

## Schedule 2: Format of the Substitution Agreement

[ON APPROPRIATE STAMP PAPER]

This Substitution Agreement (**Substitution Agreement**) is executed on this [●] day of [●] 2017 at Varanasi:

### BETWEEN

- (1) **UTTAR PRADESH JAL NIGAM**, a statutory body constituted under the Uttar Pradesh Water Supply and Sewerage Act, 1975, with its registered office at 6, Rana Pratap Marg, Lucknow - 226001 (hereinafter referred to as the **Jal Nigam**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **NATIONAL MISSION FOR CLEAN GANGA**, a statutory body constituted under the Environment (Protection) Act, 1986, with its registered office at [ ] (hereinafter referred to as **NMCG**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) [\_\_\_\_\_][*insert name of the Concessionaire*], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at \_\_\_\_\_ [*insert address*] acting through \_\_\_\_\_, \_\_\_\_\_ [*insert name of the authorised signatory and his/her designation*] duly authorized by resolution dated \_\_\_\_\_ [*insert date of the Board Resolution*] (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (4) [*Insert name of the Lenders' Representative*] a company organized, incorporated, registered and existing under the Companies Act, with its registered office at \_\_\_\_\_ [*insert address*] (hereinafter referred to as the **Lenders' Representative**, which expression shall, unless it be repugnant to the context having its registered office at [●], [acting for itself and for and on behalf of the Lenders listed in Annexure I].

The Jal Nigam, NMCG, the Concessionaire and the Lenders' Representative are hereinafter collectively referred to as **Parties** and individually as **Party**.

### WHEREAS:

- A. With a view to implement the Namami Gange programme and the Ganga 2016 Order, the Jal Nigam, in association with NMCG, has decided to undertake the development of an STP with a proposed Design Capacity of 50 MLD along with other Facilities and Associated Infrastructure at Varanasi on a PPP basis, through a hybrid annuity model.

- B. For this purpose, the Jal Nigam selected the Concessionaire post a bid process to: (i) design, develop, finance, construct, operate and maintain the Facilities on the Site; and (ii) rehabilitate, operate, and maintain the Associated Infrastructure on the Site, and after the expiry of the Term, transfer the Facilities and the Associated Infrastructure to the Jal Nigam (collectively the **Project**).
- C. The Jal Nigam, NMCG and the Concessionaire executed a Concession Agreement dated [] to implement the Project (**Concession Agreement**).
- D. The Lenders have agreed to finance the Project in accordance with the terms and conditions of the Financing Documents and have requested the Jal Nigam and NMCG to enter into this Substitution Agreement for securing their interests through substitution of the Concessionaire to a nominated Company, in accordance with this Substitution Agreement.
- E. The Parties have agreed to execute this Substitution Agreement on the terms and conditions mentioned herein below.

**IT IS AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

The capitalised terms used but not defined in this Agreement shall have the meaning ascribed to them in the Concession Agreement:

<b>Annexure</b>	means an annexure to this Substitution Agreement.
<b>Article</b>	means an article of this Substitution Agreement.
<b>Clause</b>	means a clause of this Substitution Agreement.
<b>Companies Act</b>	means the (Indian) Companies Act, 1956 and the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
<b>Company</b>	means a company incorporated under the Companies Act or a foreign company incorporated under the relevant statute of its jurisdiction.
<b>Concession Agreement</b>	has the meaning ascribed to it in Recital C.
<b>Concessionaire Event of Default</b>	means a Concessionaire Event of Default as defined under the Concession Agreement.
<b>Dispute</b>	means any difference or dispute of whatsoever nature relating to this Substitution Agreement between the Parties arising under, out of or in connection with this Substitution Agreement.

<b>Financial Assistance</b>	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire has availed of for the Project from the Lenders, as set out in the Financing Documents.
<b>Financial Default</b>	means a Concessionaire event of default as set out under the Financing Documents.
<b>Financing Documents</b>	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.
<b>Indemnified Party</b>	has the meaning ascribed to it in Clause 7.2.
<b>Indemnifying Party</b>	has the meaning ascribed to it in Clause 7.2.
<b>Lenders</b>	means the financial institutions set out in Annexure 1.
<b>Lenders' Dues</b>	means the aggregate of all monies owed by the Concessionaire to the Lenders under the Financing Documents on account of principal thereunder for funding the whole or any part of the cost to be incurred for implementing the Project and all accrued interest, additional interest, liquidated damages, commitment fees, commission, prepayment premium, costs, charges and other monies including financing charges and fees owed by the Concessionaire to the Lenders under the Financing Documents for the Project that are payable under the Financing Documents, up to the date of the Notice of Intent to Terminate or notice of termination issued under the Concession Agreement, or up to the date of issuance of the Notice of Financial Default under the Financial Documents.
<b>Notice of Dispute</b>	has the meaning ascribed to it in Clause 8.1.
<b>Notice of Financial Default</b>	has the meaning ascribed to it in Clause 3.2(a).
<b>Notice of Intent to Terminate</b>	means a notice issued by the Jal Nigam upon occurrence of a Concessionaire Event of Default in accordance with the Concession Agreement, conveying its intention to terminate the Concession Agreement.
<b>Person</b>	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership,

	co-operative society, government company, unincorporated organization or any other legal entity.
<b>Project</b>	has the meaning ascribed to it in Recital B.
<b>Proposal</b>	shall have the meaning ascribed to it in Clause 4.1(c).
<b>RFP</b>	means the request for proposal dated 22 February, 2017 issued by the Jal Nigam, for conducting a bid process to implement the Project.
<b>Selectee</b>	means a new Company proposed by the Lenders pursuant to this Substitution Agreement for performing the rights and obligations of the Concessionaire for the remaining Term of the Concession Agreement.

## 1.2. Interpretation

In this Substitution Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Substitution Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next Business Day.
- (h) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorized persons.

- (i) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (j) The provisions of the Clauses and Annexures of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses or Annexures.
- (k) In the event of any ambiguities or discrepancies between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses.
- (l) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.

## **2. ASSIGNMENT**

The Concessionaire hereby agrees to assign its rights, title and interest under the Concession Agreement to and in favour of the Lenders pursuant to and in accordance with this Substitution Agreement and the Concession Agreement by way of Security in respect of the Financial Assistance provided by the Lenders.

The Jal Nigam and NMCG hereby consent to assignment by the Concessionaire of its rights, title and interest under the Concession Agreement by way of Security to and in favour of the Lenders in connection with the Financial Assistance provided by the Lenders.

## **3. SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1. Right of Substitution**

The Jal Nigam and NMCG hereby irrevocably agree to substitute the Concessionaire with a Selectee, selected by the Lenders in accordance with the provisions of this Substitution Agreement and approved by the Jal Nigam, by novation of the Concession Agreement in favour of the Selectee. The Jal Nigam and NMCG further agree that they shall provide all necessary consents and assistance to effect such substitution of the Concessionaire with a Selectee.

It is clarified that nothing contained herein shall entitle the Lenders to design, develop, construct, complete, operate or maintain the Facilities or the Associated Infrastructure themselves under and in accordance with the Concession Agreement either individually or collectively.

### **3.2. Procedure in case of a Financial Default**

- (a) Upon occurrence of a Financial Default, the Lenders' Representative shall notify the Concessionaire by a notice, with a copy simultaneously sent to the Jal Nigam and NMCG, about the occurrence of a Financial Default and the amount of the Lenders' Dues (**Notice of Financial Default**).

The Notice of Financial Default shall be conclusive evidence of occurrence of the Financial Default and the Lenders' Dues, and shall be final, conclusive and binding upon the Concessionaire for the purpose of this Substitution Agreement and the Financing Documents.

The Parties agree that the Jal Nigam shall have the right to trigger a Concessionaire Event of Default and issue a Notice of Intent to Terminate under the Concession Agreement upon receipt of a Notice of Financial Default.

- (b) The Lenders' Representative (on behalf of the Lenders) may, within 60 days after the issuance of the Notice of Intent to Terminate on account of the Financial Default, make a representation to the Jal Nigam, stating the intention to substitute the Concessionaire by a Selectee (**Substitution Notice under Financing Documents**).

In the event that the Lenders' Representative issues the Substitution Notice under Financing Documents, then, within 90 days of issue of such notice, the Lenders shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee, in accordance with the provisions of this Substitution Agreement. The Lenders' right to substitute the Concessionaire shall be without prejudice to any other right or remedy available to the Lenders under the Financing Documents and/or this Substitution Agreement.

- (c) If the Lenders' Representative does not convey the intention to substitute the Concessionaire with a Selectee within 60 days of the Notice of Intent to Terminate, or the Lenders fail to substitute the Concessionaire within the time period set out in (b) above, the Jal Nigam shall be entitled to terminate the Concession Agreement in accordance with its provisions.

### 3.3. Procedure in case of a Concessionaire Event of Default

- (a) Upon occurrence of a Concessionaire Event of Default, the Jal Nigam shall provide the Lenders with a copy of the Notice of Intent to Terminate issued by it in accordance with the Concession Agreement, notifying the Lenders about the occurrence of a Concessionaire Event of Default in reasonable detail.

The Notice of Intent to Terminate shall be conclusive evidence of occurrence of the Financial Default, and shall be final, conclusive and binding upon the Concessionaire for the purpose of this Substitution Agreement and the Financing Documents.

- (b) The Lenders' Representative (on behalf of the Lenders) may, within 60 days after the issuance of the Notice of Intent to Terminate make a representation to the Jal Nigam, stating the intention to substitute the Concessionaire by a Selectee (**Substitution Notice under Concession Agreement**).

In the event that the Lenders' Representative issues the Substitution Notice under Concession Agreement, then, within 90 days of issue of such notice, the Lenders shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee, in accordance with the provisions of this Substitution Agreement. The Lenders' right to substitute the Concessionaire shall be without prejudice to any other

right or remedy available to the Lenders under the Financing Documents and/or this Substitution Agreement.

- (c) If the Lenders' Representative does not convey the intention to substitute the Concessionaire with a Selectee within 60 days of the Notice of Intent to Terminate, or the Lenders fail to substitute the Concessionaire within the time period set out in (b) above, the Jal Nigam shall be entitled to terminate the Concession Agreement in accordance with its provisions.

#### 3.4. **Criteria for Selection of Selectee**

- (a) The Lenders' Representative shall apply the following criteria while selecting a Company as the Selectee:
  - (i) the Company shall meet the technical and qualification criteria set out in the RFP, demonstrating that it has the necessary experience and technical qualification to construct and operate and maintain the Facilities and the Associated Infrastructure for the remaining Term;
  - (ii) the Company shall be capable of properly discharging the duties, obligations and liabilities of the Concessionaire under the Concession Agreement;
  - (iii) the Company shall provide Security to the satisfaction of the Lenders for the repayment of Lenders' Dues;
  - (iv) the Company shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues of the Concessionaire to the Jal Nigam under and in accordance with the Concession Agreement and of Lenders' Dues upon terms and conditions as agreed to with the Lenders;
  - (v) the Company shall have not been in breach of any agreement between itself and NMCG, the Jal Nigam, the GoI or the GoUP; and
  - (vi) any other appropriate condition or criterion determined by the Lenders [or the Jal Nigam], whereby continuity in the performance of the Concessionaire's obligations under the Concession Agreement is maintained and the Security in favour of the Lenders under the Financing Documents is preserved.
- (b) At any time prior to the approval of a Company as the Selectee by the Jal Nigam pursuant to this Substitution Agreement, the Jal Nigam may require the Lenders' Representative to satisfy the Jal Nigam as to the eligibility of such Selectee and the decision of the Jal Nigam in this behalf shall be reasonable, final, conclusive and binding on the Lenders and such Selectee.

### **4. MODALITIES OF SUBSTITUTION**

#### 4.1. **Modalities**

The following modalities shall be applicable to any substitution of the Concessionaire by the Selectee:

- (a) the Lenders' Representative may invite, negotiate, procure offers either through private negotiations or public auction or process of tender or otherwise for the substitution of the Concessionaire by another Company;
- (b) the Lenders' Representative shall on behalf of the Lenders propose to the Jal Nigam, with a copy to NMCG, pursuant to Clause 4.1(c), the name of such Company proposed to be the Selectee for acceptance and shall apply to the Jal Nigam for:
  - (i) grant to such Company, as substitute to the Concessionaire, the right to design, construct, finance, operate, maintain and transfer the Facilities and the Associated Infrastructure under and in accordance with and subject to and on the terms and conditions set out in the Concession Agreement;
  - (ii) novation of the Concession Agreement to such Company, upon being approved as the Selectee, on the same terms and conditions for the remaining Term under the Concession Agreement; and
  - (iii) the execution of a new substitution agreement with such Company, upon being approved as the Selectee, for the remaining Term, on the same terms and conditions as set out in this Substitution Agreement.
- (c) the Lenders' Representative shall be entitled, within the time period set out in Clause 3.2(b) or Clause 3.3(b) above as the case may be, to select and propose a Company as the Selectee to the Jal Nigam (with a copy to NMCG) for its approval (**Proposal**). The Proposal of the Lenders' Representative pursuant to this Clause 4.1(c) shall contain the details of such Company (including information in relation to the Company's ability to meet the technical and financial criteria set out in the RFP), the Lenders' Dues and any other data and information as may be relevant for the Jal Nigam to consider and take a decision on the Proposal.

Without prejudice to the foregoing, the Lenders' Representative agrees and undertakes to provide to the Jal Nigam (and NMCG), such further and other information and clarifications in respect of any data, particulars or information, furnished by the Lenders' Representative as the Jal Nigam and/or NMCG may reasonably require. The Jal Nigam shall convey its approval or otherwise of such Proposal, including such Company proposed as the Selectee, in its sole discretion within [15] days of (i) the date of receipt of the Proposal by the Jal Nigam; or (ii) the date when the last of any further information and clarifications in respect of any data, particulars or information comprised in the Proposal, have been provided by the Lenders' Representative to the Jal Nigam, whichever is later. It is expressly agreed between the Parties that the Proposal shall be accompanied by an unconditional undertaking of the Company proposed as the Selectee that it shall, upon approval by the Jal Nigam of the Proposal, perform and fulfill the terms and conditions of the Concession Agreement as if such Company was the original signatory to the Concession Agreement and shall be liable for and shall assume, discharge and pay the Lenders' Dues under and in accordance with the terms and conditions of the

Financing Documents. Upon approval of the Proposal by the Jal Nigam, the Company shall become the Selectee hereunder;

- (d) the Jal Nigam shall, upon its satisfaction of the eligibility of the Selectee and in accordance with the provisions of this Substitution Agreement and subject to the provisions of Clause 4.1(e), proceed to substitute the Concessionaire with the Selectee by novation of the Concession Agreement or such other form of document as the Jal Nigam and NMCG may reasonably require, on the same terms and conditions as set out under the Concession Agreement for the remaining Term;
- (e) the substitution as aforesaid shall be subject to the Selectee completing corporate compliances for executing the documents and obtaining Applicable Permits necessary for implementing and/or operating and maintaining the Facilities and the Associated Infrastructure under and in accordance with the Concession Agreement;
- (f) the Jal Nigam shall have the right to object to the choice of the proposed Selectee after hearing the Lenders' Representative, provided however, that in the event of a refusal as stated above, the Lenders' Representative may propose another Company as the Selectee, within 90 days of the issuance of the Substitution Notice under Financing Documents or Substitution Notice under Concession Agreement, as the case may be. In the event that no objection is raised with respect to the Company proposed to be the Selectee by the Jal Nigam within the period set forth in Clause 4.1(c), the Company proposed as the Selectee shall be deemed to have been accepted by the Jal Nigam;
- (g) the substitution as aforesaid, shall be deemed to be complete only upon the Selectee accepting and complying with the terms and conditions stipulated in the Concession Agreement; and
- (h) all actions of the Lenders' Representative hereunder shall be deemed to be on behalf of the Lenders and be binding upon them. The Lenders' Representative is authorised to receive payment of compensation, payment to cure default and any other payments, consideration for transfer in accordance with the Substitution Notice under Financing Documents or Substitution Notice under the Concession Agreement, as the case may be, the Concession Agreement and the Financing Documents and give valid discharge on behalf of all the Lenders.

#### **4.2. Waiver of Concessionaire's Right to Remedy**

The Concessionaire hereby irrevocably agrees and waives any right to challenge the Lenders' decision to apply to the Jal Nigam for substitution as aforesaid and neither the Concessionaire nor the Jal Nigam shall be entitled to prevent the Lenders' Representative from proceeding to seek such a substitution of the Concessionaire by the Selectee as provided in this Article 4. The Concessionaire agrees and confirms that the the Concessionaire shall not have any right to seek re-evaluation of the the Concessionaire's assets and the Concession Agreement, otherwise than as contracted in the Financing Documents while the Jal Nigam permits substitution as hereinbefore provided, pursuant to the Lenders' Representative's request. The Parties acknowledge that the rights of the Lenders under this Article 4 are irrevocable and shall not be contested in any proceedings before any court of law and the Concessionaire shall not have any right or remedy to prevent, obstruct, injunct or restrain the Jal Nigam and/or the

Lenders from effecting or causing the substitution as aforesaid. No third party shall have the right to question the decision of the Lenders/Lenders' Representative, the Jal Nigam or NMCG in relation to substitution of the Concessionaire.

**4.3. No Guarantee**

Nothing contained in this Article 4 shall mean or be interpreted as provision of any guarantee or surety by the Jal Nigam or NMCG and it is expressly agreed that the Jal Nigam and NMCG have not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amount of Financial Assistance advanced by the Lenders to the Concessionaire.

**5. INTERIM PROTECTION**

If the Lenders notify the Jal Nigam of a Financial Default and until such time that a Selectee is approved in accordance with this Substitution Agreement, the Lenders agree that the Jal Nigam shall (either itself or through an entity nominated by it) be entitled to maintain, preserve and protect the Facilities and the Associated Infrastructure if, in the Jal Nigam's opinion, it is necessary and required for the construction or operation and maintenance of the Facilities and the Associated Infrastructure. In case of such interim protection during the O&M Period, the Jal Nigam or an entity nominated by the Jal Nigam shall operate and maintain the Facilities and the Associated Infrastructure pending the substitution of the Concessionaire by the Selectee.

**6. STAND-STILL**

The Jal Nigam agrees that on the occurrence of any Concessionaire Event of Default or a Financial Default, it shall not exercise: (a) its Nigam's right to step-in in place of the Concessionaire; (b) suspend or terminate the Concession Agreement; or (c) take any action for the winding-up of the Concessionaire or the appointment of a receiver or administrator in respect of the Concessionaire's business and assets, until expiry of the time period available to the Lenders to exercise the substitution rights, as set out in Article 3.

**7. INDEMNITY**

**7.1 Indemnity**

- (a) The Concessionaire shall indemnify, defend and hold harmless the Jal Nigam, NMCG, the Lenders and the Lenders' Representative against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Substitution Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- (b) The Lender shall indemnify, defend and hold harmless the Jal Nigam and NMCG against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses arising out of the Lenders' or the Lenders' Representative's failure to fulfill their obligations under this Substitution Agreement, materially or adversely

affecting the performance of the Concessionaire's, the Jal Nigam's or NMCG's obligations under the Concession Agreement, other than any loss, damage, cost and expenses arising out of acts done in discharge of their lawful functions by the Lenders/Lenders' Representative.

## 7.2 Notices and Contest of Claims

In the event that any Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (**Indemnified Party**), it shall notify the other Party responsible for indemnifying such claim hereunder (**Indemnifying Party**) within 30 days of receipt of claim and shall not settle or pay the claim without prior approval of the Indemnifying Party, such approval not being unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting it. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnified Party may reasonably require.

## 8. DISPUTE RESOLUTION

### 8.1 Amicable Settlement

In the event of a Dispute, either Party may give the other written notice at any time of a Dispute having arisen (**Notice of Dispute**). The Notice of Dispute shall set out brief details of the nature of the Dispute.

The Parties agree that they shall endeavour to resolve any Dispute amicably and in good faith within 30 days of a Notice of Dispute being served by one Party on the other Party in respect of that Dispute. In the event that resolution of the Dispute is reached pursuant to this Clause 8.1, the resolution and its terms shall be recorded in writing and signed by one representative from each of the Parties.

### 8.2 Dispute Resolution by Arbitration

Failing amicable settlement and/or settlement of a Dispute pursuant to the provisions of Clause 8.1, each of the Parties unconditionally and irrevocably agrees to the submission of such Dispute to binding arbitration governed by the Arbitration and Conciliation Act, 1996.

Any arbitration proceedings commenced pursuant to this Clause 8.2 shall be referred to as the **Arbitration**.

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

### 8.3 Place of Arbitration

The place of the Arbitration shall be New Delhi.

#### **8.4 English Language**

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

#### **8.5 Fees and Expenses**

The fees and expenses of the arbitrator and all other expenses of the Arbitration shall be initially borne and paid by respective Parties, subject to determination by the arbitrator. The arbitrator may provide in the award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

#### **8.6 Performance of Obligations during the Pendency of the Arbitration Proceedings**

The Substitution Agreement and rights and obligations of the Parties shall remain in full force and effect pending the award under any Arbitration proceedings pursuant to this Article 8.

#### **8.7 Survival**

The provisions of this Article 8 shall survive the termination of the Substitution Agreement.

### **9. GOVERNING LAW AND JURISDICTION**

The Substitution Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in Allahabad shall have exclusive jurisdiction over matters arising out of or relating to this Substitution Agreement.

### **10. MISCELLANEOUS**

#### **10.1 Representations and Warranties**

The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Substitution Agreement.

#### **10.2 Notices**

Notices under this Substitution Agreement shall be sent to the addresses first hereinabove mentioned and Annexure 1 (in case of Lenders). Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to other Parties.

#### **10.3 Amendments to Substitution Agreement**

- (a) This Substitution Agreement shall not be affected by re-organisation of any Lender, Lenders' Representative, the Jal Nigam, NMCG and the successor-in-interest of such

Lender, Lenders' Representative, the Jal Nigam or NMCG shall have the benefit of this Substitution Agreement.

- (b) No amendment, variation or modification to this Substitution Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties.
- (c) All stamp duties or other imposts and charges as are applicable on this Substitution Agreement or on novation of the Concession Agreement for the purpose of substitution as specified in this Substitution Agreement shall be borne by the Concessionaire. In the event of Lenders making such payment in the interim, such amount shall be deemed to be a part of the Lenders' Dues.

#### 10.4 **Harmonious Construction**

- (a) For the purpose of giving full and proper effect to this Substitution Agreement, the Concession Agreement and this Substitution Agreement shall be read together and construed harmoniously. The terms of this Substitution Agreement shall prevail in the event of any inconsistencies with the Concession Agreement.
- (b) The consultation, recommendation or approval of the Lenders' Representative under this Substitution Agreement shall always be taken as consultation, recommendation or approval of every concerned Lender and each such Lender shall be bound by the same and hereby waives its right to question or dispute it.
- (c) This Substitution Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (d) It shall not be necessary for the Lenders or the Lenders' Representative to enforce or exhaust any other remedy available to them before invoking the provisions of this Substitution Agreement.

In witness whereof the Parties hereto have signed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

UTTAR PRADESH JAL NIGAM

By: General Manager, Ganga Pollution Prevention  
Unit

Name:

Title: General Manager

NATIONAL MISSION FOR CLEAN GANGA

By:

Name:

Title:

[CONCESSIONAIRE]

By:

Name:

Title:

[LENDERS'REPRESENTATIVE]

By:

Name:

Title:

**ANNEXURE 1**

<b>S.No.</b>	<b>Details of Lenders</b>
1.	[_____ <i>insert name of the Lender</i> ], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [_____ <i>insert address</i> ] and Company Identification Number [_____ <i>insert Company Identification Number</i> ].
2.	[_____ <i>insert name of the Lender</i> ], a company organized, incorporated, registered and existing under the Companies Act, with its registered office at [_____ <i>insert address</i> ] and Company Identification Number [_____ <i>insert Company Identification Number</i> ].