

**Schedule 4: Format of the Mobilization Advance Guarantee**

[ON APPROPRIATE STAMP PAPER]

Guarantee No. : [●]  
Amount of Guarantee : [●]

This Mobilization Advance Guarantee is executed on this [●] day of [●] at [●]

**BY**

[●] with its registered office at [●] and a branch office at [●] (hereinafter referred to as the "**Bank**", which expression shall unless repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns)

**IN FAVOUR OF**

**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 repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns).

**WHEREAS**

- A. [\_\_\_\_\_][*insert name of the Concessionaire*] with its registered office at \_\_\_\_\_ [*insert address*], hereinafter referred to as the "**Concessionaire**", which expression shall unless repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns) has executed a concession agreement dated [●] with the Jal Nigam and National Mission for Clean Ganga ("**Concession Agreement**") in relation to design, construction, rehabilitation, operation and maintenance of a sewage treatment plant with a proposed capacity of 50 MLD along with other facilities and associated infrastructure at Ramana, Varanasi, by the Concessionaire.
- B. In terms of Clause 5.16 of the Concession Agreement, the Concessionaire is required to furnish a Mobilization Advance Guarantee to the Jal Nigam in the form of an unconditional, irrevocable and on demand bank guarantee for securing the Mobilization Advance made to the Concessionaire in accordance with the Concession Agreement ("**Mobilization Advance Guarantee**") for INR [*insert amount*] (Rupees []) ("**Guaranteed Amount**").
- C. At the request of the Concessionaire and for sufficient consideration, the Bank has agreed to issue this guarantee in favour of the Jal Nigam.

**NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

1. Capitalised terms used herein but not defined shall have the meaning ascribed to them in the Concession Agreement.

2. The Bank shall upon a written demand from the Jal Nigam informing the Bank of the Concessionaire's failure to fulfill its obligations under the Concession Agreement, pay to the Jal Nigam, within 5 (five) days of receipt of such written demand from the Jal Nigam, without further proof or conditions and without contest, recourse, demur or protest and without any enquiry to the Jal Nigam or the Concessionaire, forthwith and in full amount, without any deductions or set off or counter claims whatsoever, the sum claimed by the Jal Nigam in such demand not exceeding an amount equivalent to the Guaranteed Amount. The Bank will pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute raised by the Concessionaire or any other person.

The Bank agrees that this Mobilization Advance Guarantee does not limit the number of claims that may be made by the Jal Nigam against the Bank provided that such claims taken together shall not exceed the Guaranteed Amount.

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

3. This Mobilization Advance Guarantee shall be a continuing guarantee during its currency and shall remain in force and effect until 25 months from the Effective Date or 1 month from the COD, whichever is later, upon which the obligations of the Bank under this Mobilization Advance Guarantee shall stand discharged.
4. The obligations of the Bank herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Concession Agreement or the insolvency, bankruptcy, reorganisation, dissolution or liquidation of the Concessionaire or any change in ownership of the Concessionaire or any purported assignment by the Concessionaire or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor or a surety.

Further, this Mobilization Advance Guarantee is in no way conditional upon any requirement that the Jal Nigam first attempts to procure the Guaranteed Amount from the Concessionaire or any other person, or resort to any other means of obtaining payment of the Guaranteed Amount.

5. The Bank hereby agrees that its liability under this Mobilization Advance Guarantee shall not be discharged by virtue of any agreement between the Concessionaire and the Jal Nigam, whether with or without the Bank's knowledge, or by reason of the Jal Nigam showing any indulgence or forbearance to the Concessionaire.
6. The Bank's obligations under this Mobilization Advance Guarantee for the Guaranteed Amount is primary, independent and absolute and not by way of surety only.
7. The obligations of the Bank under this Mobilization Advance Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would prejudice or

diminish the Guaranteed Amount in whole or in part, including (whether or not known to it or the Jal Nigam):

- (a) any time or waiver granted to, or composition with, the Concessionaire or any other person;
  - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions or change in the status of the Concessionaire or any other person;
  - (c) any variation of the Concession Agreement so that references to the Concession Agreement in this Mobilization Advance Guarantee shall include each variation;
  - (d) any unenforceability, illegality or invalidity of any obligation of any person under the Concession Agreement or any unenforceability, illegality or invalidity of the obligations of the Bank under this Mobilization Advance Guarantee or the unenforceability, illegality or invalidity of the obligations of any person under any other document or guarantee, to the extent that each obligation under this Mobilization Advance Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity;
  - (e) any extension, waiver, or amendment whatsoever which may release a guarantor or the Bank (other than performance or indefeasible payment of a Guaranteed Amount);  
or
  - (f) any part performance of the Concession Agreement by the Concessionaire or by any failure by the NMCG to timely pay or any failure by NMCG or the Jal Nigam to timely perform any of its obligations under the Concession Agreement.
8. So long as any sum remains owing by the Concessionaire to the Jal Nigam, the Bank shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Concessionaire (whether in respect of its liability under this Mobilization Advance Guarantee or otherwise) or claim in the insolvency or liquidation of the Concessionaire or any such other person in competition with the Jal Nigam. If the Bank receives any payment or benefit in breach of this Clause 8, it shall hold the same in trust for the Jal Nigam.
9. The Bank represents, warrants and undertakes to the Jal Nigam that:
- (a) it has the power to execute, deliver and perform the terms and provisions of this Mobilization Advance Guarantee and has taken all necessary action(s) to authorize the execution, delivery and performance by it of this Mobilization Advance Guarantee;
  - (b) the Bank has duly executed and delivered this Mobilization Advance Guarantee, and this Mobilization Advance Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles;

- (c) neither the execution, delivery or performance by the Bank of this Mobilization Advance Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any law, statute, rule or regulations or any order, writ, injunction or decree of any court or governmental instrumentality; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Bank is a party or by which it or any of its property or assets is bound; or (iii) violate any provision of the Bank's constituent documents;
  - (d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Mobilization Advance Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Mobilization Advance Guarantee; and
  - (e) this Mobilization Advance Guarantee will be enforceable when presented for payment to a Scheduled Bank (as defined by the Reserve Bank of India Act, 1934) at [*Insert name of place*].
10. This Mobilization Advance Guarantee is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of the Jal Nigam in exercising any right, power or privilege hereunder and no course of dealing between the Jal Nigam and the Bank, or the Concessionaire, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
  11. If any one or more of the provisions contained in this Mobilization Advance Guarantee are or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the Bank shall enter into good faith negotiations with the Jal Nigam to replace the invalid, illegal or unenforceable provision.
  12. The Bank hereby agrees to execute and deliver all such instruments and take all such actions as may be necessary to make effective fully the purposes of this Mobilization Advance Guarantee.
  13. This Mobilization Advance Guarantee may be executed in one or more duplicate counterparts, and when executed and delivered by the Bank and the Jal Nigam shall constitute a single binding agreement.
  14. Any demand, notice, request or other communication to be given or made under this Mobilization Advance Guarantee shall be deemed to have been duly given or served:
    - (a) Upon the Jal Nigam, at Ganga Pollution Prevention Unit, STP Campus, Bhagwanpur, Lanka, Varanasi-221005, marked for the attention of [*Please insert name*] (General Manager);

- (b) Upon a Scheduled Bank (as defined by the Reserve Bank of India Act, 1934), at [●], India.
- 15. The Bank:
  - (a) acknowledges that the Lenders will review this Mobilization Advance Guarantee and may require changes thereto as a condition of granting any Financial Assistance and/or providing political risk insurance; and
  - (b) shall consider any such requirements in good faith.
- 16. This Mobilization Advance Guarantee shall be governed by, and construed in accordance with, the laws of India. The Bank irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Mobilization Advance Guarantee may be brought in the courts in [●].
- 17. The Jal Nigam may assign or transfer all or any part of its interest herein together with the Concession Agreement to any other person with prior consent of to the Bank. The Bank may not assign or transfer any of its rights or obligations under this Mobilization Advance Guarantee.

**IN WITNESS WHEREOF** the Bank has set its hands hereunto on the day, month and year first hereinabove written.

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