agreement (subject to the satisfactory performance by the Company of approved closure activities on the Facilities):

- (a) The Company shall transfer to the LGU, free and clear of all Liens, all of the Company's rights, title, and interest in the Facilities and the Project, including, insofar as they are part of or used in, to, and for the Facilities and the Project: (i) all raw materials, consumables, and spare parts; (ii) all tangible personal property; (iii) all intangible personal property, including patents, patent licenses, patent applications, tradenames, trademarks, trademark registrations, and applications therefor, trade secrets, copyrights, know-how, secret formulae, and any other Intellectual Property Rights; (iv) all Consents; (v) all buildings and fixtures; (vi) computerized and non-computerized records, reports, data, files, and information; (vii) all drawings, test results, and documents; (viii) all warranties of equipment, materials and work; (ix) all contract rights and insurance policies; (x) all work in progress under contracts with vendors, suppliers, contractors, and subcontractors; and (xi) all rights with respect to any insurance proceeds payable to or for the account of the Company, but unpaid at the date of termination of this Agreement; and

- (b) The Company shall pay to the LGU any other amounts, if any, required to be paid by the Company to the LGU under the Project Agreements.

#### **I.7.2 Pre-Termination Date Inspection and Repair**

Not later than two (2) years prior to the Termination Date, or, in the event the Termination Date will occur earlier than the [●]<sup>th</sup> anniversary of the Provisional Operations Start Date, as soon as practicable after such earlier Termination Date is known to the Parties, the Company shall permit the LGU to inspect the Facilities. Based on the LGU's inspection, the LGU shall issue to the Company either: (a) a schedule of replacements and repairs of the Facilities that are required in accordance with Prudent Utility Practice and to meet the Design and Technical Specifications; or (b) a schedule of works that are required to ensure the proper closure of the Facilities, whichever is applicable. The Company shall, within ninety (90) Days from receipt of such schedule, carry out the required replacements, repairs or works. The LGU shall issue a certificate of compliance after the satisfactory completion of repairs, replacements or works by the Company and, if applicable, before the payment by the LGU of the Buy-Out Price.

#### **I.7.3 Maintenance Spare Parts**

When applicable, not later than one hundred twenty (120) days prior to the expected Termination Date, the Company shall deliver to the LGU the required maintenance spare parts and consumables sufficient for three (3) months operation after the Termination Date. For the purpose of determining the quantities required, the Company shall furnish the LGU, within one month (1) following the end of the Contract Year preceding the Contract Year in which the Termination Date is expected to occur, a copy of its annual record of spare parts and consumables utilization and consumption.

#### **I.8 Responsibility for Obtaining Consents to Transfer**

The LGU shall be responsible for obtaining or effecting, at its own cost, all Consents needed in order to obtain title to the Facilities and the Project. The Company shall cooperate with the LGU in identifying, applying for, and securing those Consents.

## SCHEDULE J

### OWNERSHIP INTERESTS IN THE COMPANY

Table J-1: Sponsors' Initial Ownership Interests

Sponsor	No. of Common Shares	Direct and Indirect Ownership Percentage

Table J-2: Initial Shareholders

Shareholder	No. of Common Shares	Ownership Percentage

## **SCHEDULE K**

### **FORM OF COMPANY INVOICE**

TO: THE LGU

Billing Month Number:

Date of Submission:

Date of Receipt:

Due Date:

1. Tipping Fee Computation

2. Computation of Penalties Applicable to Billing Month

3. Computation of Total Amount Due

4. Payment Instructions

Received and Acknowledged by the LGU:

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Name:

Title:

Date: