



CONCESSION AGREEMENT
for
DEVELOPMENT OF A SEWAGE TREATMENT PLANT AND ASSOCIATED
INFRASTRUCTURE
AT
VARANASI, UTTAR PRADESH
ON PPP BASIS

MARCH 2017

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	4
2.	SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION.....	27
3.	CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM	30
4.	SITE AND ASSET OWNERSHIP	36
5.	PERFORMANCE SECURITY, O&M SECURITY AND MOBILIZATION ADVANCE ...	41
6.	PROJECT ENGINEER	44
7.	CONSTRUCTION PERIOD	46
8.	OPERATIONS AND MAINTENANCE PERIOD.....	66
9.	PAYMENT AND INVOICING	82
10.	FINANCING ARRANGEMENTS AND SECURITY	91
11.	INSURANCE AND INDEMNITIES	92
12.	CHANGE IN OWNERSHIP	95
13.	CHANGE IN LAW	97
14.	FORCE MAJEURE.....	99
15.	SUSPENSION.....	104
16.	EVENTS OF DEFAULT.....	107
17.	CONSEQUENCES OF TERMINATION	112
18.	TERMINATION COMPENSATION.....	114
19.	TRANSFER ON TERMINATION.....	119
20.	DISPUTE RESOLUTION.....	120
21.	REPRESENTATIONS AND WARRANTIES.....	121
22.	MISCELLANEOUS	124

CONCESSION AGREEMENT

This Concession Agreement (**Agreement**) is executed on this [●] day of [●] Two Thousand and Seventeen 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 1st Floor, Major Dhyan Chand National Stadium, India Gate, New Delhi - 110002 (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).

The Jal Nigam, NMCG and the Concessionaire shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.
- B. Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**Ganga 2016 Order**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.

- C. The Jal Nigam has the power to develop, maintain and regulate water supply and sewerage works in Uttar Pradesh. With a view to implement the NamamiGangeprogramme 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.
- D. For this purpose, the Jal Nigam intends to engage a concessionaire who will: (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, in accordance with this Agreement (collectively the **Project**).
- E. On 22nd February, 2017, the Jal Nigam commenced a competitive Bid Process for the Project by issuing a request for proposal (the **RFP**), inviting interested parties to submit their qualification proposals and financial proposals to the Jal Nigam for undertaking the Project.
- F. Pursuant to the terms of the RFP, the Jal Nigam received proposals from various bidders, including a proposal submitted by the Selected Bidder on [insert date].
- G. Following a process of evaluation of qualification proposals and financial proposals submitted by the bidders (including the Selected Bidder), the Jal Nigam has on [insert date] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, the Jal Nigam has issued the letter of award dated [Insert date] to the Selected Bidder (the **LOA**).
- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement.
- J. The Jal Nigam and NMCG have agreed to enter into this Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Abandonment	means, with respect to the Project, the cessation of all or substantially all the obligations of the Concessionaire under this Agreement for a continuous period of 30 days, other than as a result of a Jal Nigam Event of Default, NMCG Event of Default, Force Majeure Event, a Qualifying Change in Law, a Fundamental Change in Law or a suspension in accordance with this Agreement, which is not attributable to the Concessionaire.
Acres	means a unit of land area equal to 43,560 sq.ft.
Adjoining Property	means any land and/or property adjoining or adjacent to the Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
Adjusted DG Set Units	has the meaning ascribed to it in Clause 9.4(e)(ii).
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government (including the GoUP), any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules, Ganga 2016 Order, and the UPWSS Act.
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws, as set out in Schedule 7.
Appointed Date	means the date of signing of this Agreement.

Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Selected Bidder, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls the Concessionaire, the Selected Bidder or Member of the Selected Bidder, as the case may be.
Associated Infrastructure	means the supporting infrastructure facilities for the Varanasi STP, including the main pumping station, and the 6.68 kilometres rising main existing at the Site as described in greater details in the Technical Specifications, which need to be rehabilitated, operated and maintained by the Concessionaire in accordance with this Agreement.
Availability	means the availability of the Facilities and the Associated Infrastructure to convey, accept and treat the Sewage, as determined in accordance with Clause 8.12(a)(i) and the term ' Available ' shall be construed accordingly.
Availability Liquidated Damages	means the liquidated damages payable by the Concessionaire to the Jal Nigam for failure to achieve the Guaranteed Availability, as set out in Clause 8.12(a)(iv).
Bid	means the bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by the Jal Nigam to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Appointed Date.
Bid Project Cost	means INR [] (Rupees []), being the cost of construction of the Facilities and the rehabilitation of the Associated Infrastructure, as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes and all other pre-operative expenses in relation to the Facilities and the Associated Infrastructure.
Capex Annuity	means the amount payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of

60% of the Bid Project Cost, as set out in Clause 9.4(c)(i).

Capital

means, in respect of the Concessionaire, the total capital of the Concessionaire that will be raised by the issuance of equity shares, preference shares or convertible instruments.

Change in Law

means the occurrence of any of the following events after the Bid Due Date:

- (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law;
- (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority;
- (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority;
- (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or
- (e) the introduction of any new Tax (including goods and services tax) or a change in the rate of an existing Tax.

It is clarified that Change in Law shall not include any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire.

Clause

means a clause of this RFP.

COD Certificate

means the certificate issued by the Jal Nigam to the Concessionaire upon issuance of Trial Operations Completion Certificate for the Facilities and the Associated Infrastructure and satisfaction of the conditions set out in 7.15(a).

Commercial Operations Date or COD

means the date on which the COD Certificate is issued to the Concessionaire in accordance with Clause 7.15(a).

Companies Act

means the (Indian) Companies Act, 1956 and the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.

Concessionaire

has the meaning ascribed to it in the array of Parties.

Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the Facilities and the Associated Infrastructure, as set out in Schedule 7.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 16.1.
Concessionaire Related Parties	means any of the following: <ul style="list-style-type: none"> (a) the Selected Bidder or Associates of the Selected Bidder; or (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity; or (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or (d) any Person acting on behalf of the Concessionaire.
Concessionaire's Representative	means the Person nominated by the Concessionaire to act on its behalf and liaise with the Jal Nigam and NMCG for the purposes of this Agreement and notified as such in writing to the Jal Nigam and NMCG.
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Clause 3.2, the obligations of the Jal Nigam that are set out at Clause 3.3 and the obligations of NMCG that are set out at Clause 3.4, and ' ConditionPrecedent ' means any one of them.
Confidential Information	means any part of this Agreement, or any information contained therein or any material provided to any Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Construction Completion Certificate	means the certificate issued by the Jal Nigam to the Concessionaire to certify completion of construction of the Facilities, rehabilitation of the Associated Infrastructure and the satisfaction of all other conditions required to be fulfilled by the Concessionaire, in accordance with Clause 7.13(c).
Construction Completion Date	means the date on which the Construction Completion Certificate is issued to the Concessionaire in accordance with Clause 7.13(c).

Construction Payments	means the payments to be made to the Concessionaire during the Construction Period, upon satisfactory completion of the Payment Milestones, which shall, in aggregate, be equivalent to 40% of the Bid Project Cost, as adjusted from time to time to reflect the variation in the Construction Price Index.
Construction Period	has the meaning ascribed to it in Clause 7.1.
Construction Plan	means the detailed construction plan for the Facilities and the Associated Infrastructure to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve each of the 4Payment Milestones, in a manner such that the Facilities and the Associated Infrastructure are completed on or prior to the Scheduled Construction Completion Date. The Construction Plan shall be approved by the Jal Nigam in accordance with Clause 7.3.
Construction Price Index	shall comprise: <ul style="list-style-type: none"> (a) 70% of WPI; and (b) 30% of CPI(IW), which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Control	means, with respect to a Person: <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term ' Controlled ' shall be construed accordingly.
Cost	means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-Stop Date	has the meaning ascribed to it in Clause 3.5(a).
CPI(IW)	means the Consumer Price Index for Industrial Workers published by the Labour Bureau, GoI and shall include any index which substitutes the CPI(IW), and any reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published on the

last date of the preceding quarter.

Debt Due

means the aggregate of the following sums expressed in Rupees outstanding on the date of issuance of the Notice of Intent to Terminate:

- (a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing 45% of the Bid Project Cost but excluding any part of the principal that had fallen due for repayment 2 years prior to the date of the Notice of Intent to Terminate, as set out in the Financial Package;
- (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in (a) above until the date of the Notice of Intent to Terminate but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the date of the Notice of Intent to Terminate, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a Jal Nigam Event of Default or an NMCG Event of Default; and
- (c) any Subordinated Debt availed of by the Concessionaire to part finance 45% of the Bid Project Cost, as set out in the Financial Package,

provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken.

For the purpose of calculating Debt Due:

- (A) the aggregate of the principal amounts of the debt provided by the Lenders under the Financing Documents and any Subordinated Debt shall, in no event, exceed 45% of the Bid Project Cost; and
- (B) any amount of Debt Due in foreign currency as on the date of the Notice of Intent to Terminate shall be converted to Rupees at the exchange rate published on the official website of the Reserve

Bank of Indiaas at 12 noon on the relevant rate.

Delay Event	has the meaning ascribed to it in Clause 7.11(b).
Delay Liquidated Damages	has the meaning ascribed to it in Clause 7.12(a).
Designs and Drawings	means the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications prepared by the Concessionaire for the Facilities and the Associated Infrastructure, on the basis of the Technical Specifications and which are approved bythe Jal Nigam in accordance with Clause 7.2.
Design Capacity	means the average flow of Sewage that the Facilities and the Associated Infrastructure should be designed to handle and treat in a day, which shall be 50 MLD.
DG Sets	means the backup diesel generators set maintained by the Concessionaire at the Site, to ensure continuous supply of power for the operation of the Facilities and the Associated Infrastructure, when the supply of power from the grid is not available.
Digested Sludge	means the sludge which is obtained after the treatment and digestion of the Sewage at the Varanasi STP.
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(iii).
Discharge Point	means the point at which the Effluent Disposal Pipeline shall discharge the Treated Effluent, as set out in Schedule 8.
Discharge Standards	means the minimum standards set out in the Technical Specifications that the Treated Effluent and Digested Sludge must comply with.
Dispute	has the meaning ascribed to it in Clause 20.1.
Dispute Notice	has the meaning ascribed to it in Clause 20.1.
Dispute Meeting	has the meaning ascribed to it in Clause 20.1.
Effective Date	means the date on which all the Conditions Precedent have either been satisfied or waived by the Jal Nigam, NMCG, or the Concessionaire, as the case may be, in accordance with this Agreement.
Effluent Disposal Pipeline	means the 5.5 km pipeline to be laid by the Concessionaire as part of the Project, to transport and convey Treated Effluent from the Varanasi STP to the Discharge Point.

EHS Plan	means the environment management and health and safety plan prepared by the Concessionaire and approved by the Jal Nigam in accordance with Clause 7.4.
EHS Standards	means the environmental, social, labour, health and safety related requirements, including any requirements, which the Concessionaire is required to comply with in developing, operating and maintaining the Facilities and the Associated Infrastructure, as set out in Schedule 9.
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of the Jal Nigam, the Project Engineer or the Concessionaire, may endanger the environment or lives or security of people at or around the Site or that poses an imminent threat of material damage to any property (including the Facilities and the Associated Infrastructure) at or around the Site.
Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
Equity	means the sum expressed in INR representing the paid up equity share capital of the Concessionaire for meeting the equity component of its financial obligations under this Agreement and the Financing Documents, which, for the purpose of this Agreement, shall include convertible instruments that shall compulsorily convert into equity share capital.
Escrow Account	means the interest-bearing account opened by NMCG with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term.
Escrow Agreement	means the agreement to be executed among the Jal Nigam, NMCG, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, in the form set out at Schedule 3.

Escrow Bank	means the Scheduled Bank with which NMCG opens the Escrow Account, pursuant to the Escrow Agreement.
Event of Default	means a Jal Nigam Event of Default, NMCG Event of Default or a Concessionaire Event of Default, as the context may require.
Facilities	means, collectively, the Varanasi STP, the Effluent Disposal Pipeline, the Online Monitoring System, the on-site testing laboratory facilities, the temporary storage facility for the Digested Sludge, the meters to measure the volume of the Sewage conveyed to the Varanasi STP and the volume of STP By-Products and the Treated Effluent discharged from the Varanasi STP and such other facilities associated with the Varanasi STP, required to be set up by the Concessionaire, as described in greater detail in the Technical Specifications (Schedule 11 and the Scope of Work (Schedule 1).
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the [Selected Bidder/Member(s)] ¹ determined in accordance with the RFP.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance.
Financial Package	means the financing package indicating the means of financing the Facilities and the Associated Infrastructure, and includes all Financial Assistance specified in the Financing Documents, the Subordinated Debt, if any, and the Equity.
Financial Proposal	means the financial proposal submitted by the Selected Bidder in accordance with the RFP for undertaking the Project.
Financial Year	means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a company, then the 12-month period for which such company files its statutory audited accounts in the normal course of its business.

¹Delete Member(s) if the Selected Bidder is a single entity.

Financing Documents	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.
FM Notice	has the meaning ascribed to it in Clause 14.2(a).
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.
Forced Unavailability	<p>means an interruption of or a reduction in the Availability of the Facilities or the Associated Infrastructure that is the result of:</p> <ul style="list-style-type: none"> (a) a maximum capacity utilization of the Facilities or the Associated Infrastructure, as notified by the Concessionaire to the Jal Nigam in accordance with Clause 8.9; (b) a suspension of the performance of the O&M services as a result of any of the events listed at Clauses 15.1(a)(i) and Clause 15.2(a)(i), to the extent any such event is not attributable to the Concessionaire; or (c) unavailability or breakdown of the Supporting Infrastructure.
Fuel Price	means the prevailing price of diesel at Indian Oil Corporation or Hindustan Petroleum Corporation Limited's retail outlets in Varanasi, as determined on the 15 th day of a month.
Fundamental Change in Law	<p>means any Change in Law that:</p> <ul style="list-style-type: none"> (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or (b) renders a material part of this Agreement invalid, illegal or unenforceable; or (c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Agreement.

Ganga 2016 Order	has the meaning ascribed to it in Recital B.
GoI	means the Government of India.
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of STPs in India of the type and size similar to the Facilities and the Associated Infrastructure.
GoUP	means the Government of Uttar Pradesh.
Government Authority	means the GoI, any state government (including the GoUP), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoUP exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Agreement.
Grace Period	has the meaning ascribed to it in Clause 7.12(e).
Guaranteed Availability	has the meaning ascribed to it in Clause 8.12(a)(i).
Guaranteed Energy Consumption	means the maximum number of units of power presented by the Concessionaire in its O&M Manual, which it expects to consume in each year of the O&M Period (other than any units expected to be generated and consumed from the Power Plant), to operate and maintain the Varanasi STP. To determine the Guaranteed Energy Consumption for any quarter during the O&M Period, the Guaranteed Energy Consumption presented by the Concessionaire in its O&M Manual for the relevant average BOD levels of the Sewage for the relevant year of the O&M Period will be multiplied by 3.
Hand-back Conditions	mean the condition in which the Site, the Facilities, the Associated Infrastructure and the Power Plant, if any, shall be handed back to the Jal Nigam or any entity nominated by the Jal Nigam on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement and are described in greater detail in the Technical

Specifications.

Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the Facilities and the Associated Infrastructure upon termination of the Project, as set out in Clause 19.3.
IFC Performance Standards	means the IFC Performance Standards on Environmental and Social Sustainability dated January 1, 2012 available at http://www.ifc.org/performancestandards .
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(ii).
Influent Standards	means the permissible standards and characteristics set out in the Technical Specifications for the incoming Sewage.
Inlet Point	means the point mutually agreed to between the Jal Nigam and the Concessionaire at the Varanasi STP where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the Facilities.
Intellectual Property Rights	means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Invoice	means an invoice for payment of: (a) the Construction Payments during the Construction Period; or (b) the Capex Annuity, the O&M Charges and the Power Charges during the O&M Period, submitted by the Concessionaire to the Jal Nigam (with a copy to NMCG) in accordance with Article 9.
Jal Nigam	has the meaning ascribed to it in the array of Parties.
Jal Nigam Applicable Permits	means the Applicable Permits which are required to be obtained by the Jal Nigam to undertake the Project, as set out in Schedule 7.
Jal Nigam Event of Default	has the meaning ascribed to it in Clause 16.3.
Jal Nigam Related Parties	means any of the following: (a) an officer, servant, employee or agent of the Jal

- Nigam, acting in that capacity;
- (b) any contractor or sub-contractor of the Jal Nigam and their directors, officers, servants, employees or agents, acting in that capacity; or
- (c) any Person acting on behalf of the Jal Nigam.

For the avoidance a doubt, 'Jal Nigam Related Parties' does not include the Concessionaire or NMCG.

Jal Nigam's Representative means any officer nominated by the Jal Nigam, from time to time, to act on its behalf and liaise with the Concessionaire and NMCG for the purposes of this Agreement and notified as such in writing to the Concessionaire.

KPIs means the key performance indicators set out in Schedule 10, which the Facilities and the Associated Infrastructure must achieve during the O&M Period.

Lead Member [means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.]²

Lenders includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents but does not include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.

Liquidated Damages means the Delay Liquidated Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the Power Consumption Liquidated Damages.

LOA means the letter of award issued to the Selected Bidder.

Material Adverse Effect means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.

Member [means, where the Selected Bidder is a Consortium, a

²To be deleted if the Selected Bidder is not a Consortium.

	member of the Selected Bidder.] ³
Milestone Completion Certificate	means, in respect of any Payment Milestone, a certificate issued by the Jal Nigam in accordance with Clause 7.13(a), to certify that such Payment Milestone has been achieved in accordance with the requirements of this Agreement.
Minimum Escrow Balance	has the meaning ascribed to it in Clause 9.5(b).
Minor Casualty	means any fire or other casualty that results in physical damage to the Facilities to the extent that the total cost (as estimated by the Project Engineer) of repairing and/or replacing the damaged portion of the Facilities to the same condition as previously existed would not exceed the amount of INR25,00,000 (Rupees twenty-five lakhs).
MLD	means million litres per day.
Mobilization Advance	means an amount equivalent to 10% of the Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction and rehabilitation works for the Facilities and the Associated Infrastructure in accordance with Clause 9.3(d).
Mobilization Advance Guarantee	has the meaning ascribed to in Clause 5.16.
MoWR	means the Ministry of Water Resources, River Development and Ganga Rejuvenation.
Net Worth	means the net worth of a company, which shall be determined as follows: <ul style="list-style-type: none"> (a) subscribed and paid up equity share capital; and (b) reserves; <p>LESS</p> <ul style="list-style-type: none"> (c) revaluation reserves; (d) miscellaneous expenditure not written off; (e) reserves not available for distribution to equity shareholders; and (f) aggregate value of accumulated losses.
NMCG	has the meaning ascribed to it in the array of Parties.
NMCG Event of Default	has the meaning ascribed to it in Clause 16.4.
NMCG's Representative	means any officer nominated by NMCG, from time to time,

³ To be deleted if the Selected Bidder is not a Consortium.

to act on its behalf and liaise with the Concessionaire and the Jal Nigam for the purposes of this Agreement and notified as such in writing to the Concessionaire.

Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 14.1(b)(i).
Notice of Intent to Terminate	means, a notice of intent to terminate issued by the Jal Nigam in case of a Concessionaire Event of Default (in accordance with Clause 16.2) or a notice of intent to terminate issued by the Concessionaire in case of a Jal Nigam Event of Default or an NMCG Event of Default (in accordance with Clause 16.5), stating its intention to terminate this Agreement.
NPV	means the net present value of amounts payable to the Concessionaire under this Agreement, to be calculated at a discounting rate of 8%.
O&M	means operation and maintenance.
O&M Charges	means the amount required by the Concessionaire per quarter to operate and maintain the Facilities and the Associated Infrastructure, excluding the Power Charges, during the O&M Period. The O&M Charges for the first quarter after the COD will be determined on the basis of the O&M Charges quoted by the Selected Bidder (in its Financial Proposal) for the first month from the COD, which amount shall then be adjusted to reflect the variation in the O&M Price Index.
O&M Manual	means the manual required to be prepared by the Concessionaire and approved by the Jal Nigam for the operation and maintenance of the Facilities and the Associated Infrastructure in accordance with Clause 8.2.
O&M Payments	means, collectively the: (a) Capex Annuity; (b) O&M Charges; and (c) Power Charges (subject to the cap of the Power Charges based on the Guaranteed Energy Consumption), to be paid by NMCG to the Concessionaire during the O&M Period, in accordance with this Agreement.
O&M Period	means the period of 15 years from the COD during which the Concessionaire is required to operate and maintain the Facilities and the Associated Infrastructure.
O&M Price Index	shall comprise:

(a) 70% of CPI(IW); and

(b) 30% of WPI,

which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.

O&M Security

has the meaning ascribed to it in Clause 5.4.

Online Monitoring System

means the monitoring system to be set up by the Concessionaire as part of the Facilities for continuous monitoring of the volume, specifications and characteristics of the Sewage and the Treated Effluent.

Outlet Point

means the outlet of the Varanasi STP where the sample of the Treated Effluent shall be drawn periodically to test compliance with the Discharge Standards.

Payment Certificate

has the meaning ascribed to it in Clause 9.3(e) for Construction Payments and Clause 9.4(g) for O&M Payments.

Payment Milestones

means the 4 milestones listed in Clause 9.3(e) for release of the Construction Payments to the Concessionaire, and 'Payment Milestone' shall mean any one of them, as the context may require.

Performance Liquidated Damages

means the liquidated damages payable by the Concessionaire to the Jal Nigam for a failure to meet the Discharge Standards, as set out in Clause 8.12(b)(iii).

Performance Security

has the meaning ascribed to it in Clause 5.1.

Person

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.

Power Charges

means the cost of the power consumed by the Concessionaire to operate and maintain the Facilities and the Associated Infrastructure during the O&M Period, which will be calculated on the basis of the prevailing Power Unit Rate, the Fuel Price, to the extent applicable and such other applicable charges as per the guidelines of the relevant Government Authorities.

Power Consumption Liquidated Damages

has the meaning ascribed to it in Clause 9.4(e).

Power Outage	means any interruption in the supply of electricity from the grid or any DG Sets maintained by the Concessionaire at the Site, which disrupts the continuous operation of the Facilities and the Associated Infrastructure.
Power Plant	means a bio-gas power plant that the Concessionaire decides to set up at the Site as part of the Project, for production of electricity from the biogas generated from the treatment of Sewage at the Varanasi STP.
Power Unit Rate	means the cost per unit of power drawn from the grid (through a distribution licensee), which will be the prevailing tariff per unit of power charged by the relevant distribution licensee in the relevant month during the O&M Period.
PPP	means public private partnership.
Price Index	means, for the Construction Payments, the Construction Price Index, and for the O&M Payments, the O&M Price Index.
Price Index Multiple	means, the variation multiple in the Price Index occurring between the Reference Index Date preceding the Bid Due Date and the Reference Index Date preceding the date of the Invoice, which is calculated by dividing the Price Index on the Reference Index Date preceding the date of the Invoice by the Price Index on the Reference Index Date preceding the Bid Due Date.
Project	has the meaning ascribed to it in Recital D.
Project Engineer	means the engineering firm appointed by NMCG in accordance with Article 6.
Proposed Technology	means the proven technology proposed to be used by the Concessionaire to develop the Varanasi STP, as specified by the Concessionaire in its Designs and Drawings. The proposed technology for the Varanasi STP must be the same as the technology adopted for at least one of the STP(s) for which the Selected Bidder claimed technical experience in its Bid.
Qualifying Change in Law	means any Change in Law, which: <ul style="list-style-type: none"> (a) is directly applicable to the Project; (b) impacts the Cost or time for undertaking the Project; and

- (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Due Date.

Reference Index Date	means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.
Residual Grit	means the grit which is obtained as residual matter after the treatment of the Sewage at the Varanasi STP.
RFP	has the meaning ascribed to it in Recital E.
Rupee or Rs.or INR	means Indian Rupees, the lawful currency of India.
SBI MCLR	means the prevailing marginal cost of fund based lending rate for a tenor of 1 year, notified by the State Bank of India.
Schedule	means a schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934.
Scheduled COD	means the date which is 4 months from the Construction Completion Date, by which the Concessionaire is required to achieve the COD.
Scheduled Construction Completion Date	means the date which is 21 months from the Effective Date, by which the Concessionaire is required to complete the construction and rehabilitation works for the Facilities and the Associated Infrastructure.
Scheduled Maintenance Programme	means, for each year of the O&M Period, the schedule for undertaking preventive and corrective maintenance of the Facilities and the Associated Infrastructure, as prepared by the Concessionaire and approved by the Jal Nigam in accordance with Clause 8.11(f).
Scheduled Maintenance	means a planned maintenance of the Facilities and Associated Infrastructure that: (a) has been scheduled and allowed by the Jal Nigam in accordance with the Scheduled Maintenance Programme; and (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of the Facilities or the Associated Infrastructure, as the case may be.

Scheduled Payment Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant Payment Milestone.
Screenings	means solids such as fibres, plastic and other products or things, which need to be removed from the Sewage, prior to the treatment of Sewage at the Varanasi STP.
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means the Bidder selected by the Jal Nigam for award of the Project.
Sewage	means the sewage that is in liquid, solid or semi-solid form and brought for treatment to the Facilities.
Site	means: (i) the STP Site; and (ii) the site for setting up the Associated Infrastructure.
Sq. ft.	means square feet.
STP	means a sewage treatment plant.
STP By-Products	means the by-products of the treatment process after the Sewage has passed through the Facilities and the Associated Infrastructure comprising the Digested Sludge, the Residual Grit and the Screenings.
STP Site	means the land admeasuring [] Acres at the Site required by the Concessionaire to develop the Varanasi STP, as quoted by the Selected Bidder as its 'Land Requirement' in its Financial Proposal, as presented in Schedule 12.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Subordinated Debt	means the principal amount of debt and all accrued interest for such debt provided by any lender (other than the Lenders) or the Concessionaire's shareholders to part finance 45% of the Bid Project Cost and subordinated to the Financial Assistance provided by the Lenders. Provided that if all or any part of the Subordinated Debt is convertible into equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal shall be dealt with

as if such conversion had not been undertaken.

Substitution Agreement	means the substitution agreement to be executed by the Jal Nigam, NMCG, the Concessionaire and the Lenders, in the format set out in Schedule 2.
Supporting Infrastructure	means the supporting infrastructure facilities required for the operation of the Facilities and the Associated Infrastructure, which will be provided, operated and maintained by the Jal Nigam during the Term.
Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, goods and service tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors and the term " Tax " shall be construed accordingly.
Technical Capacity	means the technical capacity and experience of the [Selected Bidder/Member(s)] ⁴ determined in accordance with the RFP.
Technical Specifications	means the technical specifications for design, construction, rehabilitation, operation and maintenance of the Facilities and the Associated Infrastructure, as set out in Schedule 11.
Term	has the meaning ascribed to it in Clause 3.7.
Termination Compensation	means the compensation payable by NMCG upon termination of this Agreement, in accordance with Article 18.
Threshold Influent Standards	means the minimum standards, beyond the Influent Standards, that the Sewage must meet for it to be treated at the Facilities, which will be mutually agreed between the Concessionaire and the Jal Nigam, as a part of the Designs and Drawings.
Total Casualty	means any fire or other casualty that results in physical damage to the Facilities to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Facilities (as determined by the Project Engineer) to the same condition as existed previously would be more than

⁴ Delete Member(s) if the Selected Bidder is a single entity.

	25 % or more of the then total replacement cost of the Facilities.
Treated Effluent	means the water which is obtained after the treatment of the Sewage at the Varanasi STP.
Trial Operations	means the operation of the Facilities and the Associated Infrastructure on a trial basis during the Trial Period in accordance with Clause 7.14.
Trial Operations Completion Certificate	means the certificate issued by the Jal Nigam to the Concessionaire upon successful completion of the Trial Operations.
Trial Operation Procedures	means the procedures for conducting the Trial Operations, as set out in the Technical Specifications.
Trial Period	means a period of 3 months from the Construction Completion Date during which trial runs of the Facilities and the Associated Infrastructure shall be conducted to ensure that the Facilities and the Associated Infrastructure are fit for purpose and comply with the Technical Specifications and the KPIs, which period may be extended in accordance with Clause 7.14.
Unscheduled Outage	means an interruption of or a reduction in the Availability of the Varanasi STP that is not the result of a Forced Unavailability, or a Scheduled Maintenance.
UPWSS Act	means the Uttar Pradesh Water Supply and Sewerage Act, 1975, as may be amended from time to time.
Varanasi STP	means the STP of 50 MLD to be set up at the Site as part of the Project.
Variation	means any alteration in the Technical Specifications or the Designs and Drawings, as instructed by the Jal Nigam or proposed by the Concessionaire, in accordance with Clause 7.16.
Variation Order	has the meaning ascribed to it in Clause 7.16(b)(i).
Waste Disposal Site	means the site identified by the Jal Nigam for disposal of the STP By-Products from the Varanasi STP.
Website	means the web portal of the Jal Nigam available at the url: www.upjn.org .
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.

WPI

means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Rules of Interpretation

In this 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 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) Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) 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.
- (i) 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 any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

- (k) The terms of the RFP form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement. In the event of any discrepancy between this Agreement and the RFP, the provisions set out in this Agreement shall prevail.
- (l) The provisions of the Clauses and the Schedules 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 and the Schedules.
- (m) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) 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;
 - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules.
- (n) In the event of any discrepancy between various documents issued by or provided to the Jal Nigam as a part of the Bid Process, the following order of priority shall apply:
 - (i) this Concession Agreement;
 - (ii) the Schedules to the Concession Agreement;
 - (iii) the Financial Proposal submitted by the Selected Bidder;
 - (iv) the LOA issued to the Selected Bidder;
 - (v) the written clarifications, if any, issued to the bidders; and
 - (vi) the RFP.
- (o) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the Jal Nigam and NMCG for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Jal Nigam and NMCG shall be responsible to and indemnify the Concessionaire for the acts and omissions of the Jal Nigam Related Parties and the NMCG Related Parties, respectively, as if they were the acts and omissions of the Jal Nigam or NMCG, as the case may be.
- (p) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Jal Nigam

or NMCG, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

- (q) 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.
- (r) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages, the Performance Liquidated Damages, the Availability Liquidated Damages and the Power Consumption Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.3 Units of Measurement

All measurements and calculations shall be in the metric system and calculations done to 4 decimal places, with the 5th digit of 5 or above being rounded up and below being rounded down.

2. SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION

2.1 Scope of the Project

The scope of the Project shall be as set out in Schedule 1 and shall include:

- (a) designing, financing, constructing and completing the Facilities by the Scheduled Construction Completion Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the EHS Plan and Good Industry Practices;
- (b) designing, financing, rehabilitating, restoring, upgrading the Associated Infrastructure in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the EHS Plan and Good Industry Practices;
- (c) operating and maintaining the Facilities and the Associated Infrastructure in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the O&M Manual, EHS Plan and Good Industry Practices to ensure compliance with the KPIs; and
- (d) handback of the Facilities and the Associated Infrastructure upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

2.2 Grant of concession

- (a) On and from the Effective Date and subject to the terms of this Agreement, Applicable Laws and Applicable Permits, the Jal Nigam grants to the Concessionaire the exclusive right to:
 - (i) design, finance, engineer, construct, develop and complete the Facilities;
 - (ii) design, finance, rehabilitate and upgrade the Associated Infrastructure; and
 - (iii) upon completion of construction of the Facilities and the rehabilitation of the Associated Infrastructure, operate and maintain the Facilities and the Associated Infrastructure during the O&M Period.

- (b) The grant of the concession set out in Clause 2.2(a) shall oblige or entitle the Concessionaire, as the case may be, to the following:
 - (i) access to the Site from the Effective Date, for the sole purpose of implementing the Project;
 - (ii) apply for and obtain all Applicable Permits and utilities required to undertake the Project;
 - (iii) raise funds (through both debt and equity financing) to finance 60% of the Bid Project Cost;
 - (iv) complete the construction of the Facilities and the rehabilitation of the Associated Infrastructure on or before the Scheduled Construction Completion Date;
 - (v) upon completion of construction of the Facilities and the rehabilitation of the Associated Infrastructure, undertake Trial Operations during the Trial Period;
 - (vi) upon successful completion of the Trial Operations, operate and maintain the Facilities and the Associated Infrastructure for 15 years;
 - (vii) receive, treat and process Sewage up to the Design Capacity;
 - (viii) store, treat, market, sell or dispose of the STP By-Products and the Treated Effluent in accordance with this Agreement;
 - (ix) transfer the Facilities and the Associated Infrastructure to the Jal Nigam upon the expiry of the Term or termination of this Agreement, after rectification of any defects in the Facilities or the Associated Infrastructure, in accordance with the Hand-back Conditions and the Hand-back Requirements;
 - (x) receive the Construction Payments during the Construction Period and

the O&M Payments during the O&M Period, subject to compliance with the terms and performance of the obligations under this Agreement;

- (xi) appoint Subcontractors, agents, advisors and consultants and enter into Subcontracts to undertake the Project, with the prior approval of the Jal Nigam; and
- (xii) construct a Power Plant at the Site, at its sole option and discretion.

2.3 Description of the Facilities and Associated Infrastructure

- (a) The Facilities shall include the Varanasi STP, a 5.5 km pipeline to dispose the Treated Effluent at the Discharge Point (i.e., the Effluent Disposal Pipeline), the Online Monitoring System, the on-site testing laboratory facilities, temporary storage facilities for the Digested Sludge, the meters to measure the volume of Sewage delivered to the Varanasi STP and the volume of the STP By-Products and the Treated Effluent discharged from the Varanasi STP and all other such facilities necessary or associated with the Varanasi STP for treatment, processing and disposal of the Sewage, as described in greater detail in Schedule 1 and the Technical Specifications.

The Associated Infrastructure shall include a 6.8 km trunk main to convey the Sewage from the sewers to the Varanasi STP and the main pumping station to pump the Sewage into the Varanasi STP.

- (b) The Concessionaire shall operate the Facilities and the Associated Infrastructure and treat the Sewage in a manner such that the KPIs are achieved, and the Treated Effluent and Digested Sludge comply with the Discharge Standards.
- (c) The by-products of the Sewage treated at the Varanasi STP (i.e., STP By-Products) will be bifurcated into the Screenings, the Digested Sludge and the Residual Grit. The Concessionaire will be required to dispose the STP By-Products as follows:
 - (i) the Residual Grit and the Screenings will be disposed at the Waste Disposal Site to be identified by the Jal Nigam within a radius of 10 km from the STP Site, in accordance with the Technical Specifications; and
 - (ii) the Concessionaire shall dry the Digested Sludge at a sludge handling facility to be provided by the Concessionaire at the Site, and have the option to sell the Digested Sludge to farmers/other third party buyers or dispose the Digested Sludge at the Waste Disposal Site.
- (d) The Concessionaire shall transfer the Treated Effluent through the Effluent Disposal Pipeline to the Discharge Point, for discharge in to the River Ganga, sale to third parties or utilization for irrigation purposes.

2.4 Use of Proposed Technology

- (a) The Concessionaire shall design and develop the Varanasi STP on the basis of the Proposed Technology, approved by the Jal Nigam as part of the Designs and Drawings.
- (b) If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology to develop and operate the Facilities.
- (c) If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the Jal Nigam or NMCG be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.
- (d) Upon the expiry of early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology to operate and maintain the Varanasi STP to the Jal Nigam at no additional cost to the Jal Nigam.
- (e) The Concessionaire shall indemnify the Jal Nigam and NMCG for any claims, losses, damages and costs suffered by the Jal Nigam and/or NMCG as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Varanasi STP.

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1 Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied in accordance with this Article 3 shall be the Effective Date.
- (b) This Article 3 and Article 2 (*Scope of the Project and Grant of the Concession*), Article 5 (*Performance Securities, O&M Securities and Mobilization Advance*), Article 6 (*Project Engineer*), Article 10 (*Financing Arrangements and Security*), Clause 11.1 (*Indemnity*), Article 12 (*Change in Ownership*), Article 13 (*Change in Law*), Article 14 (*Force Majeure*), Article 20 (*Dispute Resolution*), Article 21 (*Representations and Warranties*) and Article 22 (*Miscellaneous*) and the related Schedules, shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.

3.2 Conditions Precedent to be satisfied by the Concessionaire

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Appointed Date):

- (a) prepare the Designs and Drawings within 45 days from the Appointed Date and submit the Designs and Drawings to the Jal Nigam for its approval in accordance with Clause 7.2;
- (b) prepare the Construction Plan within 45 days from the Appointed Date and submit the Construction Plan to the Jal Nigam for its approval in accordance with Clause 7.3;
- (c) prepare the EHS Plan within 45 days from the Appointed Date and submit the EHS Plan to the Jal Nigam for its approval in accordance with Clause 7.4;
- (d) obtain all Concessionaire Applicable Permits that are required for achieving Financial Close and for commencement of construction of the Facilities and rehabilitation of the Associated Infrastructure at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;
- (e) execute and provide a copy to the Jal Nigam of the technology license agreement executed with the Selected Bidder or the third party technology supplier for setting up the Varanasi STP;
- (f) submit to the Jal Nigam certified true copies of all resolutions adopted by the board of directors of the Concessionaire authorising execution, delivery and performance of this Agreement, Substitution Agreement and the Escrow Agreement by the Concessionaire;
- (g) execute the Substitution Agreement with the Jal Nigam, NMCG and the Lenders in the agreed form set out at Schedule 2;
- (h) achieve Financial Close and submit a copy of the Financing Documents and the Financial Package to the Jal Nigam, duly certified by a director of the Concessionaire;
- (i) [execute a shareholders' agreement amongst the shareholders of the Concessionaire, and deliver to the Jal Nigam a certified true copy of the shareholders' agreement (attested by a director of the Concessionaire);]⁵
- (j) execute the Escrow Agreement with the Jal Nigam, NMCG, and the Escrow Bank in the agreed form set out at Schedule 3;
- (k) submit to the Jal Nigam certified true copies of the constitutional documents of the Concessionaire;

⁵ This Condition Precedent to be deleted if the Selected Bidder is not a Consortium.

- (l) submit to the Jal Nigam a legal opinion stating that: (i) this Agreement, the Substitution Agreement and the Escrow Agreement have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement, the Substitution Agreement and the Escrow Agreement have been taken, fulfilled or done;
- (m) if [a Member/the Selected Bidder]⁶ has submitted unaudited annual accounts along with the Bid, the Concessionaire shall submit to the Jal Nigam, within 60 days of the Appointed Date: (i) a certified copy of [such Member's/the Selected Bidder's]⁷ duly audited balance sheet, annual report and profit and loss account for the latest Financial Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member]⁸ continues to meet the Financial Capacity specified in the RFP; and
- (n) submit to the Jal Nigam a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire.

3.3 Conditions Precedent to be satisfied by the Jal Nigam

The Jal Nigam shall satisfy the following Conditions Precedent (if not already fulfilled on the Appointed Date):

- (a) obtain all necessary rights of way to the STP Site and grant access to the Site to the Concessionaire, free of Encumbrances;
- (b) to the extent relevant, obtain any change in land use permission from the relevant Government Authority to enable the Concessionaire to undertake the Project at the Site;
- (c) hand over the Associated Infrastructure to the Concessionaire;
- (d) subject to Clause 3.2(a), review and approve the Designs and Drawings in accordance with Clause 7.2;
- (e) subject to Clause 3.2(b), review and approve the Construction Plan in accordance with Clause 7.3;
- (f) subject to Clause 3.2(c), review and approve the EHS Plan in accordance with Clause 7.4;
- (g) obtain all approvals and consents, including the Jal Nigam Applicable Permits

⁶Delete Member if the Selected Bidder is a single entity.

⁷Delete Member if the Selected Bidder is a single entity.

⁸Delete Member if the Selected Bidder is a single entity.

and any approvals from the National Green Tribunal, required for Jal Nigam to enter into this Agreement and undertake the Project;

- (h) provide access road(s) to the Site, which are capable of being used for transportation of equipment and material to the Site for the construction and rehabilitation of the Facilities and the Associated Infrastructure;
- (i) execute the Substitution Agreement with the Concessionaire, NMCG and the Lenders in the agreed form set out at Schedule 2; and
- (j) execute the Escrow Agreement with the Concessionaire, NMCG and the Escrow Bank in the agreed form set out at Schedule 3.

3.4 **Conditions Precedent to be satisfied by NMCG**

NMCG shall satisfy the following Conditions Precedent (if not already fulfilled on the Appointed Date):

- (a) obtain all approvals and consents that may be required for NMCG to enter into this Agreement and undertake the Project;
- (b) appoint the Project Engineer in accordance with Article 6;
- (c) execute the Substitution Agreement with the Concessionaire, the Jal Nigam and the Lenders in the agreed form set out at Schedule 2;
- (d) execute the Escrow Agreement with the Concessionaire, the Jal Nigam, and the Escrow Bank in the agreed form set out at Schedule 3 and open the Escrow Account with the Escrow Bank; and
- (e) fund the Escrow Account with an amount equivalent to the first Payment Milestone.

3.5 **Satisfaction of Conditions Precedent**

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within 120 days from the Appointed Date (the **CP Long-stop Date**).
- (b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the CP Long-stop Date due to:
 - (i) a Force Majeure Event;
 - (ii) a Qualifying Change in Law;
 - (iii) in case of the Concessionaire, undue delay by the relevant Government Authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied for such Concessionaire Applicable Permit within the specified timelines, on payment of the prescribed fees

and having complied with the requirements of Applicable Laws in making such application; or

- (iv) delay by the other Parties in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the CP Long-stop Date shall be extended on a day-for-day basis for the period of such delay.

- (c) Each Party shall cooperate and use its reasonable efforts to assist the other Parties in satisfying the Conditions Precedent.

3.6 Consequences of failure to satisfy Conditions Precedent

- (a) Subject to this Clause 3.6:
 - (i) If the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date, as may be extended in accordance with Clause 3.5(b), the Jal Nigam shall be entitled to terminate this Agreement forthwith by issuing a notice to the Concessionaire.
 - (ii) If either the Jal Nigam or NMCG fails to satisfy any of the Conditions Precedent that they are required to fulfil by the CP Long-stop Date, as may be extended in accordance with Clause 3.5(b), the Concessionaire shall be entitled to terminate this Agreement forthwith by issuing a notice to the Jal Nigam and NMCG.
 - (iii) No Party shall be permitted to waive any Condition Precedent required to be fulfilled by any other Party.
- (b) If the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it and this Agreement is terminated in accordance with this Clause 3.6, then:
 - (i) The Jal Nigam shall be entitled to forfeit the Performance Security up to INR 2,00,00,000 (Rupees two crores) as a genuine pre-estimate of and reasonable compensation for loss and damage caused to the Jal Nigam as a result of the Concessionaire's failure to satisfy any of the Conditions Precedent and the consequent termination of this Agreement;
 - (ii) the Concessionaire shall not be entitled to receive any payment or compensation from the Jal Nigam or NMCG for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Agreement (including preparing any Designs and Drawings, the Construction Plan and the EHS Plan) prior to the termination of this Agreement;
 - (iii) the Concessionaire shall hand over to the Jal Nigam all documents,

- designs, plans, data and any Confidential Information provided by the Jal Nigam or NMCG to the Concessionaire prior to termination of this Agreement;
- (iv) the Jal Nigam shall hand over to the Concessionaire the Designs and Drawings, the Construction Plan, the EHS Plan and any other document and Confidential Information submitted by the Concessionaire to the Jal Nigam or NMCG prior to termination of this Agreement; and
 - (v) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Jal Nigam, free from all Encumbrances.
- (c) If the Jal Nigam or NMCG has failed to satisfy any of the Conditions Precedent required to be satisfied by them and this Agreement is terminated in accordance with this Clause 3.6 or this Agreement is terminated prior to the Effective Date due to a prolonged Force Majeure Event, then:
- (i) the Jal Nigam shall return the Performance Security submitted by the Concessionaire;
 - (ii) the Concessionaire shall hand over to the Jal Nigam all documents, designs, plans, data and any Confidential Information provided by the Jal Nigam or NMCG to the Concessionaire prior to termination of this Agreement;
 - (iii) the Jal Nigam shall hand over to the Concessionaire the Designs and Drawings, the Construction Plan, the EHS Plan and any other document and Confidential Information submitted by the Concessionaire to the Jal Nigam or NMCG prior to termination of this Agreement; and
 - (iv) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the Jal Nigam, free from all Encumbrances.
- (d) Upon termination of this Agreement pursuant to this Clause 3.6, other than to the extent specified in this Clause 3.6, no Party shall have any liability to the other Parties in connection with this Agreement.

3.7 **Term**

Subject to early termination in accordance with Article 14 (*Force Majeure*) or Article 16 (*Events of Default*), this Agreement shall come into full force and effect on the Effective Date and remain in full force and effect until the expiry of the O&M Period (i.e., 15 years from the COD) (**Term**).

4. **SITE AND ASSET OWNERSHIP**

4.1 **Grant of License over the Site**

- (a) The Jal Nigam shall grant the Concessionaire a license over the Site, along with all necessary rights of way, to enter upon, access and occupy the Site free of all Encumbrances in accordance with this Clause 4.1, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:
 - (i) design, construct and commission the Facilities and rehabilitate the Associated Infrastructure at the Site;
 - (ii) operate and maintain the Facilities and the Associated Infrastructure during the O&M Period;
 - (iii) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (iv) use access roads, gates, fences and utilities at or about the Site;
 - (v) discharge, store, treat and manage the STP By-Products and the Treated Effluent produced by the Facilities; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Site.
- (b) On and from the Effective Date and subject to the provisions of this Agreement, the Jal Nigam shall grant the Concessionaire a license over the Site including the exclusive right to occupy and use the Site to construct and rehabilitate the Facilities and the Associated Infrastructure.
- (c) On the Effective Date, the Jal Nigam and the Concessionaire shall execute a memorandum setting out the right of way, which has not been granted to the Concessionaire prior to the Effective Date. The memorandum will also set out the time period within which the Jal Nigam will grant such right of way to the Concessionaire.
- (d) If the Jal Nigam fails to grant all necessary rights of way, within 90 days of the Effective Date, then: (i) the Jal Nigam will be liable to pay liquidated damages at

the rate of INR 10,000 (Rupees ten thousand) for each day of delay in granting all necessary rights of way to the Concessionaire; and (ii) the Concessionaire will be entitled to a day-for-day extension for the period of such delay in the Jal Nigam granting all necessary rights of way.

If the Jal Nigam fails to grant all necessary right of way to the Concessionaire within 120 days of the Effective Date, it will be treated as a Jal Nigam Event of Default, which will give the Concessionaire a right to terminate this Agreement in accordance with Clause 16.3.

- (e) The Concessionaire agrees that if the Jal Nigam grants the Concessionaire all necessary rights of way within 90 days of the Effective Date, the Concessionaire shall be required to adhere to the Construction Plan and complete the construction and rehabilitation of the Facilities and the Associated Infrastructure by the Scheduled Construction Completion Date.
- (f) The Concessionaire shall not without the prior written consent or approval of the Jal Nigam use the Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by the Jal Nigam.
- (g) The full ownership and title over the Site shall vest with the Jal Nigam for the entire Term.
- (h) The Jal Nigam warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy the Site from such time that access is granted to the Concessionaire and until the expiry of the Term. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, the Jal Nigam shall, if called upon by the Concessionaire, defend such claims and proceedings.
- (i) Subject to any substitution rights exercised by the Lenders, the license granted by the Jal Nigam shall automatically terminate upon termination of this Agreement or expiry of the Term.

4.2 Right, Title and Interest in the Facilities and Associated Infrastructure

- (a) The full ownership, rights and title to the Facilities and Associated Infrastructure constructed, installed, rehabilitated or restored by the Concessionaire pursuant to this Agreement shall vest with the Jal Nigam during the entire Term and thereafter. The Concessionaire shall have the right to enter upon the Site, access and operate the Facilities and the Associated Infrastructure during the Term, to exercise its rights and fulfil its obligations under this Agreement.
- (b) Except as otherwise provided in this Agreement, the Concessionaire shall not:
 - (i) sell or otherwise dispose or create any Security over the Facilities or the

Associated Infrastructure or any part thereof;

- (ii) dispose any assets forming part of the Facilities or the Associated Infrastructure, other than for the purposes of replacement due to normal wear and tear; or
- (iii) transfer, assign or novate all of its rights and obligations under this Agreement,

without the prior written consent of the Jal Nigam (such consent not being unreasonably withheld or delayed).

4.3 **Site Data and Verification**

- (a) The Jal Nigam has made available to the Concessionaire, the layout plans, load flow studies and all other relevant data, studies and reports in the Jal Nigam's possession in connection with the Site, the Facilities and the Associated Infrastructure.
- (b) The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- (c) The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analyzed and verified the accuracy and reliability of the studies, reports and data provided by the Jal Nigam and any other information available with respect to the Facilities, the Site and the Associated Infrastructure and to have satisfied itself as to all the relevant matters including:
 - (i) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site;
 - (ii) the suitability of the Site for undertaking the construction and operation of the Facilities and the Associated Infrastructure;
 - (iii) the condition of the utilities available till the battery limits of the Site;
 - (iv) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
 - (v) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
 - (vi) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
 - (vii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;

- (viii) the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Government Authority; and
- (ix) all other matters that may affect the performance of its obligations under this Agreement.

The Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Jal Nigam, then, such error or discrepancy shall not entitle the Concessionaire to any extension of the Scheduled Payment Milestone Completion Date, the Scheduled Construction Completion Date and/or compensation for additional costs incurred. Further, any misinterpretation of the data, studies and reports provided by the Jal Nigam shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 4.3(c) (i) to (ix) above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

4.4 **Unforeseen Site Conditions**

Without prejudice to Clause 4.3 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which, in its opinion, are not covered under Clause 4.3 and which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Concessionaire shall give written notice of such adverse physical conditions to the Jal Nigam and the Project Engineer. Upon receipt of such written notice from the Concessionaire, if, in the opinion and sole discretion of the Jal Nigam, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then the Jal Nigam shall grant reasonable extension of the Scheduled Payment Milestone Completion Date and/or the Scheduled Construction Completion Date in accordance with Clause 7.11(b). Provided that, the Concessionaire shall implement appropriate measures, including any measures suggested by the Jal Nigam or the Project Engineer to mitigate the delay caused by any such unforeseen Site conditions. Further, it is clarified that any decision of the Jal Nigam regarding the existence of any unforeseen Site conditions and the corresponding extension of time to be allowed to the Concessionaire shall be final and binding.

4.5 **Site Related Covenants**

The Concessionaire agrees and undertakes that:

- (a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
- (b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The

Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site;

- (c) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
- (d) the Concessionaire shall be wholly responsible for safety at and security of the Site, the Facilities and the Associated Infrastructure;
- (e) the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
- (f) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under the Site shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform the Jal Nigam of such discovery and carry out the instructions of the Jal Nigam in this regard;
- (g) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties;
- (h) the Concessionaire shall use all reasonable endeavours not to do or permit to be done anything which might:
 - (i) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
 - (ii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
 - (iii) cause any contamination or damage to any Adjoining Property,

and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

If the construction and/or rehabilitation works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjacent Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of any Government Authority to undertake such construction/rehabilitation works and/or the O&M

services. The Jal Nigam shall provide all assistance to the Concessionaire for procuring such approvals.

4.6 Access to Jal Nigam Related Parties, NMCG Related Parties and Government Authorities

The Concessionaire shall ensure that the Jal Nigam Related Parties, the NMCG Related Parties and the relevant Government Authorities have access to the Site and the license granted to the Concessionaire over the Site shall always be subject to:

- (a) the rights of the Jal Nigam, the Jal Nigam's Representative, NMCG's Representative, the Project Engineer, and other Jal Nigam Related Parties and NMCG Related Parties to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the Jal Nigam and/or NMCG shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Facilities or the Associated Infrastructure in any manner whatsoever; and
- (b) the rights of the Government Authorities or other utility providers to enter upon and access the Site for laying or installing telegraph lines, electric lines or for any other public purpose.

If any physical damage is caused to the Site, the Facilities or the Associated Infrastructure as a result of such access and use of the Site by the Jal Nigam, the Project Engineer, the Jal Nigam Related Parties, the NMCG Related Parties, or Government Authorities then the Jal Nigam shall bear the costs of remedying such damage and restoring the Site and the Facilities and/or the Associated Infrastructure.

5. PERFORMANCE SECURITY, O&M SECURITY AND MOBILIZATION ADVANCE

- 5.1 The Concessionaire shall have submitted to the Jal Nigam, prior to the Appointed Date, an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 10% of the Bid Project Cost (the **Performance Security**).
- 5.2 The Performance Security shall remain valid until 25 months from the Effective Date or 1 month from the COD, whichever is later.
- 5.3 The Performance Security shall be returned within 30 days of the COD.

- 5.4 Within 60 days of the Construction Completion Date, the Concessionaire shall submit an unconditional and irrevocable bank guarantee to the Jal Nigam for an amount equal to INR [] (Rupees []), corresponding to 5% of the Bid Project Cost (the **O&M Security**).
- 5.5 The Concessionaire shall maintain the O&M Security in full force and effect until the expiry of the O&M Period. The O&M Security shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month in the relevant year, until the expiry of the O&M Period.
- 5.6 The Performance Security shall secure the due performance of the Concessionaire's obligations during the Construction Period and the O&M Security shall secure the due performance of the Concessionaire's obligations during the O&M Period. The cost of procuring the Performance Security and the O&M Security shall be borne solely by the Concessionaire.
- 5.7 If the Performance Security is scheduled to expire before the COD, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Jal Nigam shall be entitled to drawdown the total amount available under the Performance Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.
- 5.8 If the O&M Security is not renewed by the expiry of the 11th month of the relevant year of the O&M Period, then the Jal Nigam shall be entitled to drawdown the total amount available under the O&M Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the O&M Security.
- 5.9 The Jal Nigam shall be entitled to utilize such retained amount in the same manner as it would utilise the Performance Security or the O&M Security, as the case may be.

Upon receipt of a renewed or replacement Performance Security or within 30 days of the COD, the Jal Nigam shall return the unutilized cash security amount for the Performance Security to the Concessionaire.

Upon receipt of a renewed or replacement O&M Security or within 30 days of the expiry of the O&M Term, the Jal Nigam shall return the unutilized cash security amount for the O&M Security to the Concessionaire.

The interest earned on any retained amounts or cash security shall be the property of the Jal Nigam and the Jal Nigam shall not be required to account to the Concessionaire for any such interest.

- 5.10 The Jal Nigam shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Construction Period, or any amount due and payable by the Concessionaire to the Jal Nigam (including any Delay Liquidated Damages and Termination Compensation), in accordance with this Agreement.
- 5.11 The Jal Nigam shall have the right to draw on the O&M Security and claim up to the

amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the O&M Period, or any amount due and payable by the Concessionaire to the Jal Nigam (including any Availability Liquidated Damages, Performance Liquidated Damages, Termination Compensation and any amounts the Concessionaire is liable to pay under Clause 19.2), in accordance with this Agreement.

- 5.12 The Jal Nigam shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Security or the O&M Security, as the case may be. However, the Jal Nigam shall provide the Concessionaire with a copy of any demand notice issued by the Jal Nigam under the Performance Security or the O&M Security, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Performance Security or the O&M Security.
- 5.13 If the Jal Nigam makes a demand under the Performance Security or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 days of such demand, restore the value of the Performance Security or O&M Security to the amount stated in Clause 5.1 or Clause 5.4.
- 5.14 Within 30 days from the COD or the termination of this Agreement, whichever is earlier, the Performance Security or, as the case may be, the amount retained by the Jal Nigam as cash security under Clause 5.7 or Clause 5.8, shall be released to the Concessionaire after the expiry of 30 days from the COD or termination of this Agreement, subject to the Jal Nigam's right to receive any amounts from the Concessionaire before or upon COD or termination of this Agreement.
- 5.15 Upon the expiry of the O&M Period or the termination of this Agreement, whichever is earlier, the O&M Security or, as the case may be, the amount retained by the Jal Nigam as cash security under Clause 5.7 or Clause 5.8, shall be released to the Concessionaire after the expiry of 30 days from the date of expiry or termination of this Agreement, subject to the Jal Nigam's right to receive any amounts from the Concessionaire before or upon such expiry or termination of this Agreement.
- 5.16 Mobilization Advance Guarantee
- (a) Within 30 days of the Effective Date, the Concessionaire shall submit to the Jal Nigam an unconditional and irrevocable bank guarantee for an amount equal to the Mobilization Advance in the form set out at Schedule 4. The Mobilization Advance Guarantee shall secure the Mobilization Advance paid to the Concessionaire in accordance with Clause 9.3(d). The cost of procuring the Mobilization Advance Guarantee shall be borne solely by the Concessionaire.
- (b) The Mobilization Advance Guarantee shall remain valid until the entire Mobilization Advance secured by such Mobilization Advance Guarantee has been adjusted against the Construction Payments. However, the Concessionaire may, at its discretion, progressively reduce the value of the Mobilization Advance Guarantee by the amount of the Mobilization Advance adjusted against each of the 4 instalments of the Construction Payments, in accordance with Clause 9.3(d). For this purpose, the Concessionaire shall be required to furnish a replacement Mobilization Advance Guarantee of the reduced amount within 15 days of receipt of a Payment Certificate from the Jal Nigam on successful

completion of the relevant Payment Milestone. The Jal Nigam shall return the relevant existing Mobilization Advance Guarantee upon receipt of a replacement Mobilization Advance Guarantee from the Concessionaire.

- (c) If the Mobilization Advance Guarantee is scheduled to expire before the entire Mobilization Advance has been adjusted, then the Concessionaire shall arrange for an extension of the Mobilization Advance Guarantee at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the Jal Nigam shall be entitled to drawdown the total amount available under such Mobilization Advance Guarantee and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Mobilization Advance Guarantee.
- (d) The Jal Nigam shall be entitled to utilize such retained amount in the same manner as it would utilize the Mobilization Advance Guarantee. Upon receipt of an extension or replacement Mobilization Advance Guarantee or on adjustment of the entire Mobilization Advance, the Jal Nigam shall return the unutilized cash security amount to the Concessionaire.

The interest earned on any retained amounts or cash security shall be the property of the Jal Nigam and the Jal Nigam shall not be required to account to the Concessionaire for any such interest.

- (e) The Jal Nigam shall have the right to draw on the Mobilization Advance Guarantee in the event of the inadequate adjustment of the Mobilization Advance in accordance with Clause 9.3(d), prior to the Construction Completion Date.
- (f) The Jal Nigam shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under any Mobilization Advance Guarantee. However, the Jal Nigam shall provide the Concessionaire with a copy of any demand notice issued by the Jal Nigam under a Mobilization Advance Guarantee, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Mobilization Advance Guarantee.

6. PROJECT ENGINEER

- 6.1 NMCG shall appoint a third party engineering firm with requisite technical expertise, knowledge and experience in the design, engineering and construction of STPs as the engineer for the Project (the **Project Engineer**). The Project Engineer shall assist the Jal Nigam in supervising the construction, rehabilitation, operation and maintenance of the Facilities and the Associated Infrastructure and shall support the Jal Nigam to monitor compliance with the KPIs. The detailed scope of work of the Project Engineer is set out in Schedule 5.
- 6.2 All fees, costs, charges and expenses payable to the Project Engineer shall be borne by NMCG.
- 6.3 NMCG may replace the Project Engineer in any of the following circumstances:

- (a) if it has reason to believe that the Project Engineer has not discharged its duties in accordance with this Article 6 or Schedule 5; or
 - (b) if the Project Engineer submits its resignation.
- 6.4 In appointing any replacement of the Project Engineer, NMCG shall comply with this Article 6 and Schedule 5.
- 6.5 The Project Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure: (a) the timely completion of construction of the Facilities and restoration of the Associated Infrastructure on or before the Scheduled Construction Completion Date; and (b) compliance with the KPIs during the O&M Period.
- 6.6 During the Construction Period, the Project Engineer shall inspect the Facilities and the Associated Infrastructure at least once a month and prepare an inspection report, setting out the progress of the construction of the Facilities and the rehabilitation of the Associated Infrastructure, defects or deficiencies, if any, and status of compliance with the Construction Plan, Technical Specifications and Designs and Drawings. The Project Engineer shall send the report to the Jal Nigam and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer.
- 6.7 During the O&M Period, the Project Engineer shall inspect the Facilities and the Associated Infrastructure at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs (including specifically, the Influent Standards and the Discharge Standards). The Project Engineer shall send the report to the Jal Nigam and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any identified by the Project Engineer. The Project Engineer shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period at the Inlet Point and the Outlet Point to determine the standard of the Sewage, the STP By-Products and the Treated Effluent.
- 6.8 Except as specifically provided in this Agreement, the Project Engineer shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 6.9 The Project Engineer shall at all times during the Term have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany the Project Engineer during its inspection of the Facilities and the Associated Infrastructure.
- 6.10 The Project Engineer shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or O&M of the Facilities and the Associated Infrastructure, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works or O&M services is being undertaken. Neither any comments/suggestions provided by the Project Engineer nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction or rehabilitation works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the EHS Plan, and all Applicable

Laws and Applicable Permits.

- 6.11 The Concessionaire agrees that notwithstanding any review by the Project Engineer of any or all of the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Facilities and the Associated Infrastructure.

7. CONSTRUCTION PERIOD

7.1 Commencement and Duration

The period for construction of the Facilities and restoration of the Associated Infrastructure shall commence on and from the Effective Date, and shall continue until the Construction Completion Date (the **Construction Period**).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Effective Date, be entitled to commence:

- (a) preparation of the Designs and Drawings for the Facilities in accordance with Clause 7.2;
- (b) preparation of the Construction Plan for the Facilities and the Associated Infrastructure in accordance with Clause 7.3;
- (c) preparation of the EHS Plan for the Facilities in accordance with Clause 7.4;
- (d) soil or geophysical investigation or testing at the Site; and
- (e) appointment of Subcontractors for the construction works for the Facilities and the Associated Infrastructure, with the prior approval of the Jal Nigam.

7.2 Designs and Drawings

- (a) The Concessionaire shall prepare the detailed Designs and Drawings for the Facilities and the Associated Infrastructure in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. If the Concessionaire proposes to set up the Power Plant, the Concessionaire shall also submit detailed Designs and Drawings for the Power Plant. The Designs and Drawings shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth construction of the Facilities. The Facilities and the Associated Infrastructure should be designed in a manner that the Concessionaire can obtain a consent to operate from the Uttar Pradesh Pollution Control Board for the operation of the Facilities and the Associated Infrastructure. The Designs and Drawings should specify:
 - (i) the Proposed Technology for the Varanasi STP; and
 - (ii) the Threshold Influent Standards proposed by the Concessionaire for the treatment of Sewage at the Varanasi STP.

If there any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies.

- (b) Within 45 days from the Appointed Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft Designs and Drawings to the Jal Nigam for its review and approval.
- (c) The Jal Nigam shall forward all Designs and Drawings to the Project Engineer for its review and comments.
- (d) The Jal Nigam shall also forward the hydraulic Designs and Drawings to the Indian Institute of Technology at Roorkee, Uttarakhand (IIT), for their review and approval.
- (e) The Jal Nigam shall provide comments if any, on the draft Designs and Drawings (including any comments from IIT and the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft Designs and Drawings within 45 days from the date of receipt of the draft Designs and Drawings. The Jal Nigam may require the Concessionaire to amend or modify the draft Designs and Drawings if the Jal Nigam, IIT or the Project Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Designs and Drawings. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Designs and Drawings from the Jal Nigam, then the Concessionaire shall modify the draft Designs and Drawings to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, the Jal Nigam's/IIT's/the Project Engineer's comments on the draft Designs and Drawings and submit the revised Designs and Drawings to the Jal Nigam for its approval. The process set out in this Clause 7.2(e) shall continue until the hydraulic Designs and Drawings are certified by IIT and all the Designs and Drawings are approved by the Jal Nigam in accordance with this Clause 7.2(e).
- (f) The Concessionaire shall construct the Facilities strictly in accordance with the approved Designs and Drawings. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of the Jal Nigam. The Concessionaire shall not commence construction of any part of the Facilities prior to approval of the Designs and Drawings in accordance with this Clause 7.2. If the Concessionaire undertakes any construction work for the Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and the Jal Nigam shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.
- (g) Notwithstanding any approval of the Designs and Drawings by the Jal Nigam, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Clause 7.2(e), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 7.2.

7.3 **Construction Plan**

- (a) Within 45 days from the Appointed Date, the Concessionaire shall prepare and submit to the Jal Nigam a detailed Construction Plan. The Construction Plan shall set out:
 - (i) the detailed plan for completing the construction of the Facilities and rehabilitation of the Associated Infrastructure by the Scheduled Construction Completion Date;
 - (ii) specific activities and extent of construction and rehabilitation work to be performed by the Concessionaire to achieve each of the 4 Payment Milestones; and
 - (iii) the order in which the Concessionaire proposes to execute the construction of the Facilities and rehabilitation of the Associated Infrastructure.
- (b) The Jal Nigam shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 days from the date of receipt of the draft Construction Plan from the Concessionaire. The Jal Nigam may require the Concessionaire to amend or modify the draft Construction Plan if the Jal Nigam identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan from the Jal Nigam, then the Concessionaire shall incorporate the suggestions made by the Jal Nigam and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by the Jal Nigam. Thereafter, the Concessionaire shall submit the revised Construction Plan to the Jal Nigam for its approval. The process set out in this Clause 7.3(b) shall continue until the Construction Plan is approved by the Jal Nigam in accordance with this Clause 7.3(b).
- (c) The Concessionaire shall construct the Facilities and rehabilitate the Associated Infrastructure strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of the Jal Nigam. The Concessionaire shall not commence construction of any part of the Facilities or rehabilitation of any part of the Associated Infrastructure, prior to approval of the Construction Plan in accordance with this Clause 7.3.
- (d) Notwithstanding any approval of the Construction Plan by the Jal Nigam, the Concessionaire shall, subject to Clause 7.11(b), be solely liable for completing the construction of the Facilities and rehabilitation of the Associated Infrastructure, by the Scheduled Construction Completion Date.

7.4 **Environment, Health and Safety Plan**

- (a) Within 45 days from the Appointed Date, the Concessionaire shall prepare and submit 4 hard copies and 1 soft copy on a compact disc of a detailed EHS Plan to the Jal Nigam. The EHS Plan shall set out the health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project and shall include a comprehensive Site safety assurance plan, developed in accordance with Applicable Laws, Applicable Permits, the Technical Standards, the EHS Standards (including specifically, the IFC Performance Standards) and Good Industry Practices.
- (b) The Jal Nigam shall forward a copy of the EHS Plan to the Project Engineer for its review and comments.
- (c) The Jal Nigam shall provide comments, if any, on the draft EHS Plan (including any comments from the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft EHS Plan within 30 days from the date of receipt of the draft EHS Plan from the Concessionaire. The Jal Nigam/ may require the Concessionaire to amend or modify the draft EHS Plan if the Jal Nigam identifies any deficiencies or shortcomings in the draft EHS Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft EHS Plan from the Jal Nigam, then the Concessionaire shall modify the draft EHS Plan to address any such comments, shortcomings or deficiencies identified by the Jal Nigam. Thereafter, the Concessionaire shall submit the revised EHS Plan to the Jal Nigam for its approval. The process set out in this Clause 7.4(c) shall continue until the EHS Plan is approved by the Jal Nigam in accordance with this Clause 7.4(c).
- (d) The Concessionaire shall and shall ensure that its Subcontractors comply with and conform in all aspects to the EHS Plan, approved in accordance with this Clause 7.4, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the EHS Plan shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify the Jal Nigam and NMCG against all costs, expenses, penalties and liabilities incurred/suffered by the Jal Nigam and NMCG due to the Concessionaire's or any Subcontractor's failure to comply with the EHS Plan in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved EHS Plan without the prior written approval of the Jal Nigam.
- (e) Neither any approval of the EHS Plan by the Jal Nigam, nor any failure to review and provide comments on the EHS Plan shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final EHS Plan in ensuring compliance with all Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the EHS Plan and complying with the requirements of this Clause 7.4.

7.5 Subcontracting

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the Construction Period, with the prior written consent of the Jal Nigam.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract along with details of the relevant Subcontractor, to the Jal Nigam for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 7.5(b) above, the Jal Nigam shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by the Jal Nigam shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the Construction Period;
 - (ii) the Subcontract is on terms consistent with this Agreement;
 - (iii) the Subcontract contains provisions that provide, at the Jal Nigam's option, for the subcontract to be novated or assigned to the Jal Nigam or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle the Jal Nigam or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of the Jal Nigam shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor
- (e) If the Jal Nigam does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by the Jal Nigam.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the Jal Nigam for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the Jal Nigam and the process set out in this Clause 7.5 shall

apply in such case.

- (h) Notwithstanding the approval of any Subcontractor by the Jal Nigam, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

7.6 Concessionaire's Construction Obligations

The Concessionaire shall design, finance, construct and complete the Facilities, rehabilitate the Associated Infrastructure and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the EHS Plan, the Designs and Drawings, the Construction Plan and other provisions of this Agreement.

For this purpose, during the Construction Period, the Concessionaire shall:

- (a) complete the work corresponding to each Payment Milestone by the Scheduled Payment Milestone Completion Date and complete the construction of the Facilities and rehabilitation of the Associated Infrastructure by the Scheduled Construction Completion Date, in a manner that:
 - (i) is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the EHS Plan, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) the Facilities and Associated Infrastructure are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;
 - (iii) the Facilities and the Associated Infrastructure are free from all defects in design, materials, and workmanship;
 - (iv) the Facilities and Associated Infrastructure are safe, reliable and fit for purpose; and
 - (v) the Varanasi STP shall be capable of treating Sewage up to the Design Capacity.
- (b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction and rehabilitation of the Facilities and the Associated Infrastructure;

- (c) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction of the Facilities or rehabilitation of the Associated Infrastructure, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Facilities and the Associated Infrastructure, and liaise with the Jal Nigam's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period;
- (d) provide all necessary assistance to the Project Engineer and the Jal Nigam in undertaking inspection of the Facilities and the Associated Infrastructure, and in performing its other obligations and duties under this Agreement;
- (e) reasonably consider and act upon the comments/suggestions made by the Project Engineer and the Jal Nigam during any meetings with the Concessionaire;
- (f) rectify any defects and/or deficiencies in the Facilities and the Associated Infrastructure, including any defects and/or deficiencies identified by the Project Engineer or the Jal Nigam;
- (g) take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the Adjoining Properties, in accordance with the approved EHS Plan and all Applicable Laws;
- (h) ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the EHS Plan, Applicable Laws and Applicable Permits;
- (i) submit monthly reports to the Project Engineer (with a copy to the Jal Nigam), no later than 10 days after the end of each month, which should set out the following:
 - (i) extent of progress of construction activities performed by the Concessionaire for the Facilities;
 - (ii) extent of progress of the rehabilitation and/or upgradation activities performed by the Concessionaire for the Associated Infrastructure;
 - (iii) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
 - (iv) details of any accident or hazardous incident at the Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
 - (v) status of rectification of defects and/or deficiencies discovered by the Project Engineer or the Jal Nigam.

- (j) ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project. The Concessionaire shall and shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the Jal Nigam and NMCG from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Jal Nigam or NMCG due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislations);
- (k) arrange for all equipment, machinery, tools and other resources required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources;
- (l) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
- (m) maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction and restoration works for the Facilities and the Associated Infrastructure, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the Facilities and the Associated Infrastructure in accordance with Applicable Laws;
- (n) obtain and maintain adequate insurances as per this Agreement; and
- (o) prepare and keep up-to-date, "as-built" records of the execution of the construction and restoration work for the Facilities and the Associated Infrastructure, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site and be made available to the Project Engineer and the Jal Nigam for review and verification. The Concessionaire shall provide 4 hard copies and 1 soft copy on a compact disc of the complete set of "as-built" drawings for the Facilities and the Associated Infrastructure to the Jal Nigam as a condition precedent to the issuance of the Construction Completion Certificate.

7.7 Power Plant

- (a) The Concessionaire may, at its sole option and discretion, construct a Power Plant at the Site to utilise the bio gas generated from the treatment of the Sewage at the Varanasi STP to produce clean energy. The Concessionaire shall utilise the energy produced by the Power Plant to operate the Facilities and sell any excess energy to third party consumers during the Term, in accordance with all Applicable Laws.
- (b) If the Concessionaire chooses to construct a Power Plant at the Site, then it shall undertake such construction in accordance with all Applicable Laws and after

obtaining all necessary approvals and consents to construct the Power Plant at the Site.

- (c) The Concessionaire shall not be entitled to any additional land, Construction Payments, or an extension of the Scheduled Construction Completion Date for construction of the Power Plant.
- (d) The Concessionaire shall not be entitled to any additional O&M Payments for operating the Power Plant.
- (e) The Jal Nigam and NMCG shall not be liable to the Concessionaire in any manner whatsoever if the quality or quantity of Sewage delivered to the Varanasi STP is not adequate or appropriate to produce sufficient biogas to operate the Power Plant.
- (f) The ownership, rights and title to the Power Plant constructed by the Concessionaire shall vest with the Jal Nigam during the entire Term and thereafter.

7.8 **Jal Nigam's rights and obligations**

During the Construction Period, the Jal Nigam shall:

- (a) comply with all its obligations under Applicable Laws (including, specifically the UPWSS Act) and the Jal Nigam Applicable Permits;
- (b) make reasonable endeavours to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) maintain the Supporting Infrastructure to enable the delivery of Sewage at the main pumping station and disposal of the Treated Effluent from the Discharge Point during the Trial Operations;
- (d) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction for the Facilities or rehabilitation of the Associated Infrastructure, appoint a Person with sufficient skill and expertise to act as the Jal Nigam's Representative. The Jal Nigam's Representative shall liaise with the Concessionaire's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period;
- (e) cause the Project Engineer to carry out timely inspection of the Facilities and the Associated Infrastructure, and perform its other obligations and duties under this Agreement;
- (f) upon progressive completion of construction and rehabilitation works for the Facilities and the Associated Infrastructure in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, as certified by the Project Engineer, issue the Milestone

Completion Certificates and the Construction Completion Certificate to the Concessionaire; and

- (g) ensure that the Concessionaire enjoys peaceful access to the Site and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.

7.9 NMCG's rights and obligations

During the Construction Period, NMCG shall:

- (a) comply with all its obligations under the Applicable Laws (including specifically, the Ganga 2016 Order);
- (b) make the Construction Payments, on satisfactory completion of the relevant Payment Milestone, in accordance with Clause 9.3;
- (c) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction for the Facilities or rehabilitation of the Associated Infrastructure, appoint a Person with sufficient skill and expertise to act as the NMCG's Representative. NMCG's Representative shall liaise with the Concessionaire's Representative, the Jal Nigam's Representative and the Project Engineer during the Construction Period and the O&M Period; and
- (d) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

7.10 Utilities

- (a) The Concessionaire shall obtain, install and maintain at its cost, all utilities necessary for undertaking the construction of the Facilities and rehabilitation of the Associated Infrastructure, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- (b) The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clause 7.10 (a) above.
- (c) The Jal Nigam shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction and rehabilitation of the Facilities and the Associated Infrastructure.

7.11 Construction Timelines

- (a) The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Facilities and the restoration of the Associated Infrastructure on or before the Scheduled Construction Completion Date.

- (b) Subject to Clause 7.11(c) below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled Payment Milestone Completion Date or as the case may be, the Scheduled Construction Completion Date, if the completion of construction of the Facilities or restoration of the Associated Infrastructure is delayed due to any of the following reasons (each such event, a **Delay Event**):
- (i) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
 - (ii) a Qualifying Change in Law;
 - (iii) undue delay by the relevant Government Authority in renewing any Applicable Permit, despite the Concessionaire having applied for such renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (iv) undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (v) any delay attributable to unforeseen site conditions in accordance with Clause 4.4;
 - (vi) failure to grant all necessary rights of way to the Concessionaire within 90 days of the Effective Date, in accordance with Clause 4.1(d);
 - (vii) delay by the Jal Nigam in approval of the Designs and Drawings in accordance with Clause 7.2;
 - (viii) delay by the Jal Nigam in approval of the Construction Plan in accordance with Clause 7.3;
 - (ix) delay by the Jal Nigam in approval of the O&M Manual in accordance with Clause 8.2;
 - (x) delay by the Jal Nigam in issuance of a Milestone Completion Certificate in accordance with Clause 7.13(a);
 - (xi) delay by the Jal Nigam in issuance of the Construction Completion Certificate in accordance with Clause 7.13(c);
 - (xii) any variation proposed by the Jal Nigam in the Technical Specifications or the Designs and Drawings in accordance with Clause 7.16; or
 - (xiii) delay caused in complying with any instructions of the Jal Nigam or the Project Engineer, which instructions are not attributable to any default of the Concessionaire.

The Concessionaire shall promptly provide the Jal Nigam (with a copy to the Project Engineer and NMCG) with a notice upon becoming aware of any Delay Event listed at Clause 7.11(b) above. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Clause 7.11(b), within 7 days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 7.11(b).

- (c) Without prejudice to the Concessionaire's obligations to notify the Jal Nigam regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 7.11(b); and (ii) give the Jal Nigam and the Project Engineer access to such records and documents or provide the Jal Nigam and the Project Engineer with copies, if so requested.
- (d) If the Concessionaire claims an extension of time in accordance with Clause 7.11(b) and the Jal Nigam is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 7.11(b), then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- (e) If two or more of the Delay Events listed in Clause 7.11(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 7.11(b).
- (f) Except as provided in Clause 7.11(b), the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of the Jal Nigam or the Project Engineer which are attributable to any act or omission of the Concessionaire;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines;
 - (iii) unavailability or shortage of equipment, materials, or any other resources;
 - (iv) any delay in approving the drafts of the Designs and Drawings, the Construction Plan, the EHS Plan or any other document submitted by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan, the EHS Plan or other documents, as the case may be; or
 - (v) the Concessionaire's decision to construct the Power Plant at the Site.
- (g) Any Dispute between the Parties with respect to the occurrence, length of

subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 20 (*Dispute Resolution*).

7.12 **Delay Liquidated Damages**

- (a) Subject to Clause 7.11(b), if the Concessionaire fails to complete the work corresponding to any Payment Milestone by the Scheduled Payment Milestone Completion Date or fails to complete the construction of the Facilities and restoration of the Associated Infrastructure by the Scheduled Construction Completion Date, then the Jal Nigam shall be entitled to liquidated damages for each day of delay beyond the Scheduled Payment Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date, at the rate of 0.1% of the Performance Security for each day of delay up to 6 months from the relevant Scheduled Payment Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date (collectively, the **Delay Liquidated Damages**).

The Delay Liquidated Damages will be payable until the work for the relevant Payment Milestone is completed or, as the case may be, the construction of the Facilities and restoration of the Associated Infrastructure is completed, as certified by the Jal Nigam in accordance with Clause 7.13.

If the Concessionaire completes the construction and rehabilitation of the Facilities and the Associated Infrastructure by the Scheduled Construction Completion Date, the aggregate Delay Liquidated Damages recovered by the Jal Nigam under this Clause 7.12(a) for a delay in achieving any Payment Milestone shall be refunded by the Jal Nigam to the Concessionaire, without any interest.

- (b) The Jal Nigam shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any Payment Milestone, and if such amounts are insufficient, the Jal Nigam shall have a right to invoke the Performance Security to the extent of the Delay Liquidated Damages.
- (c) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the Jal Nigam as a result of the delay in the completion of the Facilities and restoration of the Associated Infrastructure, and not as penalty.
- (d) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle the Jal Nigam from claiming any Delay Liquidated Damages, then the Jal Nigam will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Payment Milestone by the Scheduled Payment Milestone Completion Date, or for the delay in completing the construction of the Facilities and restoration of the Associated Infrastructure by the Scheduled Construction Completion Date.
- (e) If the Concessionaire fails to complete the works for a Payment Milestone within 6 months of the Scheduled Payment Milestone Completion Date or if the Concessionaire fails to complete the construction of the Facilities and restoration

of the Associated Infrastructure within 6 months from the Scheduled Construction Completion Date, other than on account of any Delay Event (**Grace Period**), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 16.1.

- (f) The Concessionaire shall be required to pay the Delay Liquidated Damages to the Jal Nigam within 30 days of a demand being made by the Jal Nigam. If the Concessionaire does not pay the Delay Liquidated Damages within the above time period, then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 16.1.
- (g) The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Facilities and the restoration of the Associated Infrastructure, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavours to avoid or reduce further delay in completing the Facilities and rehabilitating the Associated infrastructure.

7.13 **Completion of Construction**

- (a) Completion of Payment Milestones
 - (i) Upon completion of the works corresponding to each Payment Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to the Jal Nigam, with a copy to the Project Engineer and NMCG, requiring the Jal Nigam to inspect (or cause the Project Engineer to inspect) the completed works covered by the relevant Payment Milestone. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.6.
 - (ii) If the Jal Nigam is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.6, the Jal Nigam shall issue a Milestone Completion Certificate to the Concessionaire for such completed Payment Milestone, with a copy to NMCG within 7 days from the date of inspection of the works covered by such Payment Milestone.
 - (iii) If the Jal Nigam is of the view that the works for the relevant Payment Milestone do not satisfy the requirements of Clause 7.6, then the Jal Nigam shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 7.6. Upon receipt of such comments, suggestions or instructions from the Jal Nigam, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the Jal Nigam. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This

process shall be repeated until the Jal Nigam is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.6 and issues a Milestone Completion Certificate in accordance with this Clause 7.13(a)(ii).

- (iv) If the Jal Nigam fails to:
 - (A) inspect the completed portion of the works covered by the relevant Payment Milestone, within 7 days from the date of receipt of a notice from the Concessionaire under Clause 7.13(a)(i) above; or
 - (B) provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Payment Milestone, within 7 days from the date of inspection of such completed portion of the works; or
 - (C) issue the Milestone Completion Certificate, within 7 days from the date of inspection of the completed portion of the works covered by the relevant Payment Milestone,

then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day for day extension in the Scheduled Payment Milestone Completion Date or the Scheduled Construction Completion Date, as the case may be, beyond the 7-day period.

- (v) The Jal Nigam may exercise its rights to review and certify the completion of works for any Payment Milestone either itself or through the Project Engineer. If the Jal Nigam instructs the Project Engineer to undertake a review of the works, then the Concessionaire shall cooperate with the Project Engineer to facilitate such review and rectify any defects or deficiencies identified by the Project Engineer in the works. Provided that, in all instances, the Jal Nigam shall finally approve the works and issue the Milestone Completion Certificates.

(b) Testing and Commissioning

- (i) Upon completion of construction of the Facilities and the restoration of the Associated Infrastructure in accordance with the requirements set out in this Agreement, the Concessionaire shall issue a notice to the Jal Nigam, with a copy to NMCG, requiring it to be present at the Site on the date specified in such notice to undertake a final inspection of the completed Facilities and Associated Infrastructure and conduct any tests required to ensure that the Facilities and the Associated Infrastructure comply with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.

- (ii) Within 5 days from the date of receipt of a notice under Clause 7.13(b)(i) above, the Jal Nigam may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 days from the date specified in the notice received from the Concessionaire under Clause 7.13(b)(i) above.
- (iii) The Concessionaire shall, on the date specified in the notice issued under Clause 7.13(b)(i) or on such other date as may be agreed with the Jal Nigam, carry out the tests in accordance with the instructions and under the supervision of the Jal Nigam, to demonstrate that the Facilities and the Associated Infrastructure comply with the requirements of Clause 7.6.
- (iv) If the Jal Nigam is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Facilities and/or the Associated Infrastructure, identified by the Jal Nigam or revealed through the tests and the Facilities and the Associated Infrastructure shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the Jal Nigam is satisfied that the Facilities and the Associated Infrastructure have been completed in accordance with Clause 7.6 and are safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Facilities and/or the Associated Infrastructure and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Facilities and/or the Associated Infrastructure.
- (v) If the Jal Nigam is satisfied with the results of the tests and inspection of the Facilities and the Associated Infrastructure, the Jal Nigam shall issue the Milestone Completion Certificate in respect of the last Payment Milestone to the Concessionaire, with a copy to NMCG, within 7 days from the date of inspection and testing of the completed Facilities and Associated Infrastructure. The issue of the Milestone Completion Certificate for the last Payment Milestone shall certify that the Facilities and the Associated Infrastructure have been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Facilities and the Associated Infrastructure are safe and fit for purpose.
- (vi) If the Jal Nigam fails to:
 - (A) inspect or witness the testing of the Facilities and the Associated Infrastructure on the date specified in the notice issued under Clause 7.13(b)(i) or such other date as may be agreed with the Concessionaire; or
 - (B) notify the Concessionaire of any defects or deficiencies in the Facilities or the Associated Infrastructure within 7 days from the

date of inspection and testing of the Facilities and the Associated Infrastructure; or

- (C) issue the Milestone Completion Certificate for the last Payment Milestone within 7 days from the date of inspection and testing of the Facilities and the Associated Infrastructure,

then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day for day extension in the Scheduled Payment Milestone Completion Date and the Scheduled Construction Completion Date.

(c) Issue of Construction Completion Certificate

- (i) Within 7 days from the date of issuance of the Milestone Completion Certificate for the last Payment Milestone, the Jal Nigam shall issue the Construction Completion Certificate to the Concessionaire, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:
 - (A) the submission of 4 hard copies and 1 soft copy on a compact disc of complete sets of the "as-built" drawings of the Facilities and the Associated Infrastructure;
 - (B) the Concessionaire having obtained all Applicable Permits necessary for commencement of the O&M services (including specifically the consent to operate from the Uttar Pradesh Pollution Control Board for the operation of the Facilities and the Associated Infrastructure);
 - (C) the Concessionaire having obtained adequate insurance for the O&M Period in accordance with Clause 11.2;
 - (D) the Concessionaire having engaged sufficient number of adequately skilled O&M Personnel to perform the services during the O&M Period; and
 - (E) the Concessionaire having cleared the Site and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site.
- (ii) If the Jal Nigam fails to issue the Completion Certificate to the Concessionaire within 7 days from the date of satisfaction of the conditions set out in Clause 7.13(c)(i)(A) to (E) above, then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day for day extension of the Scheduled Construction Completion Date, until such time that the Jal Nigam issues the Construction Completion Certificate to the Concessionaire.

- (iii) The date of the Construction Completion Certificate shall be the Construction Completion Date.

7.14 Trial Operations

- (a) Within 1 day of the issuance of the Construction Completion Certificate to the Concessionaire, the Concessionaire shall commence the Trial Operations of the Facilities and the Associated Infrastructure in accordance with the Trial Operation Procedures to determine whether the Facilities and the Associated Infrastructure meet the KPIs on a continuous basis and are fit and ready to be placed into commercial operations for treatment and disposal of Sewage in accordance with this Agreement.

The Jal Nigam shall ensure that adequate quantity of Sewage is delivered to the Facilities and the Associated Infrastructure during the Trial Operations to enable the Concessionaire to demonstrate that the Facilities and the Associated Infrastructure meet the Technical Specifications and the KPIs.

- (b) During the Trial Operations, the Jal Nigam shall or shall cause the Project Engineer to monitor the performance of the Facilities and the Associated Infrastructure on a regular basis and shall have the right to test the compliance of the incoming Sewage with the Influent Standards and test the compliance of the STP By-Products and the Treated Effluent with the Discharge Standards every 7 days to ensure that the Facilities meet the KPIs. If the Jal Nigam, or, as the case may be, the Project Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the Trial Operations Procedure; or (ii) there are any defects or deficiencies in the Facilities and/or the Associated Infrastructure, the Jal Nigam shall instruct the Concessionaire to follow the Trial Operation Procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs.
- (c) After the expiry of 3 months from the date of commencement of Trial Operations or after the rectification of the defects and deficiencies in the Facilities and/or the Associated Infrastructure identified by the Jal Nigam or the Project Engineer during the Trial Operations, whichever is later, the Concessionaire shall issue a notice to the Jal Nigam stating that the Trial Operations have been successfully completed. The Jal Nigam shall have the right to undertake a final inspection of the Facilities and the Associated Infrastructure within 5 days of a notice being issued by the Concessionaire.
- (d) If the Jal Nigam is satisfied that the Facilities and the Associated Infrastructure meet the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, the Jal Nigam shall issue the Trial Operations Completion Certificate to the Concessionaire within 7 days of the Jal Nigam undertaking a final inspection of the Facilities and the Associated Infrastructure pursuant to Clause 7.14(c) above.
- (e) If the Jal Nigam is of the opinion that the defects and deficiencies in the Facilities and/or the Associated Infrastructure have not been adequately rectified or that the Facilities and the Associated Infrastructure do not comply with the

KPIs and/or Technical Specifications, then the Jal Nigam shall reject the Facilities and terminate this Agreement. Upon termination of this Agreement, in accordance with this Clause 7.14(e), the consequences set out in Article 17 shall follow.

- (f) If the Trial Operations are not successfully completed (including the rectification of any defects or deficiencies identified by the Jal Nigam during the Trial Operations) and/or the Concessionaire fails to issue a notice to the Jal Nigam in accordance with Clause 7.14(c) above on or prior to the Scheduled COD, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 17 shall follow.
- (g) The Concessionaire will not be entitled to any O&M Payments or any other payment for conducting the Trial Operations, which shall be carried out solely at the cost and risk of the Concessionaire.

7.15 Commercial Operations Date

- (a) Within 7 days from the date of issuance of the Trial Operations Completion Certificate, the Jal Nigam shall issue the COD Certificate, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:
 - (i) the O&M Manual having been approved by the Jal Nigam;
 - (ii) the Concessionaire having submitted to the Jal Nigam the Scheduled Maintenance Programme for the first year post COD; and
 - (iii) the Concessionaire having submitted the O&M Security to the Jal Nigam.
- (b) The date on which the COD Certificate is issued to the Concessionaire shall be the Commercial Operations Date of the Facilities and the Associated Infrastructure.

7.16 Variation

- (a) Both the Jal Nigam and the Concessionaire may, at any time during the Construction Period, propose a Variation to the Technical Specifications, and/or the Designs and Drawings.
- (b) Jal Nigam Proposed Variation
 - (i) The Jal Nigam may, at any time during the Construction Period, propose a Variation in the Technical Specifications or the approved Designs and Drawings (Variation Order). Provided that, the Jal Nigam shall not propose a Variation, which: (A) is not technically feasible; or (B) is not in compliance with any Applicable Law or Applicable Permit.
 - (ii) Within 15 days of receipt of a Variation Order, the Concessionaire shall

submit a proposal to the Jal Nigam (with a copy to the Project Engineer) setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, and the additional Costs incurred in undertaking the Variation.

- (iii) Notwithstanding anything to the contrary in this Clause 7.16(b), the Concessionaire shall have the right to reject a Variation Order if, in the Concessionaire's view, the proposed variation will result in: (A) the Concessionaire incurring additional Costs, of more than 25% of the Bid Project Cost; or (B) a delay of more than 120 days in the Construction Plan.
 - (iv) Based on its review of the proposal submitted by the Concessionaire, the Jal Nigam may, at its sole discretion: (A) accept the proposal and the corresponding adjustment to the Construction Plan and/or the additional Costs for undertaking the Variation; (B) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (C) reject the proposal submitted by the Concessionaire and withdraw the Variation Order, within 15 days from the date of receipt of the Concessionaire's proposal under Clause 7.16(b)(ii) above.
 - (v) To the extent the Jal Nigam seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Jal Nigam's comments and submit a revised proposal.
 - (vi) On approval of the proposal or the revised proposal, as the case may be, the Concessionaire shall proceed with the Variation.
 - (vii) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the Construction Plan and/or payment of additional amounts agreed pursuant to the proposal submitted by the Concessionaire for carrying out the Variation.
- (c) Concessionaire Proposed Variation
- (i) The Concessionaire may propose a Variation, which it considers necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the Facilities and/or the Associated Infrastructure.
 - (ii) While proposing a Variation, the Concessionaire shall submit a proposal to the Jal Nigam (with a copy to the Project Engineer), with a statement setting out:
 - (A) the work required or no longer required;
 - (B) adjustment to the Construction Plan, if any; and

- (C) any other effect the proposed Variation would have on the construction and/or rehabilitation works for the Facilities and the Associated Infrastructure or on any other provision of this Agreement,

provided that the Concessionaire shall not be permitted to seek a Variation which (I) increases the Bid Project Cost; or (II) extends the Scheduled Construction Completion Date.

- (iii) Based on its review of the proposal submitted by the Concessionaire, the Jal Nigam may, at its sole discretion: (A) accept the proposal and the corresponding adjustment in the Construction Plan; (B) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (C) reject the proposal submitted by the Concessionaire, within 15 days from the date of receipt of the Concessionaire's proposal under Clause 7.16(c)(ii) above. To the extent the Jal Nigam seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Jal Nigam's comments and submit a revised proposal.
- (iv) On approval of the proposal or the revised proposal, as the case may be, the Concessionaire shall proceed with the Variation.
- (v) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the Construction Plan.
- (d) Notwithstanding anything to the contrary in this Clause 7.16, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the Construction Plan and additional Costs shall be determined in accordance with Article 13.
- (e) Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Subcontractor in the performance of the Concessionaire's obligations under this Agreement shall not entitle the Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.
- (f) No Variation shall invalidate this Agreement.

8. OPERATIONS AND MAINTENANCE PERIOD

8.1 Commencement and Duration

The period for the operation and maintenance of the Facilities and the Associated Infrastructure shall commence on and from the COD, and shall continue until the expiry of 15 years from the COD (the **O&M Period**), unless terminated earlier in accordance with Article 16.

8.2 O&M Manual

- (a) The Concessionaire shall prepare a detailed O&M Manual for the Facilities and Associated Infrastructure based on the Proposed Technology and in accordance with the Technical Specifications, EHS Plan, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of the Facilities and the Associated Infrastructure) and maintenance procedures. If there any errors or deficiencies in the Technical Specifications, the O&M Manual shall take in account, address or rectify such errors or deficiencies.
- (b) At least 30 days prior to the Scheduled Construction Completion Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O&M Manual to the Jal Nigam for its review and approval.
- (c) The Jal Nigam shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M Manual within 20 days from the date of receipt of the draft O&M Manual from the Concessionaire. The Jal Nigam may require the Concessionaire to amend or modify the draft O&M Manual if the Jal Nigam identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from the Jal Nigam, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by the Jal Nigam and/or address, in writing, the Jal Nigam's comments on the draft O&M Manual and submit the revised O&M Manual to the Jal Nigam for its approval. The process set out in this Clause 8.2(c) shall continue until the O&M Manual is approved by the Jal Nigam in accordance with this Clause 8.2(c).
- (d) The Concessionaire shall revise the O&M Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 8.2(c) will apply as is to the approval of the revised manual.
- (e) The Concessionaire shall undertake the O&M of the Facilities and the Associated Infrastructure strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the approved O&M Manual without the prior written approval of the Jal Nigam. The Concessionaire shall not commence operation of the Facilities or the Associated Infrastructure prior to approval of the O&M Manual in accordance with this Clause 8.2.
- (f) Notwithstanding any approval of the O&M Manual by the Jal Nigam, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of this Clause 8.2.
- (g) The Concessionaire shall submit a consolidated O&M Manual for the Facilities and the Associated Infrastructure.

8.3 Subcontracting

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the O&M Period, with the prior written consent of the Jal Nigam.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to the Jal Nigam for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 8.3(b) above, the Jal Nigam shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by the Jal Nigam shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the O&M Period;
 - (ii) the Subcontract is on terms consistent with this Agreement;
 - (iii) the Subcontract contains provisions that provide, at the Jal Nigam's option, for the Subcontract to be novated or assigned to the Jal Nigam or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle the Jal Nigam or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of the Jal Nigam shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractors.
- (e) If the Jal Nigam does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by the Jal Nigam.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the Jal Nigam for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the Jal Nigam and the process set out in this Clause 8.3 shall apply in such case.

- (h) Notwithstanding the approval of any Subcontractor by the Jal Nigam, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

8.4 **Concessionaire's rights and obligations**

- (a) The Concessionaire shall operate and maintain the Facilities and the Associated Infrastructure in a manner that:
 - (i) is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;
 - (ii) results in the Facilities and the Associated Infrastructure achieving the KPIs;
 - (iii) ensures that the Varanasi STP is capable of treating Sewage up to the Design Capacity on a daily basis;
 - (iv) ensures efficient treatment of Sewage and handling and disposal of STP By-Products and the Treated Effluent;
 - (v) is safe and reliable, subject to normal wear and tear of the Facilities and the Associated Infrastructure;
 - (vi) is in compliance with the technology license agreement executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Facilities and/or the Associated Infrastructure;
 - (vii) maintains the safety and security of personnel, material and property at the Site, in accordance with the approved EHS Plan, Applicable Laws and Applicable Permits; and
 - (viii) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the EHS Plan, Applicable Laws and Applicable Permits.
- (b) The Concessionaire shall provide adequate power backup at the Site (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Facilities and the Associated Infrastructure during the O&M Period.
- (c) The Concessionaire shall provide all necessary assistance to the Project Engineer and the Jal Nigam in undertaking inspection and monitoring of the operation and

maintenance of the Facilities and the Associated Infrastructure.

- (d) The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Project Engineer and the Jal Nigam during any meetings of the Concessionaire with its Subcontractors.
- (e) The Concessionaire shall provide the Jal Nigam and the Project Engineer with reasonable access to the Site during office hours to monitor and inspect the Facilities and the Associated Infrastructure.
- (f) The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the Facilities and the Associated Infrastructure and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site.
- (g) The Concessionaire shall develop and implement a safety and surveillance programme for the Facilities and the Associated Infrastructure and for handling and disposal of the STP By-Products and the Treated Effluent, and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site.

8.5 Jal Nigam's rights and obligations

During the O&M Period, the Jal Nigam shall:

- (a) comply with all its obligations under Applicable Laws (including, specifically the UPWSS Act) and the Jal Nigam Applicable Permits;
- (b) monitor and review the operations and performance of the Facilities and the Associated Infrastructure, including disposal of the STP By-Products and the Treated Effluent. This includes the right to access the Facilities, and review the records and reports that the Concessionaire is required to maintain, during normal working hours;
- (c) review the Scheduled Maintenance Programme and all other plans and documents submitted by the Concessionaire in an expeditious manner, in accordance with this Agreement; and
- (d) ensure that the Concessionaire continues to enjoy peaceful access to the Site and shall not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.

8.6 NMCG's rights and obligations

During the O&M Period, NMCG shall:

- (a) comply with all its obligations under the Applicable Laws (including specifically, the Ganga 2016 Order);
- (b) make the O&M Payments in accordance with Clause 9.4; and
- (c) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

8.7 Utilities

- (a) The Jal Nigam shall apply for and obtain the power connection (at the battery limit of the Site) for the operation of the Facilities and the Associated Infrastructure, in its name, at least 30 days prior to the Scheduled Construction Completion Date. The Concessionaire shall provide all necessary assistance to the Jal Nigam in procuring the power connection, including by providing all documents and information necessary to complete the application process.
- (b) The Concessionaire shall install and maintain at its cost, all utilities (other than power) necessary for the O&M of the Facilities and the Associated Infrastructure, including water, telephone connections, internet connections, etc. at the Site. Specifically, to procure water for the O&M of the Facilities and the Associated Infrastructure, the Concessionaire may dig borewells at the Site after obtaining all Applicable Permits (including any no-objection certificates from the Central Ground Water Authority or the relevant state authority).
- (c) The Concessionaire shall not be entitled to any additional costs to comply with its obligations in this Clause 8.7.
- (d) The Jal Nigam shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the O&M of the Facilities and the Associated Infrastructure.

8.8 Metering, Monitoring and Reporting

- (a) Metering
 - (i) The Concessionaire shall install flow measurement meters in accordance with Applicable Laws and Technical Specifications, at the rising main, the Inlet Point, the Outlet Point, weir at AssiNala and at any other point set out in the Technical Specifications or required as per Applicable Laws, to measure the flow of sewage over the weir and the volume and concentration of Sewage delivered to the Facilities, and the Treated Effluent discharged from the Facilities.
 - (ii) The Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.
 - (iii) If the Concessionaire sets up a Power Plant, then the Concessionaire shall install meters at the Power Plant to measure the total number of energy units (in kWh) generated from the Power Plant in each month of the

O&M Period.

- (iv) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by the Jal Nigam and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.
 - (v) The Concessionaire shall record and transmit all data collected from the meter reading of the volume of the incoming Sewage and the Treated Effluent. The Concessionaire shall furnish a summary report to the Jal Nigam (with a copy to the Project Engineer) on a daily basis, which shall indicate: (A) the volume of the Sewage received at the Varanasi STP and the volume of the Treated Effluent discharged from the Varanasi STP during each hour of the relevant day; and (B) the periods during which the volume of Sewage received at the Varanasi STP exceeded the Design Capacity.
 - (vi) The Concessionaire shall maintain the meters at its own cost and expense for the entire O&M Period.
- (b) Online Monitoring
- (i) The Concessionaire shall install and maintain an online monitoring system as part of the Facilities, in accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming Sewage and the Treated Effluent.
 - (ii) The online monitoring device should be capable of measuring and analyzing the flow rate and characteristics of the Sewage at the Inlet Point and of the Treated Effluent at the Outlet Point. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.
 - (iii) The Concessionaire shall record and transmit all data collected from the online monitoring system of the grade and characteristics of the incoming Sewage and the Treated Effluent. The Concessionaire shall furnish a summary report to the Jal Nigam (with a copy to the Project Engineer) on a daily basis, which shall indicate the periods during which: (A) the quality of the incoming Sewage was beyond the Influent Standards or the Threshold Influent Standard, as the case may be; and (B) the quality of the Treated Effluent was beyond the Discharge Standards.
 - (iv) The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Board's website.
 - (v) The Concessionaire shall maintain the online monitoring system at its own cost and expense for the entire O&M Period.

(c) Records and Reporting Requirements

- (i) The Concessionaire shall maintain:
 - (A) records of the volume and characteristics of the Sewage received at, and the STP By-Products and the Treated Effluent discharged from the Varanasi STP; and
 - (B) books of accounts recording all payments received from NMCG and other revenues derived/collected by it from the Facilities or resulting from its use.
- (ii) The Concessionaire shall provide to the Jal Nigam 2 copies of its audited financial statements along with a report from its statutory auditors, within 90 days of the close of each Financial Year.
- (iii) The Concessionaire shall deliver to the Jal Nigam, with a copy to the Project Engineer, the following during the O&M Period within the specified timelines:
 - (A) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Facilities or the Associated Infrastructure, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 hours after the occurrence of such event or circumstance;
 - (B) reports on any critical breakdowns or failures in the Facilities or the Associated Infrastructure, within 12 hours of such occurrence;
 - (C) reports on accidents or other incidents in relation to the O&M Personnel or any third party, along with statements on actions taken to minimise recurrence, within 2 days of such occurrence;
 - (D) daily reports with the data collected from the metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Clause 8.10 on the characteristics and volume of Sewage treated at the Facilities, the STP By-Products and the Treated Effluent discharged from the Facilities, at the end of each day (i.e., on or before 1500 hours every day);
 - (E) monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale of the STP By-Products and the Treated Effluent, and details of any Emergency during the relevant month), on or before the 7th day of the following month. The

monthly progress report must be certified by the Project Engineer before it is submitted to the Jal Nigam;

- (F) copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws or Applicable Permits, within 2 days of making such submissions to the relevant Government Authority; and
- (G) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

8.9 Design Capacity Utilization

- (a) During each day of the O&M Period, the Concessionaire shall ensure that the Varanasi STP can accept, treat, and process Sewage up to the Design Capacity.
- (b) The Concessionaire shall notify the Jal Nigam (with a copy to the Project Engineer) as soon as it becomes aware that the volume of Sewage received at the main pumping station is more than the Design Capacity.
- (c) In such circumstances, if the Concessionaire is unable to accept and treat the excess Sewage (i.e., over and above the Design Capacity) at the Varanasi STP, then such failure shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified the Jal Nigam in accordance with Clause 8.9(b) above. The Jal Nigam reserves the right to require the Project Engineer to verify the capacity utilization at the Varanasi STP, at any time during the O&M Period.

8.10 Testing

- (a) The Sewage and the Treated Effluent will be tested at the Inlet Point and the Outlet Point, respectively in accordance with this Clause 8.10 and the Technical Specifications.
- (b) The Concessionaire shall test the characteristics of the incoming Sewage at the Inlet Point to determine if the incoming Sewage meets the Influent Standards. The Concessionaire will be required to carry out such tests at the Inlet Point at the intervals specified in the Technical Specifications or at such other time interval as may be instructed by the Jal Nigam.
- (c) The Concessionaire shall test the characteristic of the Treated Effluent at the Outlet Point to determine if the Treated Effluent meets the Discharge Standards. The Concessionaire will be required to carry out such tests at the Outlet Point at

the intervals specified in the Technical Specifications or such other time interval as may be instructed by the Jal Nigam.

- (d) The Concessionaire shall test the characteristics of the Digested Sludge after digestion of the raw Sewage at the Varanasi STP to assess the volatile suspended solids (VSS) value of the Digested Sludge, in accordance with the Technical Specifications.
- (e) The Concessionaire shall maintain proper records of the tests conducted at the Inlet Point, the Outlet Point or at any other point at the Varanasi STP (for the Digested Sludge) and the test results shall be verified by the Project Engineer. Separately, the Project Engineer shall also have the right to take random samples of the incoming Sewage, the Digested Sludge and the Treated Effluent at any time during the O&M Period to test compliance with the Influent Standards and the Discharge Standards.
- (f) The Concessionaire shall prepare daily reports compiling the test reports for each day, which shall be submitted to the Jal Nigam, after being duly certified by the Project Engineer.

8.11 **Maintenance and Repair of the Facilities and the Associated Infrastructure**

- (a) During the O&M Period, the Concessionaire shall undertake the maintenance of the Facilities and the Associated Infrastructure and repair any damage to the Facilities and the Associated Infrastructure either by itself, or through an approved Subcontractor, such that the Facilities and the Associated Infrastructure shall be:
 - (i) in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
 - (ii) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers; and
 - (iii) capable of meeting the KPIs.
- (b) For the first year of the O&M Period, the Concessionaire shall submit its scheduled maintenance programme, specifying the Scheduled Maintenance periods and the impact of such Scheduled Maintenance periods on the Availability (**Scheduled Maintenance Programme**) to the Jal Nigam at least 1 month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs.
- (c) Within 15 days of receipt of the Scheduled Maintenance Programme, the Jal

Nigam shall notify the Concessionaire of its approval of such schedule.

If the Jal Nigam does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the Availability, the Jal Nigam shall advise the Concessionaire within 15 days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the Availability may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time, and shall be of equal duration as the requested period. If the Jal Nigam fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

- (d) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 8.11, the Jal Nigam may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:
 - (i) the Jal Nigam has given the Concessionaire at least 30 days' prior written notice of such re-scheduling;
 - (ii) the Jal Nigam shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;
 - (iii) the Jal Nigam shall not require that a single Scheduled Maintenance period be split into two or more periods; and
 - (iv) the Jal Nigam shall not require that a Scheduled Maintenance be brought forward any earlier than 15 days from the date of such notice without the consent of the Concessionaire.
- (e) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 8.11, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 days' prior written notice to the Jal Nigam. The Jal Nigam shall respond to such request within 10 days and shall not unreasonably withhold its permission for such re-scheduling.
- (f) Within 5 days of any re-scheduling of a Scheduled Maintenance in accordance with Clause 8.11(d) or Clause 8.11(e) above, the Concessionaire shall provide to the Jal Nigam, the amended Scheduled Maintenance Programme, which shall then be the "**Scheduled Maintenance Programme**".
- (g) The Facilities and the Associated Infrastructure will be deemed to be Available for the duration of the Scheduled Maintenance that are undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with this Clause 8.11.
- (h) During the O&M Period, the Concessionaire shall, at its own cost, replace any component or part of the Facilities that is damaged or worn out or in the

Concessionaire's judgement becomes no longer practicable to repair as a result of normal wear and tear.

- (i) If at any time during the O&M Period, the Facilities are damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the Facilities to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- (j) If at any time during the O&M Period, the Facilities are damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out at Clause 14.7 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged Facilities to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

8.12 **Key Performance Indicators**

(a) Availability

- (i) The Concessionaire shall ensure that the Availability of the Facilities and the Associated Infrastructure on every day during the O&M Period shall be 100% (the **Guaranteed Availability**). The '**Availability**' of the Facilities and the Associated Infrastructure will be determined as a ratio of the number of hours in a day during which the Facilities and the Associated Infrastructure are available to convey, accept and treat the Sewage up to its Design Capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.
- (ii) In computing the Availability, the Concessionaire agrees that the Facilities and the Associated Infrastructure will be deemed to be Available at all times, other than during the period of:
 - (A) an Unscheduled Outage;
 - (B) a Power Outage;
 - (C) suspension of the O&M services for reasons attributable to the Concessionaire (in accordance with Clause 15.1 and 15.2); and
 - (D) an Emergency attributable to the Concessionaire,

during which the Facilities and the Associated Infrastructure will be deemed to be not Available.

It is clarified that the Facilities shall be deemed to be not Available even if the Varanasi STP is available to accept and treat the Sewage but the

Associated Infrastructure is not available to convey the Sewage to the Varanasi STP.

- (iii) Notwithstanding anything to the contrary contained in this Agreement, during the period of a Scheduled Maintenance which is undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with Clause 8.11, a Forced Unavailability and a Force Majeure, the Facilities and the Associated Infrastructure will be deemed to be Available.
- (iv) ***Availability Liquidated Damages***

If the Availability on any given day is less than the Guaranteed Availability, then the Concessionaire shall pay as liquidated damages to the Jal Nigam, an amount equal to INR 50,000 (Rupees fifty thousand) for each 1% or part thereof reduction in Availability below the Guaranteed Availability, (the "**Availability Liquidated Damages**").

The aggregate Availability Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Availability Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of the Jal Nigam, either be adjusted against the O&M Payments for the subsequent quarter or recovered from the O&M Security.

(b) Influent Standards and Discharge Standards

- (i) The Concessionaire is required to receive, treat, and dispose all Sewage delivered to the Varanasi STP that meets the Threshold Influent Standards. If, however the Sewage is:
 - (A) beyond the Threshold Influent Standards, the Concessionaire shall have the right to reject such Sewage; and
 - (B) beyond the Influent Standards but within the Threshold Influent Standards, then the Concessionaire shall be required to treat such Sewage but will not be liable for any Performance Liquidated Damages (*defined below*) if the Treated Effluent and/or the Digested Sludge fails to meet the Discharge Standards.
- (ii) Subject to Clause 8.12(b)(i) above, the Concessionaire shall ensure that the Treated Effluent and Digested Sludge comply with the Discharge Standards set out in the Technical Specifications.
- (iii) Subject to Clause 8.12(b)(iv) below, if the Treated Effluent or the Digested Sludge does not comply with the Discharge Standards, the Concessionaire will be liable to pay liquidated damages to the Jal Nigam, for the amounts set out in Schedule 6 ("**Performance**

Liquidated Damages").

- (iv) If the Treated Effluent and/or the Digested Sludge does not meet the Discharge Standards on account of: (A) the characteristics of the Sewage being beyond the permissible Influent Standards; or (B) the volume of the Sewage being more than the Design Capacity, then, the Concessionaire shall not be liable to pay any Performance Liquidated Damages for a failure to meet the Discharge Standards.
- (v) The Performance Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Performance Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of the Jal Nigam, either be adjusted against the O&M Payments for the subsequent quarter or recovered from the O&M Security.
- (vi) Within 7 days from the end of each month, the Concessionaire shall be required to provide the monthly progress report (prepared in accordance with Clause 8.8(c)(iii)(E) above) on compliance of the Facilities and the Associated Infrastructure with the KPIs, which should indicate the periods during which the Facilities did not meet the Guaranteed Availability or the Treated Effluent and/or the Digested Sludge did not meet the Discharge Standards and the reasons for such failure. The Project Engineer shall be required to certify each such monthly report before it is provided to the Jal Nigam. Such certified report on compliance with KPIs shall be referred to as the **KPI Adherence Report**, and shall form the basis for O&M Payments being made to the Concessionaire during the O&M Period.

8.13 Disposal of STP By-Products and the Treated Effluent

The Concessionaire shall be required to store, handle and dispose the STP By-Products and the Treated Effluent in the manner set out in this Clause 8.13 during the O&M Period:

- (a) Waste Disposal Site
 - (i) At least 30 days prior to the Scheduled Construction Completion Date, the Jal Nigam shall inform the Concessionaire of the Waste Disposal Site at which the Concessionaire shall be required to dispose the STP By-Products, resulting from the treatment of the Sewage at the Varanasi STP.
 - (ii) The Jal Nigam may shift the Waste Disposal Site from time to time during the O&M Period provided that, the Waste Disposal Site will always be within a radius of 10 km from the boundary of the STP Site and any shifting of the Waste Disposal Site will be with at least 30 days' prior written notice to the Concessionaire.

- (iii) If, at any time during the O&M Period, the Jal Nigam shifts the Waste Disposal Site to a location beyond a radius of 10 km from the boundary of the STP Site, then, the Jal Nigam shall compensate the Concessionaire for any additional transportation costs incurred by the Concessionaire in transporting the STP By-Products to such Waste Disposal Site.
 - (iv) All costs in connection with the setting up and maintaining the Waste Disposal Site (including the cost of obtaining any necessary approvals) will be borne by the Jal Nigam and the Concessionaire shall only be responsible for transporting the STP By-Products to the Waste Disposal Site.
- (b) Disposal of Residual Grit and Screenings
 - (i) The Concessionaire shall, at its cost and expense, be required to transfer the Residual Grit and the Screenings to the Waste Disposal Site and shall make adequate transportation arrangements for this purpose.
 - (ii) The Concessionaire shall ensure that the Residual Grit and the Screenings are not disposed at any place on or about the Site, other than the Waste Disposal Site, or discharged into the river Ganga. The disposal of the Residual Grit and the Screenings at the Waste Disposal Site must be strictly in accordance with all Applicable Laws. The Concessionaire shall indemnify the Jal Nigam against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Clause 8.13(b) and all Applicable Laws in disposal of the Residual Grit and the Screenings.
- (c) Disposal of Digested Sludge
 - (i) As part of the Facilities, the Concessionaire shall be required to set up a sludge handling facility at the Site, where the Concessionaire can dry the Digested Sludge during the O&M Period.
 - (ii) The Concessionaire shall, at its cost and expense, provide for a storage facility within the Site to temporarily store the dried Digested Sludge until such Digested Sludge is sold or disposed in accordance with this Agreement.
 - (iii) The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to sell the Digested Sludge, at such price and to such Persons as it may deem fit or dispose the Digested Sludge at the Waste Disposal Site.
 - (iv) The Concessionaire shall maintain proper records of sale of any Digested Sludge generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to the Jal Nigam for its review.

- (v) The Concessionaire shall ensure that the Digested Sludge is not disposed at any place on or about the Site, except the Waste Disposal Site, or discharged into the river Ganga. The Concessionaire shall indemnify the Jal Nigam against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Clause 8.13(c) and all Applicable Laws in disposal of the Digested Sludge.
- (d) Disposal of Treated Effluent
 - (i) As part of the Facilities, the Concessionaire shall be required to set up an Effluent Disposal Pipeline for transportation of the Treated Effluent from the Outlet Point to the Discharge Point.
 - (ii) The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to dispose the Treated Effluent in the following manner:
 - (A) transfer the Treated Effluent through the Effluent Disposal Pipeline to the Discharge Point for discharge into the river Ganga; or
 - (B) sell the Treated Effluent at such price and to such Persons as it may deem fit.
 - (iii) The Concessionaire shall maintain proper records of sale of any Treated Effluent generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to the Jal Nigam for its review.
 - (iv) The Concessionaire shall indemnify the Jal Nigam against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Clause 8.13(d) and all Applicable Laws in disposal of the Treated Effluent.
- (e) Rights and interest in the STP By-Products and the Treated Effluent

All rights and interest in the STP By-Products and the Treated Effluent discharged from the Varanasi STP shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to a third party buyer/offtaker in accordance with this Agreement.

8.14 Remedial Measures

If after the COD, the Concessionaire ceases to operate the Facilities and the Associated Infrastructure for a period of 48 consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Clause 15.1 or Clause 15.2, which is not attributable to the Concessionaire, without the prior written consent of the Jal Nigam, then the Jal Nigam shall be entitled to step-in and undertake O&M of the Facilities and the Associated Infrastructure until the Concessionaire demonstrates to the satisfaction of the Jal Nigam that it can and will resume normal

operation and maintenance of the Facilities and the Associated Infrastructure. The exercise of the Jal Nigam's rights under this Clause 8.14 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Charges for the duration that the Jal Nigam steps-in to operate and maintain the Facilities and the Associated Infrastructure.

8.15 **O&M Personnel**

- (a) The Concessionaire shall engage (either directly or through an approved Subcontractor) adequate number of suitably skilled and qualified personnel to undertake the O&M of the Facilities and the Associated Infrastructure in accordance with the requirements set out in Article 8.
- (b) The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable labour laws.
- (c) Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal HR policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.
- (d) The Jal Nigam is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify the Jal Nigam against all losses, claims, costs and damages that the Jal Nigam may suffer due to the Concessionaire's or any of its Subcontractor's failure to comply with applicable labour laws.

9. PAYMENT AND INVOICING

9.1 In consideration of the works and services required to be performed by the Concessionaire for designing, financing, constructing, rehabilitating operating and maintaining the Facilities and the Associated Infrastructure in accordance with this Agreement, the Concessionaire shall be entitled to receive the Construction Payments and the O&M Payments from NMCG in accordance with this Article 9.

9.2 The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the Construction Payments and the O&M Payments. Except for any adjustment in accordance with Clause 8.13(a), Clause 13.2, Clause 15.1(c)(ii) and Clause 15.2(b), in case of any suspension not attributable to the Concessionaire, or any permitted Variation, the Construction Payments and the O&M Payments are the total consideration payable to the Concessionaire for undertaking the Project.

9.3 **Construction Payments**

- (a) NMCG shall deposit an amount equivalent to the first Payment Milestone in the Escrow Account in accordance with Clause 9.5 and the Escrow Agreement, prior

to the Effective Date. From the Effective Date and during the Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next Payment Milestone.

- (b) 10% of the Construction Payments shall be given to the Concessionaire as a Mobilization Advance in accordance with Clause 9.3(d), which will be adjusted against the Construction Payments to be paid by NMCG to the Concessionaire in 4 instalments, in accordance with Clause 9.3(e). The Construction Payments will be paid to the Concessionaire, upon completion of the work corresponding to the Payment Milestones and certification of completion of such Payment Milestones by the Jal Nigamin accordance with Clause 7.13.
- (c) Adjustment in Construction Payments
 - (i) The Construction Payments shall be adjusted during the Construction Period to reflect the variation in the Construction Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
 - (ii) All Invoices to be submitted by the Concessionaire to the Jal Nigam for any instalment of the Construction Payments shall be the product of the relevant percentage of the Bid Project Cost and the Price Index Multiple applicable on the date of the Invoice.
- (d) Mobilization Advance
 - (i) 10 % of the Bid Project Cost, adjusted for the Price Index Multiple, shall be payable to the Concessionaire as the Mobilization Advance, within 30 days from the Effective Date, subject to the Concessionaire having submitted a Mobilization Advance Guarantee in accordance with Clause 5.16. The Mobilization Advance shall be an interest free advance for mobilization and towards execution of the construction works for the Project.
 - (ii) The Mobilization Advance shall be deducted in equal instalments from the 4 instalments of the Construction Payments to be made to the Concessionaire upon progressive completion of the Payment Milestones.
- (e) Milestone Construction Payments
 - (i) Subject to this Clause 9.3(e), the Construction Payments will be paid by NMCG to the Concessionaire in the following 4 equal instalments (“Payment Milestones”) (after adjusting the Mobilization Advance):
 - (A) 1st instalment of 10% of the Bid Project Cost upon the expiry of 5 months from the Effective Date or issuance of the first Milestone Completion Certificate, whichever is later;
 - (B) 2nd instalment of 10% of the Bid Project Cost upon the expiry of 10 months from the Effective Date or issuance of the second Milestone Completion Certificate, whichever is later;
 - (C) 3rd instalment of 10% of the Bid Project Cost upon the expiry

of 15 months from the Effective Date or issuance of the third Milestone Completion Certificate, whichever is later; and

- (D) 4th instalment of 10% of the Bid Project Cost upon the expiry of 21 months from the Effective Date or issuance of the Construction Completion Certificate, whichever is later.
- (ii) Within 7 days of issuance of the Milestone Completion Certificate for a Payment Milestone, the Concessionaire shall submit an Invoice to the Jal Nigam for the amount of the Construction Payment linked to such Payment Milestone. Any Invoice raised by the Concessionaire for the Construction Payments shall be accompanied by a copy of the relevant Milestone Completion Certificate issued by the Jal Nigam.
- (iii) Within 10 days of receipt of an Invoice from the Concessionaire pursuant to Clause 9.3(e)(ii) above, the Jal Nigam shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - (A) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws);
 - (B) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Jal Nigam. The Concessionaire shall submit a revised Invoice to the Jal Nigam after rectifying the errors or discrepancies identified by the Jal Nigam and this process will be repeated until the Jal Nigam approves the Invoice and issues a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for release of the amount specified in the Invoice.
- (iv) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 20 (*Dispute Resolution*).
- (v) A certificate issued by the Jal Nigam in accordance with Clause 9.3(e)(iii) shall be referred to as a **Payment Certificate**.
- (vi) If, within 10 days from the date of receipt of an Invoice, the Jal Nigam does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Jal Nigam and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the Jal Nigam and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.
- (vii) Immediately upon receipt of a Payment Certificate from the Jal Nigam

in accordance with Clause 9.3(e)(iii) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.3(e)(vi), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.

- (viii) Notwithstanding anything to the contrary in this Agreement, the Jal Nigam shall have no obligation to issue a Payment Certificate unless:
 - (A) the Performance Security remains valid and in effect;
 - (B) the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;
 - (C) the Applicable Permits required to be obtained by the Concessionaire for construction of the Facilities and the Associated Infrastructure are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (D) the Concessionaire has complied with the EHS Plan in undertaking the construction of the Facilities and the Associated Infrastructure; and
 - (E) there is no subsisting Concessionaire Event of Default.

9.4 **O&M Payments**

- (a) During the O&M Period, NMCG shall be required to make the O&M Payments to the Concessionaire comprising the Capex Annuity; the O&M Charges and the Power Charges, in accordance with this Clause 9.4.
- (b) Adjustment in Capex Annuity and O&M Charges
 - (i) The Capex Annuity shall be adjusted during the O&M Period to reflect the variation in the Construction Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
 - (ii) The O&M Charges shall be adjusted during the O&M Period to reflect the variation in the O&M Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
 - (iii) All Invoices to be submitted by the Concessionaire to the Jal Nigam for the Capex Annuity shall be the product of the amount of the Capex Annuity specified in Clause 9.4(c) below, and the Price Index Multiple applicable on the date of the Invoice.
 - (iv) All Invoices to be submitted by the Concessionaire to the Jal Nigam for the quarterly O&M Charges shall be the product of the applicable O&M

Charges for the relevant quarter and the Price Index Multiple applicable on the date of the Invoice.

(c) Capex Annuity

- (i) The Capex Annuity will be INR[](Rupees[]) per quarter, which shall be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the relevant Invoice.
- (ii) Interest shall be payable on the reducing balance of 60% of the Bid Project Cost, at the rate of the SBI MCLR plus 3% per annum. Such interest shall be due and payable quarterly along with each instalment of the Capex Annuity specified in Clause 9.4(c)(i). The Parties agree that such interest shall be calculated on the basis of the number of days for which the relevant rate of the SBI MCLR was applicable during the period of calculation.

*By way of illustration, assuming that the balance Bid Project Cost to be paid to the Concessionaire on the date of payment of the 1st Capex Annuity instalment is INR 50,00,00,000 (Rupees fifty crores), the applicable SBI MCLR for the first 50 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the date of payment of the 2nd Capex Annuity, the interest would be calculated as $((50*11\%*50)/365)+((50*10.5\%*40)/365)$. For the avoidance of doubt, the interest shall be calculated on simple interest basis and the interest shall not be compounded for the purpose of payment.*

(d) O&M Charges

- (i) The O&M Charges for the first quarter after COD will be calculated on the basis of the O&M Charges quoted by the Selected Bidder in its Financial Proposal for the first month from the COD, which amount shall be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the first Invoice for the O&M Payments.
- (ii) For each subsequent quarter of the O&M Period, the O&M Charges will be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the relevant Invoice for the O&M Payments.

(e) Power Charges

- (i) The Power Charges shall initially be borne by the Concessionaire, which shall be reimbursed by NMCG to the Concessionaire, subject to a cap of the Power Charges based on the Guaranteed Energy Consumption.
- (ii) The Power Charges for any given quarter of the O&M Period will be

calculated as follows:

- (A) For the units of energy consumed from the grid (as evidenced by a copy of the bill issued by the distribution licensee), the Power Charges will be calculated by multiplying the number of units consumed in such quarter (subject to the Guaranteed Energy Consumption) with the Power Unit Rate.
- (B) If there is any interruption in the supply of power from the grid, and the Concessionaire uses backup power supply from the DG Sets, then,
- (I) the Concessionaire's Representative and the Jal Nigam shall jointly take readings from the meters installed at the DG Sets to determine the number of units of energy consumed from the DG Sets for O&M of the Facilities and the Associated Infrastructure;
- (II) the number of units of energy consumed from the DG Sets (determined as per (I) above) shall be adjusted such that the aggregate of the total number of units consumed from the grid and the total number of units consumed from the DG Sets shall not exceed the Guaranteed Energy Consumption (**Adjusted DG Set Units**);
- (III) the quantity of diesel consumed to generate the Adjusted DG Set Units in the relevant quarter shall be calculated by the Jal Nigam based on the rated specific fuel consumption of the DG Sets specified by the manufacturers of the DG Sets; and
- (IV) the Power Charges for the Adjusted DG Set Units will be calculated by multiplying the quantity of diesel consumed (determined as per (III) above) with the Fuel Price.
- (C) The Concessionaire shall be liable to pay liquidated damages to the Jal Nigam for any units of energy consumed beyond the Guaranteed Energy Consumption (whether from the grid or from the DG Sets) (**Power Consumption Liquidated Damages**), which will be calculated as follows:
- (I) For excess power consumption up to 5% of the Guaranteed Energy Consumption:
- Power Consumption Liquidated Damages: (Number of power units consumed in the relevant quarter – Guaranteed Energy Consumption for such quarter) * [Power Unit Rate] * 0.25

- (II) For excess power consumption between 5% and 10% of the Guaranteed Energy Consumption:

Power Consumption Liquidated Damages: (Number of power units consumed in the relevant quarter – Guaranteed Energy Consumption for such quarter) * [Power Unit Rate] * 0.5

- (III) For excess power consumption above 10% of the Guaranteed Energy Consumption:

Power Consumption Liquidated Damages: (Number of power units consumed in the relevant quarter – Guaranteed Energy Consumption for such quarter) * [Power Unit Rate]

- (D) The Power Consumption Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Charges payable to the Concessionaire for such quarter. If the Power Consumption Liquidated Damages for a quarter exceed the O&M Charges for such quarter, then the excess amounts shall, at the discretion of the Jal Nigam, either be adjusted against the O&M Charges for the subsequent quarter or recovered from the O&M Security.

- (f) The O&M Payments shall be paid by NMCG to the Concessionaire on a quarterly basis. The Concessionaire shall submit an Invoice to the Jal Nigam for each quarter on or before the 7th day of the first month of the following quarter, which should set out: (i) the Capex Annuity due to the Concessionaire in such quarter along with interest in accordance with Clause 9.4(c)(ii) above; (ii) the O&M Charges due to the Concessionaire in such quarter; and (iii) the Power Charges incurred by the Concessionaire during such quarter for power drawn from the grid or the DG Sets, subject to the cap of the Power Charges based on the Guaranteed Energy Consumption. Any Invoice raised by the Concessionaire for O&M Payments shall be accompanied with a copy of the: (A) KPI Adherence Report for each month of the relevant quarter, duly certified by the Project Engineer; and (B) copy of the bill(s) issued by the state distribution utility for the Power Charges, and if relevant, copy of the joint meter reading for consumption of power from the DG Sets.

If the Invoice is not accompanied with the supporting documents specified at (A) and (B) above, the Jal Nigam shall not be required to process such Invoice.

- (g) Within 10 days of receipt of an Invoice from the Concessionaire pursuant to Clause 9.4(f) above, the Jal Nigam shall verify and certify the amounts due and payable to the Concessionaire, and either:
- (i) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary

deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including any statutory dues);

- (ii) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the Jal Nigam. The Concessionaire shall submit a revised Invoice to the Jal Nigam after rectifying the errors or discrepancies identified by the Jal Nigam and this process will be repeated until the Jal Nigam approves the Invoice and issues a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for release of the amount specified in the Invoice.
- (iii) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 20 (*Dispute Resolution*).
- (iv) A certificate issued by the Jal Nigam in accordance with Clause 9.4(g)(ii) shall be referred to as a **Payment Certificate**.
- (v) If, within 10 days from the date of receipt of an Invoice, the Jal Nigam does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the Jal Nigam and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the Jal Nigam and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period
- (vi) Immediately upon receipt of a Payment Certificate in accordance with Clause 9.4(g)(ii) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.4(g)(v), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (vii) Notwithstanding anything to the contrary in this Agreement, the Jal Nigam shall have no obligation to issue a Payment Certificate unless:
 - (A) the O&M Security remains valid and in effect;
 - (B) the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;
 - (C) the Applicable Permits required to be obtained by the Concessionaire for O&M of the Facilities and the Associated Infrastructure are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (D) the Concessionaire has complied with the EHS Plan in undertaking the O&M of the Facilities and the Associated Infrastructure; and

(E) there is no subsisting Concessionaire Event of Default.

9.5 Escrow Account

- (a) Prior to the Effective Date, the Concessionaire, NMCG, the Jal Nigam and the Escrow Bank shall enter into the Escrow Agreement and NMCG shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, NMCG's obligation to deposit the Construction Payments and the O&M Payments in accordance with this agreement with the Escrow Bank and terms of withdrawal of amounts from the Escrow Account.
- (b) Minimum Escrow Balance
 - (i) NMCG shall deposit an amount equivalent to the first Payment Milestone prior to the Effective Date. From the Effective Date and during the Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next Payment Milestone; and
 - (ii) On and from the COD and during the O&M Period, NMCG shall deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuities, the O&M Charges and the estimated Power Charges for the next 2 years,

(the Minimum Escrow Balance).

If at any time during the O&M Period, the balance in the Escrow Account falls below the Minimum Escrow Balance, NMCG shall promptly, and in any event, no later than 90 days, fund the Escrow Account such that the Minimum Escrow Balance is maintained. A failure to maintain the Minimum Escrow Balance for 90 days would be treated as a NMCG Event of Default and the consequences set out in Article 16 would follow.

It is clarified that any interest earned on the amounts deposited by NMCG in the Escrow Account will be counted towards the Minimum Escrow Balance.

- (c) The Concessionaire shall be entitled to withdraw amounts from the Escrow Account in accordance with the provisions of this Agreement and the Escrow Agreement.

9.6 Taxes and Royalties

- (a) The Construction Payments and the O&M Payments are inclusive of all Taxes other than service tax, which will be paid separately, at actuals.
- (b) The Jal Nigam may deduct from the Construction Payments, the O&M Payments and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.

- (c) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- (d) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Subcontractor during the Construction Period and furnish proof of payment of such royalties to the Jal Nigam along with the Invoices for the Construction Payments.
- (e) The Concessionaire shall indemnify NMCG and the Jal Nigam from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.

9.7 Default Interest

Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at the prevailing SBI MCLR + 3% per annum or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 16 or any other right or remedy available to it under this Agreement or Applicable Laws.

9.8 Right of Set-Off

The Concessionaire shall not be entitled to retain or set off any amount due to NMCG or the Jal Nigam by it, but NMCG or the Jal Nigam may retain or set off any amount owed to it by the Concessionaire under this Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Agreement. NMCG shall notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

10. FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

- (a) The Parties acknowledge that for the purposes of implementing the Project, the Concessionaire may require Financial Assistance from the Lenders. To this end, the Jal Nigam shall co-operate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.
- (b) In case of a Concessionaire Event of Default, the Jal Nigam and NMCG acknowledge that the Lenders will have a right to substitute the Concessionaire in accordance with Clause 16.2 and the Substitution Agreement. The Jal Nigam will suspend its right to step-in until the expiry of the period available to the Lenders to exercise their substitution rights under Clause 16.2.

10.2 Security Creation

- (a) The Concessionaire shall be entitled to create Security over all of its right, title and interests in and to the Concession Agreement and the Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to the Jal Nigam or NMCG.
- (b) The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Clause 11.2 and/or grant Security over the proceeds of such insurance.
- (c) Except for any Security created by operation of law and any Security created pursuant to this Clause 10.2, the Concessionaire shall not be entitled to create any other Security over the Concession Agreement, the Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of the Jal Nigam, which consent the Jal Nigam may deny in its sole discretion.
- (d) The Concessionaire shall not be entitled to create any Security over the Site or any part thereof, or any of the Facilities or the Associated Infrastructure or the Power Plant, whether in favour of the Lenders or any third Persons.

11. INSURANCE AND INDEMNITIES

11.1 Indemnity

- (a) Subject to Clause 11.1(b) below, the Concessionaire shall be responsible for, release, hold harmless and indemnify the Jal Nigam, NMCG, the Jal Nigam Related Parties and the NMCG Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, costs or expenses (including costs of legal fees) or liability for:

- (i) death or personal injury of any person;
- (ii) loss of or damage to property;
- (iii) non-compliance with Applicable Laws (including, specifically the EPA) or Applicable Permits;
- (iv) any third party losses or claims;

which may arise out of, or in consequence of the performance or non-performance of the Concessionaire's obligations under this Agreement.

- (b) The Concessionaire shall not be responsible or be obliged to indemnify the Jal Nigam or NMCG for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of the Jal Nigam, NMCG, the Jal Nigam

Related Parties or the NMCG Related Parties or by a breach by the Jal Nigam or NMCG of their respective obligations under this Agreement.

- (c) The Jal Nigam and NMCG shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against them in respect of, resulting from, related to or arising out of any matter for which they are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof, shall be subject to the indemnification obligations of the Concessionaire.

If, however, the Concessionaire acknowledges in writing its obligations to indemnify the Jal Nigam and/or NMCG in respect of loss to the full extent provided by this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Jal Nigam and NMCG and reimburses the Jal Nigam and/or NMCG for the costs and expenses incurred by the Jal Nigam and/or NMCG prior to the assumption by the Concessionaire of such defence. A Party shall not settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Parties, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Jal Nigam and/or NMCG shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel, as and when incurred, shall be at the expense of the Jal Nigam or NMCG, as the case may be.

- (d) The provisions of this Clause 11.1 shall survive the termination of this Agreement.

11.2 Insurance

- (a) The Concessionaire shall, obtain and maintain the policies of insurance set out below in the minimum coverage amounts and during the specified periods. In addition, the Concessionaire shall obtain any additional coverage required by Applicable Laws and/or deemed necessary by the Concessionaire, the Lenders or the Jal Nigam in accordance with this Clause 11.2.

Insurances during the Construction Period

During the Construction Period, the Concessionaire shall obtain and maintain such insurances for such maximum sums as may be required under the Financing Documents and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practices.

Insurances during the O&M Period

During the O&M Period, the Concessionaire shall obtain and maintain insurance policies including but not limited to the following:

- (i) loss, damage or destruction of the Facilities, at replacement value;

- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Jal Nigam or NMCG or others caused by the Project;
 - (iii) the Concessionaire's general liability arising out of the Project;
 - (iv) liability to third parties for goods or property damage;
 - (v) workmen's compensation insurance; and
 - (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.
- (b) The level of insurance to be maintained by the Concessionaire after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of the Lenders' dues, in accordance with the Financing Documents.
- (c) The Concessionaire shall, within 30 days of the Effective Date, provide a notice to the Jal Nigam, setting out information in respect of the insurances that it proposes to effect and maintain. Within 15 days of receipt of such notice, the Jal Nigam may require the Concessionaire to effect and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 20 (*Dispute Resolution*) shall apply.
- (d) The Concessionaire shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 days of obtaining any insurance cover, the Concessionaire shall furnish to the Jal Nigam, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance.
- (e) Each insurance policy shall contain the following endorsements:
- (i) the Jal Nigam shall be additional insured under all policies maintained by the Concessionaire in relation to the Site and the Project, against loss or damage;
 - (ii) the insurers shall waive all rights of subrogation against the Jal Nigam and NMCG;
 - (iii) the insurance policy may not be cancelled or materially changed by the insurer without giving 45 days' prior written notice, except in the case of non-payment, in which case it will be 10 days' prior written notice, to the Jal Nigam; and
 - (iv) the Jal Nigam shall not be responsible for payment of any insurance

premium.

- (f) Any changes in the insurances which impact the Site or the Project will need the prior written consent of the Jal Nigam, which consent shall not be unreasonably withheld.
- (g) The Concessionaire shall apply proceeds from all insurance claims, except life and injury, for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Facilities or the Associated Infrastructure, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.
- (h) If the Concessionaire fails to procure or maintain any insurance required pursuant to this Clause 11.2 which is required to be obtained for the Site or the Project, the Jal Nigam shall have the right to procure and maintain such insurance in accordance with the requirements of this Clause 11.2 and charge the full cost thereof to the Concessionaire.

12. CHANGE IN OWNERSHIP

12.1 Ownership Information

The Selected Bidder shall inform the Jal Nigam that it has caused the Concessionaire to be incorporated as a special purpose company to implement the Project and undertake other obligations of the Concessionaire under and in accordance with this Agreement. The shareholding pattern of the [Selected Bidder/Members]⁹ in the Concessionaire is as follows:

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity/Preference]	Value of the shares held [in Rs.]	Shareholding [in %]

The Concessionaire represents and warrants to the Jal Nigam and NMCG that no arrangements are in place that have resulted or may result in a breach of the change in ownership restrictions set out in Clause 12.2 below.

12.2 Change in Ownership Restrictions

- (a) [The Selected Bidder represents and warrants that it shall hold at least 51% of the total Capital and voting rights of the Concessionaire until the COD, and at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD.

⁹Delete Member if the Selected Bidder is a single entity.

After the expiry of 3 years from the COD, the Selected Bidder can exit the Concessionaire, subject to:(i) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (ii) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in the RFP.]¹⁰

OR

- (a) [The Members of the Selected Bidder, being the shareholders of the Concessionaire, represent and warrant that:
- (i) the Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD; and
 - (ii) any Member of the Consortium, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed, shall hold at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD.

After the expiry of 3 years from the COD, the Lead Member and other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Consortium; or (B) the entity acquiring the shareholding of the Lead Member/ any other Member in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (C) the Concessionaire appointing an O&M contractor who complies with the O&M qualification criteria set out in the RFP.]¹¹

- (b) If, at any time:
- (i) the Concessionaire is likely to breach or breaches its representations and undertaking under this Article 12; or
 - (ii) if, any Associate, whose credentials were taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the [Selected Bidder/Member]¹²,

then, the Concessionaire shall give the Jal Nigam notice of such occurrence forthwith along with all relevant particulars of such occurrence and shall seek the approval of the Jal Nigam for such occurrence. While the Jal Nigam shall not unreasonably withhold or delay such approval, the decision of the Jal Nigam will be final in this regard. If Jal Nigam is of the view that such occurrence is likely to affect the Technical Capacity or Financial Capacity of the Concessionaire to undertake the Project, then the Jal Nigam may treat such occurrence as a Concessionaire Event of Default, in which case the consequences set out in Article 16 shall follow.

¹⁰This paragraph may be deleted if the Selected Bidder is a Consortium.

¹¹This paragraph may be deleted if the Selected Bidder is a single entity.

¹²Delete Member if the Selected Bidder is a single entity.

- (c) If, at any time after the expiry of 3 years from the COD, the [Selected Bidder/any Member]¹³ is proposed to be replaced by an entity that meets the O&M qualification criteria set out in the RFP or the Concessionaire proposes to appoint an O&M contractor to meet the change in ownership condition set out in Clause 12.2(a), then the Concessionaire shall submit a proposal to the Jal Nigam with details of the proposed shareholder/O&M contractor, for its approval. The proposal should demonstrate to the satisfaction of the Jal Nigam that the Concessionaire or the proposed O&M contractor meets the O&M qualification criteria specified in the RFP.

Within 15 days of receipt of a proposal from the Concessionaire, the Jal Nigam shall notify the Concessionaire of its approval or rejection (along with reasons) of the proposed shareholder/O&M contractor.

The approval of the proposed shareholder/O&M contractor by the Jal Nigam shall be at Jal Nigam's sole discretion.

If the Jal Nigam does not notify its approval or rejection of the proposed shareholder/O&M contractor within 60 days of the receipt of the proposal from the Concessionaire, then such proposed shareholder/O&M contractor will be deemed to be approved by the Jal Nigam.

13. CHANGE IN LAW

13.1 Change in Law

The Concessionaire may claim the benefit of and/or relief for a Change in Law event subject to and in accordance with this Article 13.

13.2 Consequences of Change in Law

- (a) The Concessionaire shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.
- (b) If a Qualifying Change in Law occurs, then the Concessionaire shall notify the Jal Nigam and NMCG of such Qualifying Change in Law along with details of:
- (i) any necessary change in the Construction Plan, the O&M Manual or the Technical Specifications on the basis of which construction works and O&M services are required to be undertaken for the Facilities and the Associated Infrastructure;
 - (ii) any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - (iii) any extension of the Scheduled Payment Milestone Completion Date or the Scheduled Construction Completion Date, to account for the delay, if

¹³Delete Member if the Selected Bidder is a single entity.

any, resulting from the Qualifying Change in Law; and/or

- (iv) any increase in Costs that will result from the Qualifying Change in Law.
- (c) As soon as practicable after receipt of any notice from the Concessionaire under Clause 13.2(b) above, the Parties shall discuss and agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Concessionaire can mitigate the effect of the Qualifying Change in Law, including:
 - (i) providing evidence that the Concessionaire has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in Costs or oblige the Subcontractors to minimise any increase in Costs;
 - (ii) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for construction or O&M of STPs which are similar to the Facilities; and
 - (iii) demonstrating to the Jal Nigam and NMCG that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of time could not reasonably be expected to be mitigated or recovered by the Concessionaire.
- (d) If the Concessionaire has complied with Clause 13.2 (c) above and the Parties mutually agree or it is determined in accordance with Article 20 that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:
 - (i) the Concessionaire shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to an aggregate amount equivalent to 1 % of the Bid Project Cost (**Threshold Limit**); and
 - (ii) for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,
 - (A) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold Limit; or
 - (B) an appropriate adjustment in the O&M Charges.
- (e) If the Concessionaire has complied with Clause 13.2(c) above and the Parties mutually agree or it is determined in accordance with Article 20 that the Concessionaire will suffer any delay as a result of the occurrence of a Qualifying

Change in Law, then the Concessionaire shall be entitled to an extension of time in accordance with Clause 7.11(b).

- (f) The quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under this Clause 13.2 shall be as agreed by the Parties or as determined in accordance with Article 20, provided always that:
 - (i) the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and
 - (ii) the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.
- (g) Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall not be entitled to any schedule relief and/or compensation or adjustment in the Bid Project Cost or the O&M Charges due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which is not attributable to a Delay Event.
- (h) If a Fundamental Change in Law occurs, then the affected Party may notify the other Parties giving details of its opinion on:
 - (i) the effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights of the Concessionaire under this Agreement; and
 - (ii) the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Fundamental Change in Law, while adhering to the original commercial and financial position of the Parties.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Article 14.

14. FORCE MAJEURE

14.1 Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
 - (i) beyond the reasonable control of any Party (the **Affected Party**);
 - (ii) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;

- (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.
- (b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 14.1(a):
- (i) Non-Political Force Majeure Events
 - (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
 - (B) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (C) chemical or radioactive contamination or ionising radiation;
 - (D) epidemic, plague or quarantine;
 - (E) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; and
 - (F) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Facilities or the Associated Infrastructure.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- (A) heavy rainfall;
- (B) quantum of the Sewage being more than the Design Capacity;
- (C) characteristics of the Sewage being beyond the Influent Standards;
- (D) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
- (E) a delay in the performance of any Subcontractor;

- (F) non-performance resulting from normal wear and tear; or
 - (G) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.
- (ii) Indirect Political Force Majeure Events
- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the GoUP or occurring in Uttar Pradesh;
 - (B) invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the GoUP or occurring in Uttar Pradesh;
 - (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
 - (D) any orders issued by the relevant Government Authority, which require the Concessionaire to suspend the construction or O&M of the Facilities and the Associated Infrastructure provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and
 - (E) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.
- (iii) Direct Political Force Majeure Events
- (A) occurrence of a Fundamental Change in Law in accordance with Clause 13.2(h);
 - (B) compulsory acquisition in national interest or expropriation of the Site; and
 - (C) any order, notification or judgement issued or passed by any Government Authority which restricts the Concessionaire from constructing or operating the Facilities and/or the Associated Infrastructure as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.

- (c) Without prejudice to the provisions of Clauses 14.1(a) or 14.1(b) above,
 - (i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Clause 14.1; and
 - (ii) any act, event or circumstance which primarily affects any of the Jal Nigam Related Parties or the NMCG Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Jal Nigam or NMCG, it would have come within the definition of Force Majeure Event under this Clause 14.1.
- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 20, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

14.2 **Notice of Force Majeure Events**

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 10 days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).
- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 14.2.

14.3 **Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations, provided that the period shall not exceed 120 days for a Non-Political Force Majeure Event, 90 days for an Indirect Political Force Majeure Event and 60 days for a Direct Political Force Majeure Event from the date of issuance of the FM Notice.

The Parties may mutually agree to extend the period of excuse from performance due to a Force Majeure Event.

Provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

14.4 **No Liability for Other Losses**

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

14.5 **Resumption of Performance**

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

14.6 **Allocation of costs during a Force Majeure Event**

- (a) Upon occurrence of a Force Majeure Event prior to the COD, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.
- (b) Upon occurrence of a Force Majeure Event post the COD, the Concessionaire shall be entitled to continue receiving the Capex Annuity and the O&M Charges during the subsistence of the Force Majeure Event.

14.7 **Termination due to Force Majeure Event**

(a) **Termination due to a Non-Political Force Majeure Event**

If a Non-Political Force Majeure Event continues for a period of period of 120 days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, any Party shall, after the expiry of the period of 120-day period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Clause 14.7:

- (i) if the Facilities are affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the 120 days' period stipulated for a Non-Political Force Majeure Event; and

- (ii) if the Facilities are affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Facilities to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

(b) **Termination due to an Indirect Political Force Majeure Event**

If an Indirect Political Force Majeure Event continues for a period of period of 90 days after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, any Party shall, after the expiry of the period of 90days' period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

(c) **Termination due to a Direct Political Force Majeure Event**

If a Direct Political Force Majeure Event continues for a period of period of 60 days after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, any Party shall, after the expiry of the period of 60 days' period or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

All the other consequences of termination that are set out at Article 17 shall apply in case of termination of this Agreement due to a Force Majeure Event.

15. SUSPENSION

15.1 Suspension by the Concessionaire

(a) Suspension of construction or O&M of the Facilities and/or the Associated Infrastructure

- (i) At any time during the Term, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of the Facilities and/or the Associated Infrastructure, as the case may be, in any of the following events or circumstances:

- (A) if after assessment, the Concessionaire believes that the suspension of construction or O&M of the Facilities and/or the Associated Infrastructure is necessary or appropriate in the interest of health, safety and environment; or

- (B) a Force Majeure Event has occurred (provided that the requirements of Article 14 have been complied with).

- (ii) The Concessionaire acknowledges that suspension of the construction of the Facilities and/or the Associated Infrastructure during the Construction Period on account of the event listed at Clause 15.1(a)(i)(A) shall not entitle the

Concessionaire to an extension of time if such event is attributable to the Concessionaire.

- (iii) The Concessionaire acknowledges that suspension of the performance of the O&M services on account of the events listed in Clause 15.1(a)(i)(A) shall not entitle the Concessionaire to an extension of the O&M Period. However, the Concessionaire shall be entitled to continue to receive the Capex Annuity (but not the O&M Charges) for the period during which it suspends the performance of the O&M services pursuant to Clause 15.1(a)(i).
 - (iv) Upon the occurrence of any of the events or circumstances set out in Clause 15.1(a)(i), the Concessionaire shall as soon as reasonably possible, and in no event later than 3 days after such occurrence, notify the Jal Nigam of such occurrence.
 - (v) If, upon notification, the Jal Nigam does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the Facilities and the Associated Infrastructure, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 20, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.
- (b) Mitigation, Resumption and Termination
- (i) The Concessionaire shall make best endeavours to:
 - (A) mitigate the effects of any of the events or circumstances listed at Clause 15.1(a)(i) above;
 - (B) mitigate the effects and costs of suspension of construction or O&M of the Facilities and the Associated Infrastructure; and
 - (C) resume the construction or O&M services of the Facilities and the Associated Infrastructure within 24 hours of the ceasing of any of the events or circumstances listed at Clause 15.1(a)(i) or such longer period as may be reasonably required by the Concessionaire to restore the Facilities and the Associated Infrastructure, but in no case exceeding 3 days, and notify the Jal Nigam of the resumption of works or services.
 - (ii) Without prejudice to Clause 15.1(b)(i):
 - (A) if suspension of the construction or O&M of the Facilities and/or the Associated Infrastructure on account of an event specified at Clause 15.1(a)(i)(A) continues for a period of 60 days, and such event is attributable to the Concessionaire, then

such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 16.1;

- (B) if suspension of the construction or O&M of the Facilities and/or the Associated Infrastructure on account of an event specified at Clause 15.1(a)(i)(A) continues for a period of 60 days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 14 shall apply; and
- (C) in respect of events set out in Clause 15.1(a)(i)(B), the consequences set out in Article 14 shall apply.

(c) Costs of Suspension and Resumption

- (i) Where the suspension of construction or O&M of the Facilities and/or the Associated Infrastructure is caused due to an event set out in Clause 15.1(a)(i)(A) and such event is attributable to the Concessionaire, the Concessionaire shall bear its own costs for suspending and resuming the construction or O&M of the Facilities and the Associated Infrastructure.
- (ii) Where the suspension of construction or O&M of the Facilities and the Associated Infrastructure is caused due to an event set out in Clause 15.1(a)(i)(A) which is not attributable to the Concessionaire or where such suspension is due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the reasonable and proper Costs incurred by the Concessionaire in suspending and resuming the construction or O&M of the Facilities and the Associated Infrastructure shall be reimbursed by NMCG. However, such payment will be made by NMCG only after the relevant event ceases to exist and the Concessionaire has resumed construction or O&M of the Facilities and the Associated Infrastructure, as the case may be. It is clarified that if the relevant event continues beyond the time period specified in Clause 15.1(b)(ii), and results in a termination of this Agreement, then the Concessionaire shall only be entitled to payment of the Termination Compensation specified in Clause 18.3.

It is clarified that the Concessionaire will not be entitled to any payment under this Clause 15.1(c)(ii) in respect of any Non-Political Force Majeure Event.

15.2 Suspension by the Jal Nigam

- (a) At any time during the Term, the Jal Nigam may suspend, whether partially or wholly, the construction or O&M of the Facilities and the Associated Infrastructure, in any of the following events or circumstances:
 - (i) upon the occurrence of an Emergency; or
 - (ii) if the Concessionaire fails to comply with Applicable Laws, Applicable

Permits, the EHS Plan, the O&M Manual or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).

In case of any suspension by the Jal Nigam upon the occurrence of an Emergency, the Concessionaire shall make best endeavours to mitigate the effects of the Emergency. Notwithstanding anything to the contrary contained in this Agreement, if the Jal Nigam, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the Jal Nigam shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire.

- (b) In case of suspension of the construction or O&M of the Facilities and the Associated Infrastructure pursuant to Clause 15.2(a)(ii) or Clause 15.2(a)(i) (to the extent such Emergency is attributable to the Concessionaire), all costs and expenses in connection with suspension and resumption of construction or O&M of the Facilities and the Associated Infrastructure shall be borne by the Concessionaire. If such suspension continues for a period exceeding 60 days, then such suspension shall constitute a Concessionaire Event of Default in accordance with Clause 16.1.

In case of suspension of the construction or O&M of the Facilities and the Associated Infrastructure pursuant to Clause 15.2(a)(i) for an Emergency which is not attributable to the Concessionaire, all costs and expenses incurred by the Concessionaire in connection with the suspension and resumption of construction or O&M of the Facilities and the Associated Infrastructure shall be reimbursed by NMCG. If such suspension continues for 60 days, then such suspension shall constitute a Force Majeure Event, which will be dealt with in accordance with Article 14.

The Concessionaire shall not be entitled to receive any O&M Charges or Power Charges during the period of suspension of the O&M of the Facilities and the Associated Infrastructure pursuant to Clause 15.2(a). However, the Concessionaire shall be entitled to continue to receive the Capex Annuity for the period during which the O&M of the Facilities and the Associated Infrastructure is suspended pursuant to Clause 15.2(a).

16. EVENTS OF DEFAULT

16.1 Concessionaire Events of Default

A "**Concessionaire Event of Default**" means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of a Jal Nigam Event of Default, an NMCG Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any other Force Majeure Event, and where the Concessionaire has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) any Abandonment by the Concessionaire of the construction or operation and

- maintenance of the Facilities or the Associated Infrastructure;
- (b) failure of the Concessionaire to complete the construction of the Facilities or the rehabilitation of the Associated Infrastructure by the expiry of the Grace Period;
 - (c) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement;
 - (d) failure of the Concessionaire to achieve successful completion of Trial Operations in accordance with Clause 7.14 by the Scheduled COD;
 - (e) the aggregate Availability Liquidated Damages and/or the Performance Liquidated Damages and/or the Power Consumption Liquidated Damages paid or payable by the Concessionaire exceed 50% of the value of the O&M Security;
 - (f) suspension of construction or O&M of the Facilities or the Associated Infrastructure pursuant to Clause 15.2(a)(ii), for a continuous period exceeding 60 days;
 - (g) suspension of construction or O&M of the Facilities or the Associated Infrastructure pursuant to Clause 15.1(a)(i)(A) or Clause 15.2(a)(i) (to the extent such event or Emergency is attributable to the Concessionaire), for a continuous period exceeding 60 days;
 - (h) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or maintain the Facilities or the Associated Infrastructure and such breach, if capable of being remedied, is not remedied within 30 days of issuance of written notice from the Jal Nigam specifying such breach and requiring the Concessionaire to remedy the same;
 - (i) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
 - (j) failure of the Concessionaire to submit and maintain a valid Performance Security in accordance with Clause 5.1 or a valid O&M Security in accordance with Clause 5.4 or a valid Mobilization Advance Guarantee in accordance with Clause 5.16;
 - (k) breach by the Concessionaire of its obligations under Article 4 (*Site and Asset Ownership*), 10.2 (*Security Creation*) or 21.12 (*Assignment*);
 - (l) breach of the Concessionaire's obligations under Article 12 (*Change in Ownership*);
 - (m) failure of the Concessionaire to obtain, renew and maintain any Applicable Permit;
 - (n) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA);

- (o) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Clause 11.2;
- (p) failure of the Concessionaire or the Subcontractors to comply with the EHS Plan in accordance with Clause 7.4;
- (q) the Concessionaire entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or
- (r) the breach of the Concessionaire's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Escrow Agreement, or termination of the Financing Documents, or the Escrow Agreement (for reasons attributable to the Concessionaire).

16.2 Notice of Intent to Terminate upon occurrence of a Concessionaire Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Concessionaire Event of Default, the Jal Nigam may initiate termination by delivering a Notice of Intent to Terminate to the Concessionaire, with a copy to NMCG. The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought. The Jal Nigam shall also send a copy of the Notice of Intent to Terminate to the Lenders, if any, to enable the Lenders to exercise their substitution rights.
- (b) Within 60 days from the date of the Notice of Intent to Terminate, the Lenders shall have a right to notify the Jal Nigam of their intent to substitute the Concessionaire. In case the Lenders intend to exercise their substitution rights within the above time period, the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.
- (c) If the Jal Nigam approves the substitute concessionaire in accordance with the Substitution Agreement, the Jal Nigam, NMCG and the Lenders shall take all necessary steps to novate this Agreement and amend any other Project documents to enable the substitute concessionaire to perform the obligations of the 'Concessionaire' to undertake the Project.
- (d) If, within 60 days from the date of the Notice of Intent to Terminate or such longer period as may be mutually agreed between the Jal Nigam and the Lenders:
 - (i) the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the Jal Nigam or the Jal Nigam is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist; or

- (ii) the Lenders have notified their intent to substitute the defaulting Concessionaire in accordance with Clause 16.2(b),

then, the Jal Nigam shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Lenders. In case of (ii) above, the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.

- (e) If, within 60 days from the date of the Notice of Intent to Terminate or such longer period as may be mutually agreed between the Jal Nigam and the Lenders:
 - (i) the breach has not been remedied or the Concessionaire has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of the Jal Nigam; and
 - (ii) the Lenders have not notified their intent to substitute the defaulting Concessionaire,

then, the Jal Nigam shall terminate the Agreement and the consequences set out in Article 17 shall apply.

- (f) Notwithstanding anything contained in this Clause 16.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

16.3 **Jal Nigam's Events of Default**

A "**Jal Nigam Event of Default**" means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or a Force Majeure Event and where the Jal Nigam has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) a breach by the Jal Nigam of Clause 22.12(b) (*Assignment*);
- (b) a breach by the Jal Nigam of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain the Facilities or the Associated Infrastructure and such breach, if capable of being remedied, is not remedied within 30 days of a notice being given by the Concessionaire;
- (c) failure to grant all necessary right of way to the Concessionaire within 120 days of the Effective Date;
- (d) a breach by the Jal Nigam of its obligations under Clause 7.8(g) or Clause 8.5(d), in relation to its right, title and interest in the Site; or

- (e) any representation made or warranties given by the Jal Nigam under this Agreement being found to be false or misleading in any material respect.

16.4 **NMCG's Events of Default**

An "**NMCG Event of Default**" means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or a Force Majeure Event and where NMCG has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) a failure by NMCG to pay any undisputed amounts due and payable for 90 consecutive days, notwithstanding service of a formal written demand by the Concessionaire;
- (b) a failure by NMCG to maintain the Minimum Escrow Balance for a period of 90 days;
- (c) a breach by NMCG of Clause 22.12(b) (*Assignment*); or
- (d) any representation made or warranties given by NMCG under this Agreement being found to be false or misleading in any material respect.

16.5 **Notice of Intent to Terminate upon occurrence of a Jal Nigam Event of Default or an NMCG Event of Default**

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Jal Nigam Event of Default or an NMCG Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 60 days from the date of the Notice of Intent to Terminate, the Jal Nigam or NMCG, as the case may be, rectifies or remedies the Jal Nigam Event of Default or the NMCG Event of Default, to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the Jal Nigam or NMCG or the Jal Nigam Event of Default or the NMCG Event of Default, as the case may be, has ceased to exist, the Concessionaire shall withdraw the Notice of Intent to Terminate.
- (c) If, within 60 days from the date of the Notice of Intent to Terminate, the Jal Nigam Event of Default or the NMCG Event of Default has not been remedied or the Jal Nigam or NMCG, as the case may be, has not taken steps or proposed to take steps to remedy the Jal Nigam Event of Default or the NMCG Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Agreement and the consequences set out in Article 17 shall follow.
- (d) During the subsistence of a Jal Nigam Event of Default or an NMCG Event of Default, the Parties shall continue to perform such of their respective

obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

17. CONSEQUENCES OF TERMINATION

17.1 Consequences of termination of the Agreement prior to the Construction Completion Date

In case of termination of the Agreement prior to the Construction Completion Date:

- (a) the Concessionaire shall cease all work in relation to construction and rehabilitation of the Facilities and the Associated Infrastructure, and the Power Plant, if any;
- (b) the Concessionaire shall take all necessary steps to safeguard and protect the Facilities, the Associated Infrastructure and the Power Plant (at whatever stage of completion) and all other equipment, materials and goods on the Site;
- (c) the Jal Nigam shall require the Project Engineer to assess the Cost of the construction and rehabilitation works undertaken by the Concessionaire in relation to the Facilities and the Associated Infrastructure as on the date of the Notice of Intent to Terminate and based on such assessment, NMCG shall pay the Termination Compensation in accordance with Article 18;
- (d) in case of termination of this Agreement due to a Jal Nigam Event of Default or an NMCG Event of Default, the Jal Nigam shall return the Performance Security and the Mobilization Advance Guarantee within 30 days from the date of the Notice of Intent to Terminate;and
- (e) the Concessionaire shall hand over the Site,the Facilities and the Associated Infrastructure, and the Power Plant, if any, to the Jal Nigam or its nominee in accordance with the Hand-back Requirements set out in Clause 19.3, to the extent applicable.

17.2 Consequences of termination of the Agreement post the Construction Completion Date but prior to the COD

In case of termination of the Agreement post the Construction Completion Date but prior to the COD:

- (a) the Concessionaire shall cease the Trial Operations of the Facilities, the Associated Infrastructure, and the Power Plant, if any;
- (b) the Concessionaire shall take all necessary steps to safeguard and protect the Facilities, the Associated Infrastructure, the Power Plant, if any, and all other equipment, materials and goods on the Site; and
- (c) the Concessionaire shall handover the Site, the Facilities the Associated Infrastructure and the Power Plant, if any, to the Jal Nigam or its nominee in accordance with the Hand-back Requirements set out in Clause 19.3.

17.3 Consequences of termination of the Agreement after the COD

In case of termination of the Agreement after the COD, the following consequences shall apply:

- (a) the Concessionaire shall cease all work in relation to O&M of the Facilities, the Associated Infrastructure, and the Power Plant, if any;
- (b) the Concessionaire shall take all necessary steps to safeguard and protect the Facilities, the Associated Infrastructure, the Power Plant, if any, and all other equipment, materials and goods on the Site;
- (c) in case of termination of this Agreement due to a Jal Nigam Event of Default or an NMCG Event of Default, the Jal Nigam shall return the O&M Security within 30 days from the date of the Notice of Intent to Terminate;and
- (d) the Concessionaire shall hand over the Site, the Facilities, the Associated Infrastructure and the Power Plant, if any, to Jal Nigam or its nominee in accordance with the Hand-back Requirements set out in Clause 19.3.

17.4 Consequences of termination due to a Force Majeure Event

In case of termination of the Agreement due to a Force Majeure Event, the following consequences shall apply:

- (a) the Concessionaire shall hand over the Site, the Facilities, the Associated Infrastructure and the Power Plant, if any, to the Jal Nigam on an "as is where is" basis and to the extent relevant, in accordance with the Hand-back Requirements set out in Clause 19.3;
- (b) the Jal Nigam shall be required to return the Mobilization Advance Guarantee, the Performance Security or the O&M Security, as the case may be, to the Concessionaire within 30 days from the date of the notice of termination under Clause 14.7;and
- (c) in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, the Jal Nigam shall (or shall require the Project Engineer) to assess the Cost of the construction and rehabilitation work undertaken by the Concessionaire in relation to the Facilities and the Associated Infrastructure as on the date of the notice of termination under Clause 14.7 and based on such assessment, pay the Termination Compensation in accordance with Clause 18.4.

17.5 Accrued Rights and Liabilities

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of

aParty, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of a Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.

- (b) Nothing in Article 16 or this Article 17 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

18. TERMINATION COMPENSATION

18.1 Termination Compensation for Termination prior to the Construction Completion Date

- (a) For a Jal Nigam Event of Default or an NMCG Event of Default

If the Agreement is terminated prior to the Construction Completion Date for a Jal Nigam Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Jal Nigam as on the date of the Notice of Intent to Terminate;
- (ii) lower of the: (A) actual Cost of the construction or rehabilitation work executed by the Concessionaire in relation to the Facilities and the Associated Infrastructure, from the date of the last Invoice issued by the Concessionaire in accordance with Clause 9.3 until the date of the Notice of Intent to Terminate, as certified by the Project Engineer; and (B) the balance of the Construction Payments that remain unpaid as on the date of the Notice of Intent to Terminate;
- (iii) Debt Due as on the date of Notice of Intent to Terminate;
- (iv) Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;

LESS

- (v) any unadjusted Mobilization Advance;
 - (vi) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).
- (b) For a Concessionaire Event of Default

If the Agreement is terminated prior to the Construction Completion Date for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Jal Nigam as on the date of the Notice of Intent to Terminate;
- (ii) 85% of Debt Due;

LESS

- (iii) unadjusted Mobilization Advance;
- (iv) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.2 Termination Compensation for Termination post the Construction Completion Date but prior to the COD

- (a) For a Jal Nigam Event of Default or an NMCG Event of Default

If the Agreement is terminated post the Construction Completion Date but prior to the COD for a Jal Nigam Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) the Construction Payments, if not already paid as on the date of the Notice of Intent to Terminate;
- (ii) Debt Due;
- (iii) Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;

LESS

- (iv) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

- (b) For a Concessionaire Event of Default

If the Agreement is terminated post the Construction Completion Date but prior to the COD for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) the Construction Payments, if not already paid as on the date of the Notice of Intent to Terminate;

- (ii) 85% of Debt Due;

LESS

- (iii) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.3 Termination Compensation for Termination post the COD

(a) For a Jal Nigam Event of Default or an NMCG Event of Default

If the Agreement is terminated post the COD for a Jal Nigam Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (ii) the NPV of the Capex Annuity for the unexpired portion of the O&M Period;
- (iii) Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;

LESS

- (iv) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

(b) For a Concessionaire Event of Default

If the Agreement is terminated post the COD for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (ii) 85% of the NPV of the Capex Annuity for the unexpired portion of the O&M Period;

LESS

- (iii) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.4 Termination Compensation for Termination due to a Force Majeure Event

(a) Non-Political Force Majeure Event

In the event of a termination of this Agreement as a result of a Non-Political Force Majeure Event in accordance with Clause 14.7(a), the Parties agree that the Concessionaire shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the Site and the Project (subject to the Lenders' rights in respect of such insurance proceeds) and the Concessionaire shall not be entitled to any Termination Compensation.

(b) Indirect Political Force Majeure

(i) If the Agreement is terminated due to an Indirect Political Force Majeure Event, prior to the COD, NMCG shall be liable to pay to the Concessionaire:

(A) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Jal Nigamas on the date of the notice of termination under Clause 14.7; and

(B) Debt Due.

(ii) If the Agreement is terminated due to an Indirect Political Force Majeure Event post the COD, NMCG shall be liable to pay to the Concessionaire:

(A) the O&M Payments due to the Concessionaire as on the date of the notice of termination under Clause 14.7; and

(B) Debt Due.

(c) Direct Political Force Majeure

(i) If the Agreement is terminated due to a Direct Political Force Majeure Event, prior to the COD, NMCG shall be liable to pay to the Concessionaire:

(A) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Jal Nigam as on the date of the notice of termination under Clause 14.7;

(B) lower of the: (I) Cost of the construction or rehabilitation work executed by the Concessionaire in relation to the Facilities and the Associated Infrastructure, from the date of the last Invoice issued by the Concessionaire in accordance with Clause 8.3 until the date of the notice of termination under Clause 14.7, as certified by the Project Engineer; and (II) the balance of the

Construction Payments that remain unpaid as on the date of the notice of termination under Clause 14.7;

- (C) Debt Due;
- (D) Equity infused in the Concessionaire as on the date of the notice of termination under Clause 14.7 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;

LESS

- (E) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).
- (ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the COD, NMCG shall be liable to pay to the Concessionaire:
- (A) O&M Payments due to the Concessionaire as on the date of the notice of termination under Clause 14.7;
 - (B) Debt Due;
 - (C) Equity infused in the Concessionaire as on the date of the notice of termination under Clause 14.7 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;

LESS

- (D) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.5 All Termination Compensation required to be paid by NMCG to the Concessionaire shall be paid within 60 days of handover of the Site, the Facilities, the Associated Infrastructure and the Power Plant, if any, to the Jal Nigam in accordance with Article 19.

18.6 Full and Final Settlement

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 18 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against NMCG and the Jal Nigam, in relation to termination of this Agreement and the Concessionaire shall be excluded from all other rights and remedies in respect of such termination.

18.7 The provisions of this Article 18 shall survive the termination of this Agreement.

19. TRANSFER ON TERMINATION

19.1 Transfer of the Site, Facilities, and Associated Infrastructure

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Site, the Facilities, the Associated Infrastructure and the Power Plant, if any, to the Jal Nigam or any other entity nominated by the Jal Nigam in accordance with this Article 19.

19.2 Inspection of the Site, the Facilities and Associated Infrastructure

- (a) No later than 30 days from the end of the 14th year of the O&M Period or 30 days from the date of termination of the Agreement, as the case may be, the Jal Nigam shall or shall cause the Project Engineer to carry out a survey of the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any, to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- (b) The Jal Nigam shall notify the Concessionaire at least 7 days prior to the date on which it wishes to carry out the survey of the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any.
- (c) If the survey carried out by the Jal Nigam or the Project Engineer shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the Jal Nigam shall notify the Concessionaire of the rectification and/or maintenance work which is required to ensure that the condition of the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any is restored to the Hand-back Conditions.
- (d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within 30 days from the receipt of a notice from the Jal Nigam in accordance with Clause 19.2(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request the Jal Nigam to carry out a final survey and inspection of the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any. The Jal Nigam shall carry out the final survey within 7 days of receipt of a notice from the Concessionaire pursuant to this Clause 19.2(d).

If the Jal Nigam is satisfied with the results of the final survey, then the Jal Nigam shall notify the Concessionaire within 7 days of carrying out the final survey that the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any, comply with the Hand-back Conditions. If the Jal Nigam is not satisfied with the results of the final survey, then the Jal Nigam shall or shall cause the Project Engineer to estimate the cost of restoring the Site, the Facilities, the Associated Infrastructure and/or the Power Plant, if any, to the Hand-back Conditions and recover such cost from the Concessionaire.

19.3 Hand-back Requirements

On the expiry or early termination of this Agreement, the Concessionaire shall:

- (a) hand over to the Jal Nigam or any entity nominated by the Jal Nigam, the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any;
- (b) to the extent that such rights and interests are not already vested in the Jal Nigam, transfer all its rights and interest in the assets comprised in the Facilities, the Associated Infrastructure, and the Power Plant, if any and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;
- (c) hand over all documents relating to the Site, the Facilities, the Associated Infrastructure, and the Power Plant, if any, including as-built records, Designs and Drawings, online monitoring and metering data, operating logs, manuals, reports, plans and records;
- (d) transfer to the Jal Nigam or its nominee (free of cost) the license to use the Proposed Technology and other know-how relating to the Facilities, the Associated Infrastructure, and the Power Plant, if any;
- (e) transfer or cause to be transferred to the Jal Nigam or its nominee any Subcontract that the Jal Nigam or its nominee has chosen to take over and terminate all other Subcontracts;
- (f) transfer to the Jal Nigam or its nominee all Concessionaire Applicable Permits which the Jal Nigam or its nominee may require and which can be legally transferred; and
- (g) remove from the Site allemployees and workmen, and assets, equipment and materials that are not required to be taken over by the Jal Nigam or its nominee.

19.4 The provisions of this Article 19 shall survive the termination of this Agreement.

20. DISPUTE RESOLUTION

20.1 Amicable Settlement

In the event of any dispute, controversy or difference between the Parties arising out of or relating to this Agreement (including a dispute relating to the validity or existence of this Agreement and any non-contractual obligations arising out of or in connection with this Agreement) (a **Dispute**), the representatives of the Parties shall, within 15 days of service of a written notice from one Party to the other Parties (the **Dispute Notice**) hold a meeting (the **Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of the Jal Nigam in Lucknow.

20.2 Dispute Resolution by Arbitration

- (a) Arbitration Procedure

If a Dispute is not resolved within 30 days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any Party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 20.2 by issuing a notice to the other Parties (**Notice of Arbitration**). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

(b) Appointment of Arbitrator

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

(c) Venue, Language and Rules of Arbitration

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

(d) Award and Apportionment of costs

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

(e) Law Governing the Arbitration

The arbitration shall be governed by the laws of India.

20.3 Survival

The provisions of this Article 20 shall survive the termination of this Agreement.

21. REPRESENTATIONS AND WARRANTIES

21.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Substitution Agreement, the Escrow Agreement and any other agreements required in relation to the Project;

- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement, the Substitution Agreement and the Escrow Agreement; and
- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement, the Substitution Agreement or the Escrow Agreement.

21.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to the Jal Nigam and NMCG that:

- (a) it is duly organized, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, finance, construct, complete, operate and maintain the Facilities and the Associated Infrastructure in accordance with this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid of the Selected Bidder, and as updated on or before the date of this Agreement is true and accurate in all respects as on the AppointedDate;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the GoI or the GoUP which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement; and
- (i) no representation or warranty by it contained in this Agreement or in any other document furnished by it to the Jal Nigam, NMCG, the GoI or the GoUP in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty.

21.3 **Jal Nigam's Representations and Warranties**

The Jal Nigam represents and warrants to the Concessionaire and NMCG that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- (c) it has taken all necessary approvals to execute this Agreement (including any approval required under the UPWSS Act) and perform its obligations under this Agreement;
- (d) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of the GoI or the GoUP, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (f) it has complied with all Applicable Laws and Applicable Permits in all material respects;
- (g) the Site is not subject to any mortgage, lien, charge or any other Encumbrance;
- (h) it does not have any liability for any Taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
- (i) all information provided by it in the RFP and this Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

21.4 **NMCG's Representations and Warranties**

NMCG represents and warrants to the Concessionaire and the Jal Nigam that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- (c) it has taken all necessary approvals to execute this Agreement and perform its obligations under this Agreement;
- (d) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of the GoI or the GoUP, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement; and
- (f) it has complied with all Applicable Laws and Applicable Permits in all material respects.

21.5 Acknowledgement

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a Party under this Agreement.
- (c) The Jal Nigam, the Jal Nigam Related Parties, NMCG and the NMCG Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by the Jal Nigam or NMCG to the Concessionaire; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

22. MISCELLANEOUS

22.1 Survival

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Term by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Term or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

22.2 Entire Agreement

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

22.3 Non-exhaustive Remedies

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

22.4 Notices

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

Jal Nigam : General Manager
Address: Ganga Pollution Prevention Unit, STP Campus,
Bhagwanpur, Lanka, Varanasi-221005
Tel: +919473942688
Fax: [●]
Email: [:gmgangavns@gmail.com](mailto:gmgangavns@gmail.com)

NMCG : Attention: Executive Director (Projects)
Address: 1st Floor, Major Dhyan Chand National Stadium, India Gate, New Delhi
- 110002

Tel: +91(11) 23049442
Fax: +91(11) 23049566
Email: ed.projects@nmcg.nic.in

Concessionaire : Attention: [●]
Address: [●]
Tel: [●]
Fax: [●]
Email: [●]

- (b) Any notice or demand served by registered post or courier shall be deemed to be duly served 48 hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered post or courier, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.
- (c) Each Party may change the above address by prior written notice to the other Parties.

22.5 **Governing Law and Jurisdiction**

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

22.6 **Counterparts**

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

22.7 **Language**

- (a) The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.
- (b) All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

22.8 **Confidentiality**

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 years after the expiry or termination of this Agreement, except to its

representatives officers, directors, advisors, employers, agents and Associates (including the Jal Nigam Related Parties, the NMCG Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.

- (b) This Clause 22.8 shall not apply to Confidential Information, which:
- (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
 - (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
 - (vi) is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;
 - (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
 - (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
 - (ix) is disclosed to any professional advisors or consultants of any persons to whom a Party is entitled to disclose Confidential Information under this Clause 22.8(b);
 - (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
 - (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party;
 - (xii) is disclosed by the Concessionaire to any Lender (and their professional advisers); or

- (xiii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 22.8(a) above.

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 22.8(a) shall,
 - (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Associates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 22.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.
- (e) The recipient Party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the recipient Party shall be entitled to retain such Confidential

Information which forms part of the permanent records of the recipient Party or its Associates and which was prepared for the purposes of the review or decision-making process of the recipient Party or such Affiliate and/or which the recipient Party or its Associates is required to retain by Applicable Law if it continues to keep such Confidential Information confidential in accordance with this Agreement.

22.9 **Amendments**

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

22.10 **Waivers and Consents**

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

22.11 **Severability**

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

22.12 **Assignment**

- (a) Except as expressly permitted in this Agreement, the Concessionaire shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of the Jal Nigam and NMCG.
- (b) The rights and obligations of Jal Nigam or NMCG under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (i) is a single entity;

acquires the whole of the Agreement;
 - (ii) has the legal capacity, power and authority to become a party to and to perform the obligations of the Jal Nigam or NMCG under this Agreement, as the case may be; and
 - (iii) has sufficient financial standing or financial resources to perform the obligations of the Jal Nigam or NMCG under this Agreement, as the case may be.

22.13 **No Agency or Partnership**

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and none of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Parties.

22.14 **Costs and Expenses**

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement, the Substitution Agreement and the Escrow Agreement.
- (b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement, the Substitution Agreement and the Escrow Agreement.

22.15 **Reservation of Rights**

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of the Jal Nigam or NMCG to require performance of that provision, and no delay in exercising or omission to exercise any right, power or remedy accruing to the Jal Nigam or NMCG upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Jal Nigam or NMCG in respect of any default or any acquiescence by it in any default, affect or

impair any right, power or remedy of the Jal Nigam or NMCG in respect of any other default.

22.16 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Jal Nigam Related Parties, NMCG Related Parties, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

In witness whereof the Parties hereto have signed this Agreement on this _____day of _____2017.

UTTAR PRADESH JAL NIGAM (JAL NIGAM)

By: General Manager, Ganga Pollution
Prevention Unit

Name:

Title: General Manager

NATIONAL MISSION FOR CLEAN GANGA (NMCG)

By:

Name:

Title:

[Insert name of the Concessionaire] (CONCESSIONAIRE)

By:

Name:

Title: