

DRAFT CONCESSION AGREEMENT

FOR

IMPLEMENTATION OF 24x7 WATER SUPPLY SYSTEM

IN THE CITY OF COIMBATORE

THROUGH

PUBLIC PRIVATE PARTNERSHIP

CONCESSION AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 - DEFINITIONS AND INTERPRETATION	3
ARTICLE 2 - SCOPE OF THE PROJECT	18
ARTICLE 3 - GRANT OF CONCESSION	21
ARTICLE 4 - CONDITIONS PRECEDENT	23
ARTICLE 5 - OBLIGATIONS OF THE CONCESSIONAIRE	27
ARTICLE 6 - OBLIGATIONS OF THE AUTHORITY	36
ARTICLE 7 - REPRESENTATIONS AND WARRANTIES	39
ARTICLE 8 - DISCLAIMER	42
ARTICLE 9 - PERFORMANCE SECURITY	43
ARTICLE 10 - RIGHT OF WAY	45
ARTICLE 11 - UTILITIES	47
ARTICLE 12 - CONSTRUCTION OF THE ADDITIONAL PROJECT FACILITIES	48
ARTICLE 13 – MONITORING OF CONSTRUCTION	51
ARTICLE 14 - COMPLETION CERTIFICATE	55
ARTICLE 15 – COMMERCIAL OPERATIONS	57
ARTICLE 16 – CHANGE OF SCOPE	58
ARTICLE 17 – OPERATION AND MAINTENANCE	61
ARTICLE 18 – SAFETY REQUIREMENTS	76
ARTICLE 19 – MONITORING OF OPERATION AND MAINTENANCE	77
ARTICLE 20 – INDEPENDENT ENGINEER	78
ARTICLE 21 – FINANCIAL CLOSE	80
ARTICLE 22 – PAYMENTS	81
ARTICLE 23 – ESCROW ACCOUNT	86
ARTICLE 24 – INSURANCE	87
ARTICLE 25 – ACCOUNTS AND AUDIT	90
ARTICLE 26 – FORCE MAJEURE	92
ARTICLE 27 – COMPENSATION FOR BREACH OF AGREEMENT	98
ARTICLE 28 – SUSPENSION OF CONCESSIONAIRE’S RIGHTS	99
ARTICLE 29 – TERMINATION	101
ARTICLE 30 – DIVESTMENT RIGHTS AND INTEREST	107
ARTICLE 31 – ASSIGNMENT AND CHARGES	110
ARTICLE 32 – LIABILITY AND INDEMNITY	112
ARTICLE 33 – RIGHTS AND TITLE OVER THE SERVICE AREA	116
ARTICLE 34 – USER CHARGES	117
ARTICLE 35 – CHANGE IN LAW	119
ARTICLE 36 – DEFECTS LIABILITY	121
ARTICLE 37 – DISPUTE RESOLUTION	123
ARTICLE 38 – MISCELLANEOUS	125

THIS AGREEMENT is entered into on this the [•] day of [•], 2016

BETWEEN

THE COIMBATORE CITY MUNICIPAL CORPORATION, established under the [•], represented by its Commissioner and having its principal offices at [•] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

[*please insert name of the company*], a company incorporated under the provisions of the Companies Act, 1956/2013 with CIN [•] and having its registered office at [•], (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes);

AND

[*please insert name of the company*], a company incorporated under [•] and having its registered office at [•], (hereinafter referred to as the “**Lead Member**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes);

AND

[*please insert name of the company*], a company incorporated under [•] and having its registered office at [•], (hereinafter referred to as the “**Technical Member**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes);

WHEREAS:

- (A) The Authority is desirous to upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “**Project**”) on build, transfer and operate (“**BTO**”) basis, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (B) The Authority had accordingly invited proposals by its Request for Qualification dated [•] (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the above referred Project and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising of Lead Member and Technical Member (collectively the “**Consortium**”) (“**Successful Bidder**”).
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award bearing number [•] dated [•] (hereinafter called the “**LOA**”) to the {selected bidder/ Consortium requiring, *inter alia*, the execution of this Concession Agreement within [45 (forty five)] days of the date of issue thereof.
- (E) {The Successful Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise

the rights of the {selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

- (F) {By its letter dated [•] the Concessionaire has joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.}
- (G) The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Additional Project Facilities**” shall mean the facilities to be constructed by the Concessionaire by developing and augmenting the Existing Project Facilities and by constructing new infrastructure improvement works and replacements forming part of the water supply, transmission, treatment, storage, and distribution system required to provide the water supply services in the Service Area, as stated in the agreed in the CIP and subject to any addition or deduction that may occur pursuant to Change in Scope approved by the Authority in accordance with this Agreement.

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.49% (zero point four nine per cent) thereof at the commencement

of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“Advance Procurement Plan” means the procurement plan to be prepared by the Concessionaire during the Study Period and approved by the Authority as per Article 5.2.2;

“Affected Party” shall have the meaning as set forth in Article 26.1;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, and the Schedules the RFQ, RFP, Volume III to RFP (consisting of the BOQ etc.) hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including policies, rules, bye-laws, regulations, circulars, government orders and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Parties under Applicable Laws in relation to the due performance of their respective obligations under this Agreement;

“Appointed Date” means the date on which the Condition Precedent of the Concessionaire and the Authority is satisfied, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period which shall not be more than 1 year from Effective Date;

“Associate” or **“Affiliate”** shall mean, in relation to the Applicant/Consortium Member, any other person who either directly or indirectly controls, is controlled by or is under the common control with such the Applicant/Consortium Member (for the purpose this definition, the expression “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”) means with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than twenty six percent (26%) of the voting shares of such person and/or the power to direct the management and policies of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise;

“Authority” shall have the meaning attributed thereto in the name clause;

“Authority Default” shall have the meaning as set forth in Article 29.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Article 32.1.1;

“Authority Representative” means such person or persons as may be authorized in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Bank**” means a scheduled bank incorporated in India;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {successful bidder/Consortium} in response to the RFQ and RFP in accordance with the provisions thereof;

“**Bid Due Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Bid Documents**” shall mean the RFQ, RFP and any amendments thereto;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals and which is to remain in force until substituted by the Performance Security;

“**BOQ**” means the bill of quantities provided along with the Bid Documents

“**CIP**” means the capital investment plan prepared by the Concessionaire and approved by the Authority as per Article 5.2.6;

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Article 15.1;

“**Change in Law**” means the occurrence of any of the following after the Bid Due Date:

- (a) The enactment of any new Indian law;
- (b) The repeal, modification or re-enactment of any existing Indian law;
- (c) The commencement of any Indian law which has not entered into effect until the Bid Due Date;
- (d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Due Date; or
- (e) Any change in the rates of any of the Taxes that have a direct effect on the Project.

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Successful Bidder/ Consortium Members, together with its/their Associates, in the total Equity to decline below:

- (i) Till the achievement of the COD and until the expiry of 2 (two) years there from each Consortium Member whose financial capacity (net worth) or technical capacity was evaluated for the purposes of the RFQ / RFP shall subscribe and continue to hold not less than (a) 26% (twenty six percent) of the Equity; and (b) at least 5% (five percent) of the Estimated Project Construction Cost;
- (ii) The Consortium Members shall together hold at least 51% of the Equity the expiry of the Concession Period and the Consortium Member whose technical experience in operations and maintenance was considered for qualification during the RFQ stage should hold not less than 11% of the Equity subsequent to the minimum lock in period as stated in (i) above;

“**Change of Scope**” shall have the meaning as set forth in Article 16.1.1;

“**Completion Certificate**” shall have the meaning as set forth in Article 14.2;

“**Composite Quote**” shall have the meaning as set forth in Article 22.1;

“**Concession**” shall have the meaning as set forth in Article 3.1.1;

“**Concessionaire**” shall have the meaning attributed thereto in the name clause;

“**Concession Period**” means the period starting on and from Appointed Date and ending on the Transfer Date, which shall consist of the Construction Period, the Initial Operation Period and the Operation Period and shall be limited to an aggregate period of 25 years;

“**Concession Year**” shall mean any given year, forming part of the Concession Period, commencing on the date and month of the Appointed Date and ending on a day prior to the said date and month of the each Subsequent Year. For example in the event the Appointed Date is December 30, 2016, the first Concession Year shall end on December 29, 2017.

“**Concessionaire Default**” shall have the meaning as set forth in Article 29.1.1;

“**Conditions Precedent**” shall have the meaning as set forth in Article 4.1.1;

[“**Consortium**” shall have the meaning as set forth in Recital (B);]

[“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;]

“**Construction Period**” means the period commencing from the Appointed Date and ending on COD, which shall be a period of 4 (four) years and shall further include any extension of time granted by the Authority in accordance with the terms of this Agreement;

“**Construction Works**” means all works and activities necessary to complete the construction of the Additional Project Facilities in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) Not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

“**Cumulative O&M Quote**” shall mean the cumulative value of year wise O&M quote submitted as part of the Composite Quote;

“**Damages**” shall have the meaning as set forth in Sub-Article (w) of Article 1.2.1;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the capital cost or working capital cost of the Project (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the cost of the Project;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior 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 thereof shall be dealt with as if such conversion had not been undertaken;

Provided further that the Debt Due, on or after COD, shall in no case exceed 50% (fifty percent) of the cost of the Project;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“Dispute” shall have the meaning as set forth in Article 37.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 37;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 30.1;

“Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmers, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Designs and Drawings” means the designs and drawings, and other technical information submitted by the Concessionaire from time to time in relation to the construction of the Additional Project Facilities and reviewed by the Independent Engineer in accordance with the provisions of this Agreement.

“Effective Date” means the date of execution of this Agreement.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project Facilities, including Users thereof, or which poses an immediate threat of material damage to any of the Additional Project Facilities;

“**EPC Quote**” shall mean the quote submitted by the Successful Bidder in its financial proposal submitted as part of its Bid;

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Project, and for the purposes of this Agreement shall include preference capital, convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any funds advanced by any shareholder of the Concessionaire for meeting such equity component;

“**Escrow Account**” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning as set forth in Article 23.1.2;

“**Escrow Bank**” shall have the meaning as set forth in Article 23.1.1;

“**Escrow Default**” shall have the meaning as set forth in Schedule 13;

“**Estimated Project Construction Cost**” shall have the meaning ascribed to it in the RFP.

“**Existing Project Facilities**” means all the existing amenities and facilities such as water supply, transmission, treatment, storage, and distribution system used for providing the water supply services in the Service Area on the Effective Date and forming part of Schedule I of the Agreement;

“**Financial Close**” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“**Financial Model**” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

“**Financial Plan**” means the financial projections as submitted by the Successful Bidder along with the Bid, setting forth the capital and operating costs and revenues from the O&M of the Additional Project Facilities and includes a description of the assumptions and parameters used for making calculations and projections therein, which shall include any subsequent revisions approved by the Authority;

“**Financial Package**” means the financing package set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Article 26.1;

“**GOI**” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of works as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits;

“Government” means the Government of the India or the State Government, as the case may be;

“Government Instrumentality” means any department, division or sub-division of the relevant Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the relevant Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Implementation Schedule” means the progressive Project Milestones forming part of the CIP in accordance with which the Additional Project Facilities shall be constructed;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 33;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 33;

“Independent Auditors” means a reputable firm of chartered accountants acting as independent auditors and appointed in accordance with Article 25.2.1;

“Independent Engineer” shall have the meaning as set forth in Article 20.1;

“Initial Operation Period” means the period commencing from the Appointed Date and concluding on the expiry of the Construction Period, during which the Concessionaire shall be responsible for the operation and maintenance of the Existing Project Facilities and parts of the Additional Project Facilities, as may be constructed progressively during the Construction Period;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 24;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Key Performance Indicators” means the performance indicators in relation to the operation and maintenance of the Project Facilities attached herewith as Schedule 5;

“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Maintenance Requirements” shall mean the maintenance requirements set forth in Schedule 16;

“Material Adverse Effect” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“O&M” means the operation and maintenance of the Existing Project Facilities during the Initial Operation Period and the Project Facilities during the Operation Period and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities, in accordance with Article 17 of this Agreement;

“O&M Expenses” means expenses incurred by the Concessionaire or by the Authority, as the case may be, for performing all the O&M activities including; (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premium for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under to a Contractor under any contract executed in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Article 19.2;

“O&M Payments” shall have the meaning as set forth in Article 22.7.1;

“O&M Plan” means the operation and maintenance plan prepared and submitted by the Concessionaire and approved by the Authority;

“O&M Quote” shall mean the year-wise cost of O&M of the Existing Project Facilities or the Project Facilities, as the case may be, quoted by the Successful Bidder in its financial proposal in the Bid;

“Operation Period” means the period commencing from the COD and shall end on the Transfer Date during which the Concessionaire shall be responsible for the operation and maintenance of the Project Facilities;

“Preliminary Operation Period” means the period commencing from Preliminary Takeover Date and ending on the Appointed Date;

“Preliminary Takeover Date” means the mutually agreed date on which of the Existing Facilities are taken over by the Concessionaire in accordance Interim Takeover Plan for operation and maintenance during the Preliminary Operation Period;

“Parties” means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

“Preparatory Period” shall mean the period of 1 (one) year from the Effective Date which shall comprise of the period for fulfilment of the Condition Precedent of the Parties, unless the same is extended by the Authority in accordance with the provisions of this Agreement.

“Project Facilities” means collectively the Existing Project Facilities and the Additional Project Facilities;

“**Project Milestones**” means the project milestones as set forth in the Implementation Schedule;

“**Provisional Certificate**” shall have the meaning as set forth in Article 14.1;

“**Re**”, “**Rs**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Request for Proposals**” or “**RFP**” shall have the meaning as set forth in Recital (C);

“**Right of Way**” means the constructive possession of the Service Area, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the Concessionaire to perform its duties and obligations pursuant to this Agreement;

“**Safety Requirements**” shall have the meaning as set forth in Article 18.1.1;

“**Scope of the Project**” shall have the meaning as set forth in Article 2.2;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the cost for implementing the Project and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire in accordance with the provisions of this Agreement;

“**Service Area**” shall have the meaning as set forth in Article 10.1;

“**Standard Operating Procedures**” means the procedures set by the Concessionaire in relation to the O&M of the Project Facilities and approved by the Authority;

“**State**” means the State of Tamil Nadu;

“**State Government**” shall mean the Government of Tamil Nadu;

“**Study Period**” means the period of 300 (three hundred) days commencing from the Effective Date during which the Concessionaire shall be responsible for the preparation of the CIP;

“**Subordinated Debt**” means the principal amount of debt provided by the Concessionaire’s shareholders for meeting the cost for implementing the Project and subordinated to the financial assistance provided by the Senior Lenders, outstanding as on the Transfer Date

“**Substitution Agreement**” shall have the meaning as set forth in Article 31.3.1;

“**Suspension**” shall have the meaning as set forth in Article 28.1;

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Technical Specifications**” means the specifications to the quality, quantity, capacity and other technical requirements for the construction, operation and maintenance of the Existing Project Facilities and the Additional Project Facilities, as set forth in Schedule 6, and any modifications thereof, or

additions thereto, as included in the design and engineering for the Existing Project Facilities and the Additional Project Facilities, submitted by the Concessionaire and approved by the Authority;

“**Termination**” means the expiry or termination of this Agreement and the Concession granted hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**User**” means a person initially using the Existing Project Facilities and thereafter the Project Facilities or any part thereof in accordance with the provisions of this Agreement;

“**User Charges**” means the charges paid for availing the benefits of the Existing Project Facilities during the Initial Operation Period and subsequently the Project Facilities during the Operation Period;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of 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 latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;

- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) Reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words having singular meaning shall also include plural and vice versa;
- (o) References to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**Indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer

shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

- (u) the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) forms 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;
- (v) references to Recitals, Articles, Sub-Articles, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”); and
- (x) Time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 **Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

1.4 **Priority of agreements, articles and schedules**

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement;
- (b) the Bid;
- (c) the RFP; and

(d) the RFQ

1.4.2 Subject to provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Designs and Drawings and the Technical Specifications, the latter shall prevail;
- (e) between the dimension scaled from the Designs and Drawings and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

1.5 Joint and several liability

1.5.1 The Consortium Members shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of the obligations of the Concessionaire under this Agreement.

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Project Phases

The Project has been divided into the following phases:

- (a) the phase between the Effective Date and the Appointed Date, which shall consist of the Study Period;
- (b) the operation and maintenance of the Existing Project Facilities during the Preliminary Operation Period;
- (c) the construction phase which shall consist of the Construction Period and the Initial Operation Period; and
- (d) the operations phase which shall consist of the Operation Period.

2.2 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall consist of the following:

- (a) the studies, analysis and assessment of the Existing Project Facilities and the conditions prevailing in the Service Area, to be conducted by the Concessionaire, during the Study Period along with the preparation of the CIP;
- (b) the operation and maintenance of the Existing Project Facilities during the Preliminary Operation Period;
- (c) construction of the Additional Project Facilities during the Construction Period in accordance with the CIP and the Technical Specifications;
- (d) operation and maintenance of the Existing Project Facilities and the Additional Project Facilities, to the extent developed, during the Initial Operation Period in accordance with the provisions of this Agreement;
- (e) operation and maintenance of the Project Facilities during the Operation Period; and
- (f) collection of User Charges in the Service Area;
- (g) rectification of Defects in the Additional Project Facilities during the Defects Liability Period; and
- (h) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.3 Activity Chart

The obligations of the Concessionaire under this Agreement shall consist of the following major activities:

List of Major Activities:

Activity	Time Period (unless extended in terms of this Agreement)
Achievement of Conditions Precedent	One year from the Effective Date
Completion of Conditions Precedent	Appointed Date
Takeover of Existing Project Facilities by Concessionaire	Preliminary Takeover Date
Commencement of Construction of Additional Project Facilities	Appointed Date
Completion of Construction of Additional Project Facilities	Four years from Appointed Date
Commencement of operation of Project Facilities	On and from COD
End of Concession Period	On Transfer Date

List of document submission:

Document submission	Key Date
Mobilization Advance Security	Within 7 (seven) days from Effective Date
Construction Period Performance Security	Within 21 (twenty one) days from Effective Date
Operation Period Performance Security	Within 21 (twenty one) days from the Effective Date
CIP	Draft – 270 days from Effective Date Final - 14 days from receipt of comments from Authority
O&M Plan	Draft – 270 days from Effective Date Final - 14 days from receipt of comments from Authority
Advance Procurement Plan and Interim Takeover Plan	Draft – 90 days from Effective Date Final – 14 days from receipt of comments from Authority
Implementation Schedule	Along with CIP
Communications Plan	Along with CIP
Takeover Plan	Draft – 150 days from Effective Date Final - 15 days from receipt of comments from Authority
Emergency Response Plan	Along with Takeover Plan
Standard Operating Procedures and Policy	Along with CIP
Connection Policy	Along with CIP
Executed Escrow Agreement	Within 110 days from the Effective Date
Progress reports	Quarterly reports – 7 days from end of relevant quarter

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby appoints the Concessionaire and grants an exclusive right and power to undertake civil works for developing Additional Project Facilities, operation and maintenance of Existing Project Facilities and Project Facilities within the Service Area in conformity with the CIP, the technical specifications and the Key Performance Indicators (the “**Concession**”). The Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein and agrees to provide water supply services within the Service Area during the Initial Operation Period and the Operation Period.

3.1.2 Subject to and in accordance with the provisions of this Agreement, an exclusive Concession is hereby granted which shall oblige or entitle (as the case may be) the Concessionaire to:

- (a) access and license to the Service Area during the Study Period;
- (b) Right of Way to the Service Area during the Construction Period and the Operation Period for the purpose of and to the extent conferred by the provisions of this Agreement;
- (c) obtain finance and perform the Project;
- (d) construct the Additional Project Facilities during the Construction Period;
- (e) manage, operate and maintain the Existing Project Facilities and the Project Facilities;
- (f) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (g) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (h) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Existing Project Facilities or the Additional Project Facilities nor transfer, lease or part possession thereof, save and except to the Senior Lenders and the Contractors as expressly permitted by this Agreement;
- (i) on and from the commencement of the Preliminary Operation Period the operations and maintenance of the Existing Project Facilities to the Concessionaire; and
- (j) collect User Charges from the Users of the Existing Project Facilities during the Preliminary Operation Period, the Initial Operation Period, along with the Additional Project Facilities during the Operation Period. It is understood by the Parties that the ownership of the Project Facilities shall, throughout the Term of the Agreement, remain with the Authority and is neither intended to be transferred, nor being transferred in any manner to the Concessionaire by or under this Agreement.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 26, 37 and 38, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “**Conditions Precedent**”).

4.1.2 Upon submission of the Construction Period Performance Security by the Concessionaire, the Authority shall fulfil the following the Conditions Precedent:

- (a) provide Right of Way to the Service Area for conducting initial study of the Existing Project Facilities and the conditions at the Service Area within 30 (thirty) days therefrom;
- (b) appoint a nodal officer for facilitating the matters in relation to the execution of this Agreement within 30 (thirty) days therefrom;
- (c) list of Existing Project Facilities in the Service Area, both underground and above ground within 45 (forty five) days therefrom;
- (d) within 45 (forty five) days therefrom, provide the following existing database to the Concessionaire:
 - (i) updated base map of the city of Coimbatore;
 - (ii) updated customer database;
 - (iii) billing and collection database of User Charges;
 - (iv) details of the location of the Existing Project Facilities on the base map;
 - (v) history of repairs and maintenance of the Existing Project Facilities.
- (e) execute the Escrow Agreement within 110 (one hundred ten) days from the Effective Date;
- (f) execute the Substitution Agreement as may be required under the Financing Agreements.

The Preparatory Period shall be extended by the actual number of days’ by which the fulfilment of Article 4.1.2 (d) is delayed by the Authority.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall:

- (a) provide the Construction Period Performance Security to the Authority within 21 (twenty one) days from the Effective Date and the Operation Period Performance Security, equivalent to 50% of the O&M quote for the first Concession Year, within 21 (twenty one) days prior to the commencement of the Preliminary Operation Period;
- (b) execute the Escrow Agreement within 110 (one hundred ten) days from the Effective Date;

- (c) execute and procure execution of the Substitution Agreement, as may be required under the Financing Agreements;
 - (d) procure all the relevant Applicable Permits specified in Schedule 7 and mutually agreed by Independent Engineer and Concessionaire unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect, within 150 (one hundred fifty) days from the Effective Date;
 - (e) deliver to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-Articles (k), (l) and (m) of Article 7.1 of this Agreement, within 150 (one hundred fifty) days from the Effective Date;
 - (f) provide the Mobilization Advance Security to the Authority within 7 (seven) days from the Effective Date; and
 - (g) submit the approved CIP within the Preparatory Period and along with the CIP also submit the following to the Authority:
 - (i) the O&M Plan
 - (ii) the Advance Procurement Plan
 - (iii) the Implementation Schedule
 - (iv) the Communications Plan
 - (v) the Takeover Plan
 - (vi) the Emergency Response Plan
 - (vii) the Standard Operating Procedures and Policy
 - (viii) the Connection Policy.
 - (h) commencement of operation and maintenance of the Existing Project Facilities during the Preliminary Operation Period, as per the satisfaction of the Authority.
- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfil each parties' Conditions Precedent is an independent obligation of the respective Party.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Construction Period Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to the maximum limit equal to 20% of the aggregate amount of the Construction Period Performance Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the

Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Article 4.1.3, no Damages shall be due or payable by the Authority under this Article 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.3.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Construction Period Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to 20% of the aggregate amount of the Construction Period Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Article 9.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due or payable by the Concessionaire under this Article 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.2.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Articles 4.2 and 4.3, and subject to the provisions of Article 9.2, the Parties expressly agree that in the event the conditions precedent in Article 4.2 and 4.3 are not completed, for any reason whatsoever, before the 1st (first) anniversary of the Effective Date or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Construction Period Performance Security, if any, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the maintenance of the Existing Project Facilities during the Initial Operation Period and design, engineering, procurement, construction, operation and maintenance of the Project Facilities and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Article 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) perform and fulfil its obligations under the Financing Agreements;
 - (c) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement.
- 5.1.5 The Concessionaire shall remedy any and all loss or damage to the Project Facilities during the Defects Liability Period at the Concessionaire's cost to the extent that such loss or damage shall have arisen out of the reasons specified in Article 36.3.
- 5.1.6 The Concessionaire shall remedy any and all loss or damage to the Project Facilities during the Preliminary Operation Period, the Initial Operation Period and the Operation Period as per the provisions of this Agreement, save and except to the extent that any such loss or damage shall have arisen on account of any default or neglect of the Authority or on account of a Force Majeure Event.

5.2 Obligations during the Study Period

5.2.1 Advance Procurement Plan

This shall comprise of preparation and implementation of an Advance Procurement Plan detailing the pre-transition activities. The Advance Procurement Plan shall provide for all such items which shall be procured in advance to ensure the Concessionaire is able to meet the delivery standards during the Preliminary Operations Period, carry out various studies and assessments during the Study Period and monitor the key performance indicators during the Initial Operation Period. The Advance Procurement Plan shall be prepared in the following manner:

- (a) The Concessionaire shall, no later than ninety (90) days from the Effective Date, submit to the Authority the draft Advance Procurement Plan.
 - (b) Within 15 (fifteen) business days from the date on which the Authority and the Independent Engineer receive the draft Advance Procurement Plan from the Concessionaire, the Independent Engineer shall review it and provide comments on it to the Authority, with a copy to the Concessionaire. The Authority shall within 15 (fifteen) business days thereof, jointly review in consultation with the Independent Engineer, approve or suggest revisions to the draft Advance Procurement Plan. In the event that the Authority fails to approve the draft Advance Procurement Plan or suggest any revisions thereto in writing to the Concessionaire within 30 (thirty) business days of the date on which the Authority receives the draft Advance Procurement Plan from the Concessionaire, the draft Advance Procurement Plan submitted by the Concessionaire shall be deemed to be approved.
 - (c) In the event the Concessionaire agrees with the changes proposed by the Authority to the draft Advance Procurement Plan under Article 5.2.2 (b), the Concessionaire shall resubmit the draft Advance Procurement Plan within 14 (fourteen) business days of the receipt of the changes proposed by the Authority and the Authority shall, subject to satisfactory incorporation of the changes suggested by them, approve APP within 14 (fourteen) business days of receipt of the revised draft.
 - (d) In the event the Concessionaire disagrees with the changes suggested by the Authority to the draft Advance Procurement Plan under Article 5.2.2 (b), the Authority and the Concessionaire shall meet to discuss and resolve these issues. If the Authority, and the Concessionaire are unable to agree on the changes to the draft Advance Procurement Plan within 2 (two) weeks of receipt by the Concessionaire of the Authority's suggestions under Article 5.2.2 (b), any disputed items shall be removed from the Advance Procurement Plan and incorporated into the draft CIP and the Concessionaire shall proceed to implement those parts of the Advance Procurement Plan that are not disputed.
 - (e) Once the Authority and the Concessionaire reach agreement on the draft Advance Procurement Plan as provided in Article 5.2.2 (b), or if the draft Advance Procurement Plan is approved/deemed to be approved as provided in Article 5.2.2 (b) or Article 5.2.2 (c), the Authority and the Concessionaire shall sign off on the finalized version of the draft Advance Procurement Plan (the "Advance Procurement Plan").
- 5.2.3 Obtaining relevant Applicable Permits as may be required by the Concessionaire during the Preliminary Operation Period, the Initial Operation Period, Construction Period and Operation Period.
- 5.2.4 Preparation of a Communications Plan detailing the communication activities to be undertaken during the Study Period, the Preliminary Operation Period, and Initial Operation Period, and implementation of the Study Period activities.
- 5.2.5 Comprehensive Assessment

During the Study Period the Concessionaire shall carry out a comprehensive assessment of the existing raw water sources, assets forming part of the Existing Project Facilities and service delivery arrangements in the Service Area. This shall include but not be limited to assessing the condition and performance of the assets forming part of the Existing Project Facilities such as the raw water intakes, water treatment works, treated water pumping and transmission mains,

service reservoirs, and water distribution system. The Concessionaire through this assessment will evaluate the existing service delivery arrangements including the organizational structure, systems, procedures and equipment. The comprehensive assessment shall form the basis for the CIP.

The comprehensive assessment shall include, but not be limited to, the following activities:

- (a) General
 - (i) The Concessionaire shall establish contact with all relevant stakeholders, including any third party agencies engaged by the Authority, and become familiarize itself with the water supply system in the Service Area, and the applicable standards and guidelines for water supply design, and with current on-going works in the Service Area.
 - (ii) Satisfy itself with the nature and scope of work and the prevailing conditions in the Service Area.
 - (iii) Liaise with the Authority, the local traffic police and other government agencies as per Applicable Laws and regulations in order to undertake studies and preparation for activities /works to be undertaken during the Construction Period.
- (b) Familiarize itself with the on-going activities and arrangements which the Authority has in place in the Service Area.
- (c) The Concessionaire shall read, familiarize itself with, and understand the relevant institutional arrangements and Applicable Laws to determine in detail which roles the Authority, as the asset holding and operating entity, plays in the following: (i) sanction of water connections, (ii) installation of water connections, (iii) disconnections and reconnections, and (iv) services to urban poor areas as applicable, so that the CIP conforms with them.
- (d) The Concessionaire shall review all available reports related to the water supply system in the Service Area and identify the material changes which have taken place in the water supply system in the Service Area since the time those reports were prepared.
- (e) The Concessionaire shall familiarize itself with any other recent, on-going or programmed development activities including but not limited to JnNURM, AMRUT, Smart City initiatives and other programs being implemented by the Authority, and GoTN or GoI, as the case may be.
- (f) Topographic and Infrastructure Survey
 - (i) The Concessionaire shall undertake a detailed topographical survey of the Service Area and existing infrastructure from the source to the Users including those areas within the Service Area that are not provided with water supply. The survey shall be conducted in manner to collect data sufficient for developing the CIP during the Study Period and also provide sufficient data for developing a comprehensive Geographical Information System (GIS).
 - (ii) In the survey the Concessionaire shall include all key elevations with geo-reference and all physical features such as roads, culverts, drains, nalas, electrical transformers, trees, existing valve chambers, sewer manholes, and any other relevant features which would affect installation and maintenance of existing and/or new pipe lines, pumping stations, service reservoirs, and prepare maps of the Service Area in at least 1:2000 scale and to produce a

Digital Elevation Model (DEM) in 1m contour interval. The output from the survey shall be based on real on-ground fresh survey using total station equipment and GPS etc. and shall not be by mere updating of available maps by desktop digitization methods.

(g) Initial User Survey

The Concessionaire shall undertake a door-to-door survey of all Users in the Service Area whether connected to the network or un-connected and obtain the details in regard to location, name, address, mobile and landline telephone numbers, number of resident members, status of billing and metering (the “User Survey”). The output from the survey shall be sufficient to validate and improve existing billing data and for integrating the customer data into the GIS based customer management system.

(h) Assessment of Water Resources

The Concessionaire will review available data on the volumes of water historically abstracted from existing water sources and prepare a summary of volumes, by month, over the last ten (10) years identifying key variabilities. The Concessionaire should identify in the CIP any critical water resource issues that may, periodically, affect the ability of the Concessionaire to meet the Key Performance Indicators.

(i) Assessment of Water Quality

(i) The Concessionaire shall collect the required number of samples each of the raw water and treated water from all the water sources existing in the Service Area during the Study Period.

(ii) The Concessionaire shall analyze the samples collected for all the physical, chemical and bacteriological characteristics in a recognized/accredited lab as approved by the Authority. The results of the water quality analysis shall be evaluated by the Concessionaire for determining whether any emergency measures are required such as closure of tube wells due to fluoride, nitrates, arsenic or any other harmful chemical constituents or ensuring robust disinfection in case of bacteriological contamination as the case may be. The results of such tests shall be notified to the Authority within two (2) days of receipt of the results.

(j) Assessment of Existing Treatment Works

The Concessionaire shall undertake a detailed study of the water treatment works existing at the Effective Date which shall include a condition and performance assessment of all civil, mechanical, electrical and instrumentation infrastructure, efficiency of treatment process, output capability of the plant and the treated water pumping system for delivering water conforming to the water quality standards set out in the Key Performance Indicators. The results of these studies shall form the basis of a list of works or activities for optimizing the efficiency of the existing production capacity of the Existing Project Facilities in the CIP. The Concessionaire may specifically explore proposing additional works such as wash water recovery units for minimizing the losses in the treatment.

(k) Assessment of Pumping Systems

The Concessionaire shall undertake a detailed condition and performance assessment of the existing pumping systems for raw water transmission, treated water transmission and boosters if any and assess the efficiency of the existing pumping regime. It shall undertake an energy audit of each pumping installation and assess the overall pumping regime and storage arrangements. This will allow the Concessionaire to develop a plan for optimizing the performance of the pumping units and system in the CIP so as to save energy consumption and extend the life of the units.

(l) Assessment of Pipe Networks

- (i) The Concessionaire shall undertake a study of the condition of the existing water transmission and distribution network within and outside the Service Area through flow and pressure measurement and review of historical repairs data if available and through detailed interactions with the employees of the Authority in order to assess the strength and capacity of the networks for provision of continuous pressurized water supply services to the Users in accordance with the Key Performance Indicators.
- (ii) The Concessionaire shall undertake studies to determine the hydraulic capacity of the existing networks so as to assess the hydraulic carrying capacity for ensuring continuous pressurized water supply, determine the residual life of the networks, and assess what strengthening and extensions are needed to meet the Key Performance Indicators. The Concessionaire shall develop a hydraulic network model which includes all pipelines down to 100 mm diameter based on the available information and by undertaking site investigations as required. The hydraulic network model shall be based on the data pertaining to reservoirs, pipes, valves and demand allocations which shall be obtained through field study and captured on the network model. AutoCAD or equivalent shall be the drawing software and WATERGEMS or equivalent shall be the modeling software for building the network model.
- (iii) The Concessionaire will prepare a Water Balance, following the IWA Methodology, for the hydraulically separable areas, and for the system as a whole.
- (iv) The Concessionaire based on the information collected as per the processes above, develop a plan for rehabilitation, replacement, reinforcement and expansion of the pipe networks as part of the CIP and in order to meet the Key Performance Indicators.

(m) Assessment of service storage

The Concessionaire will undertake a detailed assessment of the structural condition, capacity and hydraulic performance of the existing service reservoirs. This will allow the Concessionaire to identify those that could be used in a continuous pressurized water supply system, what repairs or rehabilitation is needed, what capacity expansions are required, and where new reservoirs will need to be constructed. The Concessionaire shall make efforts to ensure optimum use of the available storage capacity and land area so as to minimize or avoid requirement of additional land acquisition.

(n) Assessment of current levels of service

The Concessionaire will assess, by distinct hydraulic areas, the existing intermittent water supply situation including timing (during day), quantity, quality, availability

(hours) and pressure of water delivery to customers. The assessment will be based on observation, historic operating procedures, and inputs from consumers resident in the areas. The assessment will highlight seasonal variations as appropriate.

(o) Assessment of Service Delivery Costs/Revenues

The Concessionaire shall collect and record the data on historical (at least for three continuous years in the immediate past from the Effective Date) financial performance of revenues and the existing operations, maintenance and service delivery costs with sufficient detail covering the broad headings of energy, staffing, repairs, routine maintenance, capital expansion, administration, outsourced contract services and others. The revenues and costs shall be analyzed and the baseline cost trend established for the prevailing intermittent water supply regime.

5.2.6 Preparation of the CIP and O&M Plan describing in detail how the Concessionaire shall improve Existing Project Facilities and service delivery in a cost effective and sustainable manner to meet the Key Performance Indicators. The CIP shall be prepared in the following manner:

- (a) No later than two hundred and seventy (270) days from the Effective Date, the Concessionaire shall provide to the Authority and the Independent Engineer the draft CIP and the draft O&M Plan as per the guidelines stated in Schedule 4 along with a detailed power point presentation to the Authority and the Independent Engineer. The Concessionaire while developing the draft CIP may suggest new technologies / ideas which will improve the performance of the proposed water supply system within the overall cost earmarked for the EPC component.
- (b) The Independent Engineer shall review each of the draft CIP and O&M Plan and provide to the Authority with a copy to the Concessionaire any comments and suggested amendments, if any, to the drafts as it considers appropriate within 21 (twenty one) days of receipt of the drafts from the Concessionaire.
- (c) Within 45 (forty five) days of the date on which the Authority receives comments from the Independent Engineer on the draft CIP and the draft O&M Plan, the Authority shall review and, in consultation with the Independent Engineer, approve, if the same is in line with the EPC Quote furnished along with the Bid and the deviations if any would result in improving the quality of services to be offered by the Concessionaire during the Operation Period or suggest revisions to the draft CIP and O&M Plan. In the event that the Authority fails to approve the draft CIP or suggest any revisions thereto in writing to the Concessionaire within the stipulated period, the draft CIP submitted by the Concessionaire shall be deemed to be approved. Provided that no such approval may be deemed, if, pursuant to the draft CIP additional works is required to be performed by the Concessionaire, which shall be taken up as per Article 5.2.6 (j). In the event that the Authority fails to approve or provide comments on the draft O&M Plan within the stipulated period, the draft O&M Plan shall be deemed to be approved.
- (d) If the Concessionaire is unable to deliver the draft CIP or O&M Plan within the time frame set out in Article 5.2.6 (a), the Authority may, at its sole discretion provide additional time to the Concessionaire to complete these obligations, or may immediately terminate this Agreement and forfeit the Construction Period Performance Security. If the Concessionaire can reasonably demonstrate that the delay in submission is due to a failure on the part of the Authority or its representatives to make Existing Project Facilities or information requested by the Concessionaire available to the Concessionaire in a timely manner or due to an event of Force Majeure, then the

Concessionaire will be granted such extension of time for delivery of the draft CIP and/ or O&M Plan as the Independent Engineer certifies as being reasonable.

- (e) If the Concessionaire fails to meet the time line set out in Article 5.2.6 (a) (as extended under Article 5.2.6 (d), if applicable), then:
 - (i) the Concessionaire will use its best endeavours to mitigate any delay in delivery of the CIP;
 - (ii) if such delay is for 45 (forty five) days or more, then the Authority, may terminate this Agreement immediately, except that the Concessionaire may be liable to Liquidated Damages in accordance with Article 4.3.
- (f) In the event the Concessionaire agrees with the changes proposed by the Authority to the draft CIP under Article 5.2.6 (c), the Concessionaire shall resubmit the draft CIP within 14 (fourteen) business days of the receipt of the changes proposed by the Authority, and the Authority shall subject to due incorporation of its comments and suggestions, approve the CIP, within 14 (fourteen) business days of receipt of the revised draft CIP.
- (g) If the Concessionaire does not agree with the changes proposed by the Authority to the draft CIP under Article 5.2.6 (c), it shall meet with the Authority and the Independent Engineer to seek to resolve the areas of disagreement. The Parties while discussing the areas of disagreement shall be guided by the EPC Quote submitted as part of the Bid.
- (h) Once the Authority and the Concessionaire reach an agreement with regard to the draft CIP, the Authority and the Concessionaire shall sign off on the finalized version of the draft CIP which shall be the final CIP (“CIP”) and the Concessionaire shall proceed to implement the CIP.
- (i) The CIP and agreed O&M Plan shall be updated by the Concessionaire once in every 5 (five) years during the Concession Period or at such other duration as may be mutually agreed between the Parties. Copy of the updated CIP and agreed O&M Plan shall be submitted to the Authority along with a copy to Independent Engineer, as the case may be during the Construction Period and the Operation Period respectively. The procedure for approval of CIP and O&M Plan as set out in Articles 5.2.6 (b) to 5.2.6 (h) shall apply *mutadis mutandis* for approval of the updated CIP and O&M Plan.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
 - (i) Till the achievement of the COD and until the expiry of 2 (two) years there from each Consortium Member whose financial capacity (net worth) or technical capacity was evaluated for the purposes of the RFQ / RFP shall subscribe and continue to hold not less than (a) 26% (twenty six percent) of the Equity; and (b) at least 5% (five percent) of the Estimated Project Construction Cost;
 - (ii) The Consortium Members shall together hold at least 51% of the Equity till the expiry of the Concession Period and the Consortium Member whose technical experience in

operations and maintenance was considered for qualification during the RFQ stage should hold not less than 11% of the Equity, subsequent to the minimum lock in period as stated in Article 5.3.2 (i);

5.4 Takeover Plan

- 5.4.1 No later than ninety (90) days from the Effective Date, the Concessionaire shall provide to the Authority and the Independent Engineer a draft plan (“Interim Takeover Plan”) for the efficient handover of the operation and maintenance of the Existing Project Facilities from the Authority to the Concessionaire on the Preliminary Takeover Date. The Interim Takeover Plan shall be mutually agreed between the Parties and the Authority shall in accordance to such Interim Takeover Plan handover to the Concessionaire the Existing Project facilities in a phase wise manner.
- 5.4.2 No later than one hundred and eighty (180) days from the Effective Date, the Concessionaire shall provide to the Authority a draft Takeover Plan including the Emergency Response Plan for efficient handover of the Existing Takeover Facilities from the Appointed Date. Within 15 (fifteen) business days of receipt of the draft Takeover Plan from the Concessionaire by the Authority and Independent Engineer, the Independent Engineer shall review and provide comments on the draft Takeover Plan to the Authority, with a copy to the Concessionaire. The Authority shall within 15 (fifteen) business days of receipt of comments from Independent Engineer shall jointly review the draft Takeover Plan and in consultation with the Independent Engineer approve or suggest revisions to the same. In the event that the Authority fails to approve the draft Takeover Plan or suggest any revisions thereto in writing to the Concessionaire within the stipulated period of 15 (fifteen) business days of receipt of comments from the Independent Engineer, the draft Takeover Plan submitted by the Concessionaire shall be deemed to be approved.
- 5.4.3 Where the Concessionaire agrees with the requested amendments to the draft Takeover Plan, it shall resubmit the draft Takeover Plan to the Authority and the Independent Engineer within 14 (fourteen) business days of the receipt of the changes and the Authority shall, subject to satisfactory incorporation of the changes suggested by them, approve Takeover Plan within 14 (fourteen) business days of receipt of the revised draft Takeover Plan.
- 5.4.4 Once the Authority and the Concessionaire reach an agreement, the Authority and the Concessionaire shall sign off on the finalized version of the draft Takeover Plan (the “Takeover Plan”).

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, on a best effort basis provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation of the Project and in achieving Financial Close for implementation of the Project;
 - (b) upon written request from the Concessionaire, on a best effort basis provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities as may be required for performing the works during the Preliminary Operation Period, the Initial Operation Period, the Construction Period and the Operation Period;
 - (c) procure that the performance of the Project shall not be obstructed by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency;
 - (d) Subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project Facilities;
 - (e) Not do or omit to do any act, deed or thing which may in any manner be violating of any of the provisions of this Agreement; and
 - (f) support, cooperate with and facilitate the Concessionaire in the operation and maintenance of the Existing Project Facilities and implementation and operation of the Project Facilities in accordance with the provisions of this Agreement.
 - (g) effect payment towards bulk water charges, differential tariff on power if applicable, O&M of Pillur I scheme, provision for additional house service connections, asset replacement and major maintenance activities as detailed under section 2.2, Part II, Volume – III (Technical Terms of Reference).
 - (h) to ensure adequate availability of raw water within the provisions of the Agreement. It is clarified that while performing its obligations herein, at any time during the Concession Period in case the Authority makes any changes in the source of raw water or the supply system of raw water from the source to the intake point of the Project, it shall do so in a manner such that such changes do not affect the design of the Project or cast additional obligations on the Concessionaire or in any manner affect the performance of the Concessionaire in achieving the Key Performance Indicators under this Agreement.

- (i) The Authority hereby covenants that, on and from the date hereof and until the Appointed Date:
- (i) the Authority shall continue to be responsible to operate and maintain the Existing Project Facilities and provide water supply services and collect User Charges in the Service Area. The Authority shall also be responsible for repairing the Existing Project Facilities during such period.
 - (ii) The Authority shall bear all liabilities, including contingent liabilities related to any payable accounts, environmental contamination and other environmental liabilities, arising out of or in connection with the operation of the Existing Project Facilities.
 - (iii) The Authority shall handover / ensure handover of the Existing Project Facilities to the Concessionaire in the Service Area without encumbrance on and from the Construction Period.
 - (iv) The Authority shall ensure that all contracts between the Authority / other third party agencies and contractors in respect of the Existing Project Facilities and/ or water supply services in the Service Area shall be terminated / novated as mutually agreed between the Parties on or prior to the Appointed Date.
 - (v) give prompt written notice to the Concessionaire of:
 - (aa) the commencement of any dispute or proceeding between the Authority and/or any person which, if determined adversely to the Authority, as the case may be, could reasonably be expected to have a material adverse effect on the Authority's operations and/or financial condition or the performance by the Authority of its obligations hereunder,
 - (bb) the occurrence of any event of default in connection with any agreement of the Authority, or any event which, upon a lapse of time or the giving of notice or both, would become an event of default under any such agreement, and
 - (cc) the occurrence of any other event which has or could reasonably be expected to have a material adverse effect on the Authority's operations and/or financial condition, the performance by each Party of its obligations hereunder.
 - (vi) give notice to the Concessionaire of any major defect, damage or alteration to any of the equipment, machinery or assets being part of or associated with the Existing Project Facilities.
 - (vii) The Authority shall designate a senior officer as its transition coordinator ("Transition Coordinator") at the time of the transition and takeover of the Existing Project Facilities by the Concessionaire on the Appointed Date. The Transition Coordinator shall be the point of contact for the Concessionaire. The Authority shall notify the Concessionaire of the identity and contact details for the Transition Coordinator 15 (fifteen) days prior to the Appointed Date. The Authority will notify the Concessionaire in accordance with this Agreement of any change made to the identity or contact details for the Transition Coordinator.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) {the selected bidder / Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt, if necessary, for undertaking and implementing the Project in accordance with this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) 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;
- (f) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws 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;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality 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;
- (j) it has complied with Applicable Laws 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;

- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3;
- (l) {the selected bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Facilities shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality 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 not misleading;
- (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (p) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (q) All undertakings and obligations of the Concessionaire arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full capacity, power and authority to execute, deliver and perform its contractual and financial obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. 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 right, remedy or obligation of either Party under this Agreement.

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement and during the Study Period, the Concessionaire shall, conduct a complete and careful examination, made and shall further make an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Service Area, Existing Project Facilities, the BOQ, local conditions, and all information provided by the Authority or obtained, procured or gathered otherwise, and determine to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations during the Study Period and the Construction Period, provide to the Authority no later than 21 (twenty one) days from the Effective Date and in each subsequent Accounting Year therefrom, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 5% of the EPC Quote in the form set forth in Schedule 8 (the “**Construction Period Performance Security**”). The Construction Period Performance Security shall periodically renewed and kept valid for a period of 30 (thirty) days after the expiry Defects Liability Period. Until such time the Construction Period Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Construction Period Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Construction Period Performance Security is not provided by the Concessionaire within a period of 21 (twenty one) days from the Effective Date, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages during the Construction Period, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 9.1.3 The Concessionaire shall, for the performance of its obligations during the Initial Operation Period and the Operation Period, provide to the Authority no later than 21 (twenty one) days from the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 50% of the O&M Quote for the relevant Concession Year, in the form set forth in Schedule 8 (the “**Operation Period Performance Security**”). The Operation Period Performance Security shall be maintained through the Concession Year and shall remain valid for a period of 30 (thirty) days after the expiry of the said Concession Year.

It is clarified that during the Preliminary Operation Period, the Concessionaire shall submit and keep valid an irrevocable and unconditional guarantee from a Bank for a sum equivalent to 50% of the O&M Quote for the first Concession Year. The Operation Period Performance Security shall be submitted within 10 (ten) days prior to the Preliminary Operation Period shall be kept valid till the submission of the security for the Initial Operation Period.

It is further clarified that during the Construction Period, the Authority may at its sole direction, instruct the Concessionaire to submit the higher of the Construction Period Performance Security or the Operation Period Performance Security. Accordingly, the Concessionaire shall submit and keep valid the relevant performance security throughout the Construction Period. The conditions stated in this Article 9, applicable to the Construction Period Performance Security and the Operation Period Performance Security shall consequently apply to the performance security submitted as per the instruction of the Authority.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Construction Period Performance Security or the

Operation Period Performance Security, as the case may be, the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent.

Upon such encashment and appropriation from the Construction Period Performance Security or the Operation Period Performance Security, as the case may be, the Concessionaire shall, within 7 (seven) days thereof, replenish, in case of partial appropriation, to the original level of the relevant performance security. In case of appropriation of the entire amount the Construction Period Performance Security or the Operation Period Performance Security, as the case may be, the Concessionaire shall provide a fresh performance security within 5 (five) days thereof, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 29.

9.3 Release of Performance Security

The Authority shall return the Construction Period Performance Security to the Concessionaire within 60 (sixty) days of the expiry of the Defects Liability Period under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Construction Period Performance Security until 30 (thirty) days after the expiry Defects Liability Period. The Operation Period Performance Security shall remain in force and effect till expiry of the Concession Period and shall be released within 30 (thirty) days therefrom.

ARTICLE 10

RIGHT OF WAY

10.1 The Service Area

The site shall comprise of the area where the Existing Project Facilities and ancillary facilities described in Schedule 2 are located and shall include all such areas in which the Additional Project Facilities are to be constructed as per this Agreement (the “**Service Area**”) as demarcated in the map attached as Schedule 1. The Concessionaire shall be provided and granted the Right of Way by the Authority to the Service Area as a licensee under and in accordance with this Agreement.

10.2 License, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Service Area for carrying out any surveys, investigations and soil tests that the Concessionaire may require during the Study Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Service Area pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, during the Preparatory Period and the Concession Period, Right of Way, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Service Area which is described, delineated and shown in Schedule 1 hereto, on an “as is where is” basis, free of any encumbrances, to execute the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The license, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that Existing Project Facilities are operational at all times during the Construction Period without disruption, except with prior notification to the Authority and the Independent Engineer appointed by the Authority.
- 10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Service Area by the Concessionaire or its sub-licensees, the license in respect of the Service Area shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 It is expressly agreed that trees on the Service Area are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Protection of Service Area from Encumbrances

During the Concession Period, the Concessionaire shall protect the Service Area from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any

Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Service Area or the Existing Project Facilities or the Additional Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.4 Access to the Authority and Independent Engineer

The license, Right of Way and right to the Service Area granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

ARTICLE 11

UTILITIES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Service Area are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, procure any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

- 11.2.1 The Authority shall, cause the utility companies owning such utilities to undertake shifting of any utility including electric lines and telephone cables, to an appropriate location or alignment within or outside the Service Area if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Additional Project Facilities. The cost of such shifting shall be borne by the Concessionaire.

ARTICLE 12

CONSTRUCTION OF THE ADDITIONAL PROJECT FACILITIES

12.1 Obligations prior to commencement of construction

In addition to its obligations of maintaining the Existing Project Facilities during the Construction Period, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures as per the CIP which shall include the Implementation Schedule;
- (b) Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with the CIP, this Agreement, Applicable Laws and Applicable Permits.

12.2 Designs and Drawings

In respect of the Concessionaire's obligations relating to the Designs and Drawings for the Additional Project Facilities, the following shall apply:

- (a) The Concessionaire shall prepare and submit at its cost, charges and expenses, the Designs and Drawings in conformity with the Technical Specifications, with reasonable promptness and in such sequence as is consistent with the Implementation Schedule, 3 (three) copies of all Designs and Drawings to the Authority and the Independent Engineer for review.
- (b) By submitting the Designs and Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, the CIP, Technical Specifications, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Designs and Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Technical Specifications. The Concessionaire shall not be obliged to await for the observations of the Independent Engineer on the Designs and Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and cost.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Designs and Drawings are not in conformity with the Scope of the Project or the Technical Specifications, such Designs and Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Designs and Drawings.
- (e) Without prejudice to the foregoing provisions of this Article 12.2, the Concessionaire shall submit to the Authority for review and comments, its Designs and Drawings

relating to the Project, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Designs and Drawings. The provisions of this Article 12.2 shall apply mutatis mutandis to the review and comments hereunder.

- (f) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Designs and Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner. Notwithstanding the review by the Independent Engineer, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Designs and Drawings relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- (h) Any review of the Designs and Drawings conducted by the Authority is solely for the Authority's own information and that by conducting such review, the Authority does not accept any responsibility for the same.
- (i) The Concessionaire shall in no way represent to any Person that, as a result of any review by the Independent Engineer, the Authority has accepted responsibility for the engineering or soundness of any work relating to the Project Facilities and services or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project Facilities and services or any part thereof.
- (j) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of all Designs and as-built Drawings, in 2 (two) hard copies and in its editable digital format.

12.3 Construction of the Additional Project Facilities

- 12.3.1 During the Construction Period, the Concessionaire shall undertake construction of the Additional Project Facilities, and in conformity with the Technical Specifications set forth in Schedule 6 and the CIP. The Concessionaire agrees and undertakes that the Additional Project Facilities shall be constructed in accordance with the Implementation Schedule provided with the CIP.
- 12.3.2 During the Construction Period, the Concessionaire shall perform all the works as set out in the CIP, as updated, shall be completed and commissioned and all legal Users shall be provided with continuous pressurized water supply through the Project Facilities and the Concessionaire shall have achieved all of the applicable Key Performance Indicators.
- 12.3.3 During the Construction Period, the Concessionaire shall implement the CIP on behalf of the Authority in accordance to Good Industry Practice and reasonable care shall be taken by the Concessionaire to minimize supply interruptions, traffic disruptions and ensure good and timely communications with Users in the Service Area. All the works and interventions proposed as part of the CIP shall be in conformity with the relevant industry standards and the Environmental Code of Practice.
- 12.3.4 The Concessionaire shall implement the Standard Operating Procedures and Policy in accordance with Article 17.10 duly identifying gaps if any for further improvement of service delivery.

- 12.3.5 The Concessionaire is responsible for carrying out road restoration on completion of laying of pipes and refilling of the trench as per the provisions of the CIP.
- 12.3.6 In the event that the Concessionaire fails to achieve any Project Milestone within a period of 180 (one hundred and eighty) days from the date set forth for such Project Milestone in the Implementation Schedule, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in accordance with Schedule 5 for delay of each day until such Project Milestone is achieved. Provided that if any or all Project Milestones are extended in accordance with the provisions of this Agreement, the dates set forth in the Implementation Schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if the Implementation Schedule has been amended as above. Provided further that in the event COD is achieved within the timelines set forth in the Implementation Schedule, the Damages paid under this Article 12.3.6 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Article 12.3.6 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

ARTICLE 13

QUALITY ASSURANCE, MONITORING AND SUPERVISION OF CONSTRUCTION

13.1 Quarterly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once in a quarter and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Implementation Schedule, the CIP and Technical Specifications. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Quality of Materials and workmanship

The Concessionaire shall ensure that the construction, materials and workmanship are in accordance with the requirements specified in this Agreement, Technical Specifications and Good Industry Practice.

13.4 Quality control system

13.4.1 The Concessionaire shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”).

13.4.2 The Concessionaire shall, within 30 (thirty) days of the Appointed Date, submit to the Independent Engineer its Quality Assurance Plan which shall include the following:

- (a) organisation, duties and responsibilities, procedures, inspections and documentation;
- (b) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Technical Specifications, relevant Applicable Law and Good Industry Practice; and
- (c) internal quality audit system.

The Independent Engineer shall convey its comments to the Concessionaire within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Concessionaire shall incorporate those in the QAP to the extent required for conforming with the provisions of this Article 13.4.

13.4.3 The cost of testing of construction, materials and workmanship under this Article 13 shall be borne by the Concessionaire.

13.5 Methodology

The Concessionaire shall, at least 15 (fifteen) days prior to the commencement of the construction, submit to the Independent Engineer for review the methodology proposed to be adopted for executing the works, giving details of equipment to be deployed, traffic management and measures for ensuring safety. The Independent Engineer shall complete the review and convey its comments to the Concessionaire within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Concessionaire.

13.6 Inspection and technical audit by the Authority

The Independent Engineer may inspect and review the progress and quality of the construction of the Additional Project Facilities and issue appropriate directions to the Concessionaire for taking remedial action in the event the works are not in accordance with the provisions of this Agreement.

13.7 Inspection of construction records

The Authority shall have the right to inspect the records of the Concessionaire relating to the construction of the Additional Project Facilities.

13.8 Samples

The Concessionaire shall submit the following samples of materials and relevant information to the Independent Engineer for pre-construction review:

- (a) manufacturer's test reports and standard samples of manufactured materials; and
- (b) samples of such other materials as the Independent Engineer may require.

13.9 Tests

13.9.1 For determining that upon construction the Additional Project Facilities conform to the Technical Specifications, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in this Agreement, and in accordance with Good Industry Practice for quality assurance.

13.9.2 In the event that results of any tests conducted under this Article 13.9 establish any Defects or deficiencies in the Additional Project Facilities, the Concessionaire shall be responsible for carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Additional Project Facilities into compliance with the Technical Specifications and the procedure shall be repeated until the Additional Project Facilities conform to the Technical Specifications. For the avoidance of doubt, the cost of such tests and remedial measures in pursuance thereof shall be solely borne by the Concessionaire.

13.10 Examination of work before covering up

In respect of the work which the Independent Engineer is entitled to examine, inspect, measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Concessionaire shall give notice to the Authority and the Independent Engineer whenever any such work is ready and before it is covered up. The Authority and the Independent Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Concessionaire that the Independent Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or

prudent to keep it uncovered or incomplete, the Concessionaire shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority and the Independent Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Concessionaire receives no response from the Authority or the Independent Engineer within a period of 3 (three) business days from the date on which the Concessionaire's notice hereunder is delivered to the Independent Engineer, the Concessionaire shall be entitled to assume that the Independent Engineer would not undertake the said inspection.

13.11 Rejection

If, as a result of an examination, inspection, measurement or testing, any plant, materials, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Independent Engineer shall reject the plant, materials, design or workmanship by giving notice to the Concessionaire, with reasons. The Concessionaire shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

If the Independent Engineer requires the plant, materials, design or workmanship to be retested, the tests shall be repeated under the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such cost shall be recoverable by the Authority from the Concessionaire; and may be deducted by the Authority from any monies due to be paid to the Concessionaire.

13.12 Remedial work

13.12.1 Notwithstanding any previous test or certification, the Independent Engineer may instruct the Concessionaire to:

- (a) remove from the Service Area and replace any plant or materials which are not in accordance with the provisions of this Agreement;
- (b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Technical Specification; and
- (c) execute any work which is urgently required for the safety of the Project Facilities, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Article 26.7 shall apply.

13.12.2 If the Concessionaire fails to comply with the instructions issued by the Independent Engineer under Article 13.12.1, within the time specified in the Independent Engineer's notice or as mutually agreed, the Independent Engineer may advise the Authority to have the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Concessionaire and may be deducted by the Authority from any monies due to be paid to the Concessionaire.

13.13 Delays during construction

Without prejudice to the provisions of Article 12.3.6, if the Concessionaire does not achieve any of the Project Milestones and is not likely to achieve the timely completion of construction of the Additional Project Facilities within the time specified in the Implementation Schedule, Independent Engineer shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent

Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

13.14 Suspension of unsafe Construction Works

13.14.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or the localities adjacent to the Service Area. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to hereinabove.

13.14.2 The Concessionaire shall, pursuant to the notice under Article 13.14.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Provisional Certificate

- 14.1.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule 10 (the “**Provisional Certificate**”) if the key activities indicated in the Implementation Schedule have been successfully completed post which the Project Facilities can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority; provided further that the Punch list shall also include the cost of completion of each of the outstanding items.
- 14.1.2 The Parties hereto expressly agree that a Provisional Certificate under this Article 14.1 may, upon request of the Concessionaire to this effect, be issued for operating part of the Additional Project Facilities, if at least 90% (ninety per cent) of the Additional Project Facilities has been completed. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.2 Completion Certificate

Upon completion of balance works indicated in the list appended to the Provisional Certificate or the waiver of some activities by the Authority, and the Independent Engineer determining the successful completion of the same, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule 10 (the “**Completion Certificate**”).

14.3 Completion of Punch List items

- 14.3.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated as per Schedule 5. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Article 14.3.1.
- 14.3.2 Upon completion of all the Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Article 14.3.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.4 Withholding of Provisional or Completion Certificate

- 14.4.1 If the Independent Engineer determines that the Project Facilities or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project Facilities is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Facilities and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and notify the same to the Independent Engineer. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

ARTICLE 15

COMMERCIAL OPERATIONS

15.1 Commercial Operation Date

The construction of the Additional Project Facilities shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”).

15.2 Damages for delay

Subject to the provisions of Article 12.3, if COD does not occur prior to the 91st (ninety first) day from the last Project Milestone indicated in the Implementation Schedule, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in accordance with Schedule 5.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services over and above the Additional Project Facilities or reduction of the works/facilities due to a change in:

- (i) the number of connections envisaged in the Service Area to those contemplated in the approved CIP;
- (ii) material change in the O&M obligations of the Concessionaire;
- (iii) material change in the Key Performance Indicators provided in this Agreement;

shall be considered as a revision of the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be treated in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire or the Authority and reimbursed or adjusted by the Authority or the Concessionaire in accordance with Article 16.3 or Article 16.4, as the case may be.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall where Change of Scope for additional works is initiated by the Concessionaire, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Additional Project Facilities and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary or in case of reduction of works/facilities as per Article 16.1.1, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Implementation Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority

to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

- 16.2.3 Upon receipt of information set forth in Article 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire and the time and costs implementation thereof. The Authority shall thereafter issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for increase in scope of work

The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction of 10% of the cost identified in the Change of Scope Order, towards retention money which shall be released after a period of 1 (one) year from the completion of works or COD, whichever is later, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure. The Parties while agreeing the Change of Scope shall also agree to the billing break-up for additional scope of work and the same shall be used to pay to the Concessionaire.

16.4 Reduction in the scope of work

- 16.4.1 If the Concessionaire has not completed construction of any part of the Additional Project Facilities on account of Force Majeure or for reasons solely attributable to the Authority or a due to reduction in the scope as identified in the CIP, the Parties shall jointly estimate the reduction in the scope of work and the value of such reduced scope of work based on the item rate as quoted by the Concessionaire in the Bid. Such value shall be deducted from the Staggered Annuity Payments to be made to the Concessionaire as per the payment terms in this Agreement.
- 16.4.2 In the event the reduction of the scope of work with respect to the operation and maintenance obligations of the Concessionaire during the Concession Period, the Authority shall estimate the cost of the reduced works as per a mechanism mutually agreed between the Parties based on the recommendations of the Independent Engineer. Such value shall be deducted from the O&M Quote of the respective Concession Year.

16.5 Power of the Authority to undertake works

In the event the Parties are unable to agree to the proposed Change of Scope Order in accordance with Article 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award the works or services, contemplated under the Article 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two percent) of the bid amount to the Authority, and thereupon securing the award of such works or services. It is also agreed that the Concessionaire shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but

shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies.

ARTICLE 17

OPERATION AND MAINTENANCE

The Concessionaire shall be responsible for performing the obligations under this Article 17.

17.1 Maintenance during Preliminary Operation Period

17.1.1 During the Preliminary Operation Period, the Concessionaire shall operate and maintain the Existing Project Facilities with the assistance of the Authority and ensure water supply in the Service Area is maintained in a manner which is similar to the conditions existing prior to the Effective Date. During such Preliminary Operation Period, the Concessionaire shall be paid as per the standard rates offered by the Authority to the contractors performing such operations or at the actual cost being incurred by the Authority for such operations. The scope of works to be performed by the Concessionaire during such Preliminary Operation Period shall be mutually agreed between the Parties as per the provisions of the Interim Takeover Plan. For the avoidance of doubt the scope of the Concessionaire during the Preliminary Operation Period shall be in a phased manner to facilitate a smooth transition of the operations in the Services Area prior to the Initial Operation Period. Any maintenance activity to be performed by the Concessionaire during the Preliminary Operation Period shall be done at the cost and expense of the Authority.

17.2 Maintenance during Initial Operation Period

17.2.1 During the Initial Operation Period, the Concessionaire shall maintain, at its cost, the Existing Project Facilities to ensure water supply to the Users in manner to improve the service delivery parameters as envisaged through the improvement in Key Performance Indicators thresholds and also to ensure that the quality of service and safety are maintained and shall undertake the necessary repair and maintenance works for this purpose as per Good Industry Practice. Provided that the Concessionaire may, interrupt supply of water from the Project Facilities if such interruption is necessary for the efficient progress of works during the Initial Operation Period and conforms to Good Industry Practice. Provided further that such interruption shall be undertaken by the Concessionaire only in accordance with the approved O&M Plan with written notice to the Authority and the Independent Engineer and notification to the Users as per the Standard Operating Procedures for communication. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Facilities and meeting the Key Performance Indicators. Notwithstanding anything contained herein this Agreement, the service levels within the Service Area shall be at least at the same level as at the time of Appointed Date and documented in the approved O&M Plan submitted by the Concessionaire.

17.2.2 On the date of commencement of the Initial Operation Period, or as soon thereafter as possible:

- (a) The Concessionaire shall obtain/renew and retain all the Applicable Permits required during the Initial Operation Period and the Operation Period;
- (b) The Concessionaire shall continue operation and maintenance of the Existing Project Facilities in compliance with Applicable Law; and
- (c) The Concessionaire shall provide the Authority and the Independent Engineer with access at all times to the Existing Project Facilities and to view all data and reports held by the various electronic information systems managed by the Concessionaire.

17.2.3 The key activities to be undertaken by the Concessionaire during the Initial Operation Period comprise the following:

- (a) Implementation of the agreed CIP including all necessary activities identified therein;
- (b) Operation and maintenance of the Existing Project Facilities from the Appointed Date by taking over the Existing Project Facilities, commencing all operations and maintenance activities, and systematically moving from intermittent water supply to continuous pressurized water supply, including notifying the Authority for removal of illegal connections;
- (c) Billing and revenue collection and depositing the same in the Escrow Account or such other account as designated by the Authority in accordance with applicable municipal rules;
- (d) Periodically updating of the CIP based on the revealed condition and performance information and other information with the objective of optimizing the CIP to achieve increased capital and operating efficiency;
- (e) Providing monthly reports of the service performance and progress in the implementation of the CIP;
- (f) Communications and outreach activities in the Service Area as agreed with and in collaboration with the Authority.
- (g) During the Initial Operation Period, the Concessionaire shall be responsible for providing the water in the Service Area which shall include, but not be limited to: (i) continued provision of intermittent water supplies in areas not converted to continuous pressurized water supply and in the event of no water supply to any zones, potable water for drinking purposes shall be provided by the Concessionaire through alternative arrangements in manner identified in the CIP; (ii) provision of continuous water supplies on those areas converted. The quality of service provided will be in accordance with the Key Performance Indicator in Schedule 5; and, for intermittent supplies, at a service level no worse than recorded in the CIP.
- (h) The Concessionaire shall be responsible for planning and implementing the O&M Plan and attending to emergencies as they arise as laid out in the agreed Emergency Response Plan and the Environmental Code of Practice.
- (i) The Concessionaire shall fulfil the following operational requirements, obligations and commitments during the Initial Operation Period:
 - (i) abstracting raw water from the existing and proposed sources of water, managing the water abstraction points and level instrumentation, de-weeding and de-silting the intake location and monitoring river flow levels including coordination with the water resource authorities, pumping and transmitting the abstracted raw water to the different treatment units;
 - (ii) treating the raw water to the stipulated national water quality standards at discharge from the treatment plants, including the safe disposal of any by-products of the treatment process;
 - (iii) pumping the treated water from the treatment works through the feeder mains via the treated water pumping stations to the service reservoirs;

- (iv) distributing the water from the service reservoirs to the Users addressing leakage in the networks, to the extent required to meet the Key Performance Indicators, through leakage repair, pipe rehabilitation, pipe replacement, pressure management and active leakage control;
- (v) operationalizing the part of the Service Area as identified in the CIP including for on-going pressure and flow monitoring, establishment of telemetry system, and data analysis;
- (vi) Preparation of annual water balance for those parts of the Service Area converted to continuous pressurized water supply;
- (vii) Providing new connections, and regularizing illegal connections in conformity with standards agreed in the CIP;
- (viii) Operating the User Service Centres and grievance redressal system as set out in the CIP;
- (ix) Sampling raw water at the point it enters the intake to check the raw water quality characteristics;
- (x) Sampling treated water as it leaves the water treatment works to ensure that it meets the quality standards stated in Schedule 5;
- (xi) Sampling treated water at taps of the Users to check for residual chlorine levels;
- (xii) Updating the Standard Operating Procedures in accordance with the experience gained during the Study Period and the Initial Operation Period; and
- (xiii) collecting User Charges in the Service Area.

17.2.4. The Concessionaire shall undertake:

- (a) planned maintenance of all electro-mechanical equipment and other devices existing, supplied, installed/erected and commissioned by the Concessionaire;
- (b) planned maintenance(including routine preventive maintenance) of all valves and pipeline/appurtenances/electro-mechanical equipment and other devices supplied, installed/erected& commissioned by the Concessionaire; and
- (c) planned maintenance activities of all other assets in accordance with Good Industry Practices.

17.2.5. The Concessionaire shall implement data capture systems to ensure that the various operational and maintenance activities, including leakage management activities, are recorded for analysis and to facilitate improved operations and maintenance performance by the Concessionaire. Asset registers and GIS information will be updated to reflect any changes to the Existing Project Facilities during the Initial Operation Period.

17.2.6. The Concessionaire shall with written instructions from the Authority replace illegal service connections with legal connections where the User applies to the Authority for the provision for a new connection and the Authority authorizes the same. If the User does not apply for a new connection or if the Authority does not approve such application, the Concessionaire shall recommend the Authority to disconnect such illegal connections after providing the User notice of 15 (fifteen) days.

17.2.7. Manage all aspects of customer services with the Users.

17.2.8 Periodic update of the CIP

- (a) The Concessionaire shall update the CIP once in every 5 (five) years to capture improved data on asset condition and performance, experience from operation of the Existing Project Facilities, actual progress in implementing the CIP and from any other information that will improve the quality of the CIP.
- (b) The annual update will include a section on progress made in the previous year in implementing the CIP, identifying any reasons for delays or lower than expected performance, and outlining the actions to be taken to a) eliminate such occurrences reoccurring and b) recover from the delays and lower performance identified.
- (c) The Concessionaire will propose revisions to the CIP to reflect the more up to date information, including a revised rolling procurement plan for the next three year period of which the first eighteen (18) months will be fixed and the remaining period indicative.

17.2.9. Communications and Outreach

- (a) The Concessionaire shall, in consultation with the Authority, notify the communities and User in the Services well in advance regarding the plans and time lines of conversion to continuous pressurized water supply, including the procedures that will be followed and actions that will need to be taken by the consumers/ households, billing related issues, type of supported / guidance available from the Concessionaire.
- (b) The Concessionaire shall cooperate and collaborate with the various mechanisms instituted by the Authority for facilitating outreach to the Users in the Service Area.
- (c) The Concessionaire shall, in consultation with the Authority, provide clear information to households on connection policy for existing connection holders, new connections, regularization of illegal connection, collection of arrears, and settlement of disputes.

- (d) The Concessionaire shall issue dummy bills to Users to test the billing system and to make Users aware of the new procedures, payment facilities and User complaint and information mechanisms.
- (e) The Concessionaire shall provide information on the importance of safe storage and handling of water after the conversion to Project Facilities to provide continuous water supply and on the opportunities for householders to manage their demand for water.
- (f) The Concessionaire shall provide advance warning to Users of planned maintenance that will affect such Users.

17.2.10 Performance Standards of the Concessionaire during Initial Operation Period

- (a) During the Initial Operation Period the Concessionaire shall demonstrate to the Authority and the Independent Engineer, the achievement of the Key Performance Indicators set out in Schedule 5. The Independent Engineer shall certify the achievement of the Key Performance Indicators.
- (b) In the event of a reduction in the quality or quantity of water available for any reason attributable to Concessionaire:
 - (i) in respect of the zones in the Service Area which have not been converted to continuous pressurized water supply; and
 - (ii) in respect of the zones in the Service Area converted to continuous pressurized water supply;

the Concessionaire shall provide an alternative water supply, at his own cost, to affected Users within 24 hours from the time of disruption, with a minimum quantity of [twenty (20)] litres per person per day for the duration of the reduced quality or quantity. In the event of reduction in the quality or quantity of water available for any reason other than Force Majeure including the periods of reduced availability of raw water and the Concessionaire fails to ensure alternate water supply within 24 hours of such disruption, then the Authority shall provide an alternative water supply through an independent party at the cost of the Concessionaire.

- (c) The Authority shall, through the Independent Engineer, monitor achievement of Key Performance Indicators in relation to the operation and maintenance of the Existing Project Facilities by the Concessionaire during the Initial Operation Period following the agreed methodology for measurement of the Key Performance Indicators developed in the CIP in accordance with this Agreement.

17.2 A Procurement made during Preliminary Operation Period and Initial Operation Period

In accordance with the Advance Procurement Plan, the Concessionaire shall procure at its sole cost and expense and maintain in a time bound manner any inventory of material that may be required for operation and maintenance of the Existing Project Facilities during the Preliminary Operation Period and the Initial Operation Period. The cost of the material procured by the Concessionaire as part of Advance Procurement Plan shall be deemed to have been included in the EPC Quote and shall therefore form a part of the Staggered Annuity Payments to be made to the Concessionaire during the Construction Period. The Concessionaire shall not be entitled to claim any additional payment for the cost incurred in purchase of material and maintaining inventory in accordance with the Advance Procurement Plan.

17.3 Maintenance during Operation Period

17.3.1 During the Operation Period, the Concessionaire shall operate and maintain the Project Facilities in accordance with this Agreement in compliance with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Technical Specifications and Good Industry Practice.

17.3.2 In addition to the above stated responsibilities the Concessionaire shall perform the following obligations during the Operation Period:

- (a) Operation and Maintenance of the Project Facilities delivering continuous pressurized water services in line with the Key Performance Indicators, CPHEEO guidelines and the Environmental Code of Practice;
- (b) Billing and collection of User Charges and transferring same to the Escrow Account;
- (c) Periodically updating the CIP and the O&M Plan and its implementation;
- (d) Obtaining and maintaining Applicable Permits that the Concessionaire requires to operate and maintain the Project Facilities and provide the water supply services;
- (e) Submitting monthly reports on the operation and maintenance activities;
- (f) Communications and outreach to the Users in the Service Area.
- (g) During the Operation Period, the Concessionaire shall be responsible for providing continuous water supply to the Users.
- (h) Planning and implementing routine operations and maintenance activities and attending to emergencies as they arise as laid out in the agreed Emergency Response Plan.
- (i) The Concessionaire shall also be responsible to fulfil the following operational requirements, obligations and commitments during the Operation Period:
 - (i) Abstracting raw water from the Project Facilities, managing the water abstraction points by maintaining required water levels and level instrumentation, de-weeding and de-silting the intake location and monitoring river flow levels including coordination with the water resource authorities, pumping and transmitting the abstracted raw water to the different treatment units;
 - (ii) Treating as per Applicable Law the raw water to the stipulated national water quality standards at discharge from the treatment plants, including the safe disposal of any by-products of the treatment process;
 - (iii) Pumping the treated water from the treatment works through the feeder mains via the treated water pumping stations to the service reservoirs;
 - (iv) Distributing the water from the service reservoirs to the Users addressing leakage in the networks, to the extent required to meet the Key Performance Indicators, through leakage repair, pipe rehabilitation, pipe replacement, pressure management and active leakage control;
 - (v) Ensuring 100% of all property connections, public stand posts and faucets to street storage tanks are metered and computerized records of readings are maintained;
 - (vi) Preparation of annual water balance for those part of the Service Area converted to continuous pressurized water supply;
 - (vii) Providing new connections, and regularizing illegal connections in conformity with standards in the CIP;
 - (viii) Operating the customer service centres and grievance redressal system as set out in the CIP;
 - (ix) Sampling raw water at the point it enters the intake to check the raw water quality characteristics;
 - (x) Sampling treated water as it leaves the water treatment works to ensure that it meets the potable water specification;
 - (xi) Sampling treated water at customer taps to check for residual chlorine levels;

- (xii) Update of the Standard Operating Procedures to reflect experience gained during the Initial Operation Period; and
- (xiii) Updating the O&M Plan for incorporation into the periodical update of the CIP.
- (xiv) Maintaining and upgrading the computerized maintenance management system;
- (xv) Planned maintenance of all electro-mechanical equipment & other devices existing, supplied, installed/erected as part of the Additional Project Facilities;
- (xvi) Planned maintenance of all valves and pipeline/appurtenances/electro-mechanical equipment and other devices supplied, installed/erected by the Concessionaire as part of the Additional Project Facilities.
- (xvii) Planned maintenance activities of the Project Facilities in accordance with Good Industry Practice.
- (xviii) Provision of chemicals, consumables, and spares for activities other than Major Maintenance and in relation to Major Maintenance activities in accordance with Article 2.2.6 of Volume III - Part II.
- (xix) implement data capture systems to ensure that the various operational and maintenance activities, including leakage management activities, are recorded for analysis and to facilitate improved operations and maintenance performance by the Concessionaire of asset registers and GIS information will be updated to reflect any changes to the Project Facilities during the Operation Period.

17.3.3 During the Operation Period the Concessionaire shall be fully responsible for all costs associated with minor maintenance activities of the Project Facilities. The Concessionaire's proposals for major maintenance will be included in the annual update of the CIP.

17.3.4 In the Operation Period the Concessionaire shall continue to be responsible for billing and collection in the Service Area for and on behalf of the Authority in accordance with Article 34, which will be on a monthly basis unless agreed otherwise with the Authority.

17.3.5 Updating and Implementation of the CIP

- (a) The Concessionaire shall update the CIP and the O&M Plan once in every 5 (five) years to capture improved data on asset condition and performance, experience from operation of the Project Facilities, actual progress in implementing the CIP and from any other information that will improve the quality of the CIP and the O&M Plan.
- (b) The Concessionaire shall at its cost carry out during the Operation Period all preventive/routine/minor maintenance activities.
- (c) All expansions of water supply network / pumping stations / treatment plants etc., not covered under the CIP the Concessionaire shall initiate a Change in Scope request which shall be approved as per Article 16.

17.3.6 Communications and Outreach

- (a) The Concessionaire shall, in consultation with the Authority, notify the communities and User in the Services well in advance regarding the plans and time lines of conversion to continuous pressurized water supply, including the procedures that will be followed and actions that will need to be taken by the consumers/ households, billing related issues, type of supported / guidance available from the Concessionaire.
- (b) The Concessionaire shall cooperate and collaborate with the various mechanisms instituted by the Authority for facilitating outreach to the Users in the Service Area.

- (c) The Concessionaire shall, in consultation with the Authority, provide clear information to households on connection policy for existing connection holders, new connections, regularization of illegal connection, collection of arrears, and settlement of disputes.
- (d) The Concessionaire shall issue dummy bills to Users to test the billing system and to make Users aware of the new procedures, payment facilities and User complaint and information mechanisms.
- (e) The Concessionaire shall provide information on the importance of safe storage and handling of water after the conversion to Project Facilities to provide continuous water supply and on the opportunities for householders to manage their demand for water.
- (f) The Concessionaire shall provide advance warning to Users of planned maintenance that will affect such Users.

17.3.7 Performance Standards during the Operation Period

- (i) During the Operation Period, the Concessionaire shall meet the Key Performance Indicators set out in Schedule 5.
- (ii) the Independent Engineer shall monitor achievement of Key Performance Indicators set out in Schedule 5.
- (iii) In the event of reduced quality or quantity of water in the Service Area, the Concessionaire shall within 24 hours from the time of disruption, provide an alternative water supply of a minimum quantity of 20 litres per person per day for the duration of the reduced quality or quantity.

In the event reduction in the quality or quantity of water available for any reason other than Force Majeure and the Concessionaire fails to ensure an alternative water supply within 24 hours of such reduction, then the Authority shall provide alternate water supply through an independent party at the cost of the Concessionaire.

17.4 General obligations of the Concessionaire

17.4.1 Notwithstanding its specific obligations under the Preliminary Operation Period, the Initial Operation Period and the Operation Period of this Agreement, the Concessionaire shall have the following general obligations as they may be applicable during the Preliminary Operation Period, the Initial Operation Period and Operation Period:

- (a) to operate the Existing Project Facilities and the Project Facilities, as the case may be, and provide water supply services in accordance with this Agreement, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and Good Industry Practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods;
- (b) to carry out day-to-day management and operation of the water supply production, transmission and distribution system within the Service Area;
- (c) to be responsible for maintaining all Applicable Permits to operate the Project Facilities provide water supply services throughout the Preliminary Operation Period, the Initial Operation Period and the Operation Period;
- (d) to ensure that all materials and workmanship used in the operation and maintenance of the Project Facilities shall be in accordance with relevant standards of Bureau of Indian Standards and in the absence of which to the relevant standards of International Standards Organisation;
- (e) to maintain all records and data in up to date format on the various information systems;

- (f) to permit the Independent Engineer to conduct quarterly and annual audits to regularly review the performance of the Concessionaire under the Agreement from the Preliminary Operation Date till the end of the Concession Period, and shall fully cooperate with the Independent Engineer in the conduct of audit and review exercises and checks as may be required under this Agreement and shall immediately provide all requested information to the Independent Engineer;
- (g) to permit the Independent Engineer, from the commencement of the Preliminary Operation Period, the Initial Operation Period and the Operation Period, to review the data, analysis, and design computations which support the Concessionaire's proposals in the CIP, and shall fully cooperate with the Independent Engineer in the conduct of any such review;
- (h) to update on a periodic basis the GIS system and all relevant maps and drawings of the Service Area at a scale of 1:2000 and list of every connection and property connected to the public water distribution network;
- (i) to update on a periodic basis the User data on any additions to the property, addition or reduction in number of residents, usage of water for intended use etc;
- (j) not to engage, and ensure that its employees do not engage, either directly or indirectly, in any business or professional activities in India which would conflict with the provisions under this Agreement;
- (k) To set-up website dedicated to the project which shall provide information regarding plan maintenance, approved quarterly performance reports, tariff etc. it should also have a link to online registration of complaints.
- (l) to update the Standard Operating Procedures periodically to reflect latest practices;

17.4.2 Drinking Water Quality Standards

The water supplied by the Concessionaire in the Service Area shall comply with the applicable drinking water quality standards as declared from time to time by the Central Public Health & Environmental Engineering Organisation, Ministry of Urban Development, Government of India, Government of Tamil Nadu or such other equivalent or similar authority or department, which compliance shall be required in a phased manner in accordance with the schedule for implementation of 24x7 supply. The Concessionaire shall comply with any requirements in relation to sampling, record keeping or reporting as may be required under Applicable Laws.

17.5 Obligation to supply Water for Public Purposes

- (a) The Concessionaire shall make available an adequate supply of water for fire-fighting and other public purposes as the Authority may reasonably request subject to any considerations arising from the actual technical conditions of the Project Facilities and the actual and adequate supply of raw water by the Authority.
- (b) The volume of water provided by the Concessionaire for fire-fighting or to the Authority shall be deemed to have been billed to and collected from the relevant authorities or the Authority, as the case may be, for the purposes of Key performance Indicators. The quantity of water required in particular for firefighting and other public purposes shall be limited to a maximum of 2% (two percent) of the total water supply or such other qualities as may be approved by the Authority.

17.6 Interruptions in water supply during the Preliminary Operation Period or the Initial Operation Period

Notwithstanding anything to the contrary contained in any provision of this Agreement, but subject to the Applicable Laws:

- (i) the Concessionaire shall be entitled to request the Authority/Independent Engineer to prohibit or regulate the use of water by Users, for any uses other than domestic use, upon the occurrence of any event beyond its control (whether or not such event is an event of Force Majeure under this Agreement) as a result of which the Concessionaire is unable to provide the quantity of water required by the Users;
- (ii) until the commissioning of any required Additional Project Facilities, the Concessionaire shall be permitted to establish an intermittent schedule of water supply which shall be submitted to Authority;
- (iii) the Concessionaire shall be entitled to make interruptions in the distribution of water supply:
 - (a) for any repairs, rehabilitation works, renewal works, development of Additional Project Facilities and extension/modification of the Project Facilities; and
 - (b) for repairs in the distribution networks or in the event of accidents requiring an immediate interruption in which case, the Concessionaire shall be authorized to take any measures as may be considered desirable.
- (iv) The Concessionaire shall sufficiently in advance notify the Authority / the Independent Engineer of any interruptions of water supply in the Service Area to the extent reasonably practicable.

17.7 Disconnections

Subject to Applicable Laws, in the event that a User qualifies the relevant conditions in the water supply regulations made in this behalf, which warrants the water supply connection of the said User to be disconnected, in accordance with the relevant Applicable Laws, the Concessionaire shall be entitled to request the Authority to disconnect the said water supply connection.

However, before making any request to the Authority for disconnecting the water supply connection, the Concessionaire shall make all reasonable efforts to collect the outstanding dues and arrears from the defaulting Users. The Concessionaire shall state the ground for seeking such disconnection in its request.

The Authority shall, if any of the ground mentioned in the relevant Applicable Laws for exercising the power of disconnection is made out, take requisite actions towards undertaking such disconnections in accordance with the relevant Applicable Laws.

Such defaulting User shall, subject to making the payments of applicable reconnection charges to the Authority, be eligible to apply for a reconnection only upon rectification of the default, due to which the connection of such defaulting User was disconnected and upon payment in full of the whole of the outstanding amounts (including all previously billed amounts which are outstanding and interest and/or late payment charges / penalties as prescribed in the water supply regulations and/or the agreement for supply water entered into with such User, as the case may be).

However, the Authority may direct the Concessionaire to continue the supply of water to the defaulting User by giving written instructions. Provided that, upon the Concessionaire notifying the Authority of a defaulting User the amounts due from such defaulting User for the purposes of Key Performance Indicators shall be deemed to have been billed to and collected.

17.8 Overriding powers of the Authority

- 17.8.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and in particular the Maintenance Requirements and the O&M Plan, and such breach is causing or likely to cause hardship to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship, as the case may be.
- 17.8.2 In the event that the Concessionaire, upon notice under Article 17.8.1, fails to rectify or remove any hardship within a reasonable period, the Authority may exercise overriding powers under this Article 17.8.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations the Authority shall be entitled to recover them from the Concessionaire.
- 17.8.3 In the event of a national emergency, civil commotion or any other act of Force Majeure, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project Facilities or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority.

17.9 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Facilities is not available to Users on account of any of the following for the duration of:

- (a) an event of Force Majeure;
- (b) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project; or
- (c) Non-provision of adequate raw water, disruptions in power supply etc.

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay;

Provided further that the Concessionaire shall keep all unaffected parts of the Project Facilities operational, provided they can be operated safely.

17.10 Standard Operating Procedures

17.10.1 The Concessionaire shall prepare a set of Standard Operating Procedures (SOPs) for the management and operation of the Project Facilities. Such Standard Operating Procedures shall be developed for effective and efficient service delivery which shall include but not be limited to, the following:

- (i) Emergency Response Plan (ERP);
- (ii) User Management and Communications Plan;
- (iii) Energy optimization program;

- (iv) Health and safety plan;
- (v) New Connections policy for all types of connections including services to the urban poor and treatment of illegal connections;
- (vi) Network expansion and replacement policy.

17.10.2 The Concessionaire shall also develop a comprehensive water quality surveillance program covering source, treatment and distribution systems. The program shall be based on statutory requirements as per the Applicable Law.

17.11 User Service Centres

17.11.1 The Concessionaire shall set up of customer service centres (“CSC”) of at least one CSC for every 30,000 connections and part thereof including one central control centre to facilitate receiving and resolving User requests, complaints, and grievances in the areas of new connections, service deficiencies, resolution of billing disputes, inappropriate actions by staff, etc. While doing so the Concessionaire shall take into consideration the existing User Service Centres and propose an optimal solution. The CSCs shall function between 8am to 8pm during business days including Saturdays and between 8am to 1pm during public holidays including Sundays. The CSC shall have reasonable space and furniture for the Customers to wait, interact and represent their requirements. During the other off peak times of 8pm to 8am, the Concessionaire shall have a facility to receive User complaints and grievances through telephone, fax, text message, email and any other reasonable electronic means. The CSC shall be equipped with sufficient human resources with proficiency in local language, hardware and software to facilitate continuous record of User requests, monitoring the resolution, and reporting completion of necessary actions and tasks.

17.12 Connections to Users

17.12.1 The Concessionaire shall prepare a detailed programme to design its connection policy (“Connection Policy”) for undertaking sanction and installation of connections to new Users. The Connection Policy shall be in accordance to the principles of the water policy as may be applicable in the state of Tamil Nadu and any bye laws framed by the Authority from time to time.

17.12.2 The Connection Policy may provide installation of the following optional improvements by the User:

- a) service pipe after the customer meter connected to a faucet (tap) at a convenient point; and
- b) a ball-cock valve on an existing ground storage tank after the meter for prevention of overflow or back flow.

17.12.3 In the case of Bulk Water Supply (Treated or Raw Water) with connections of 25mm diameter or higher, such as apartments, housing societies, private layouts, institutions and industries within the Service Area, the Concessionaire shall propose installation of a suitably sized, accurate consumption meter with the automatic meter reading ability compatible to smart meter technologies. The Concessionaire as part of the revision of water byelaws should examine and propose necessary amendments for installation of individual customer meters for all new apartment or community housing complexes to facilitate any future legal requirements of billing individual apartment as a separate connection.

17.12.4 The Concessionaire, based on the findings during the Study Period, and in accordance to the proposed Connection Policy, shall lay out a plan for identification of illegal or un-authorized connections and necessary obligations of the Authority to permit regularization of such illegal connections. In the case of a property with an illegal connection where the property owner accepts the option to legitimise the connection, to facilitate regularization of connection; and if the property owner does not opt to legalise the connection, shall intimate the Authority for disconnection of such illegal connections. The Authority shall be responsible for the disconnection of such illegal connection.

17.12.5 The Concessionaire shall develop procedures consistent with the Connection Policy for:

- (a) (i) sanctioning new service connections; (ii) change of ownership for existing connections; (iii) division of existing connections consequent to division of property, (iv) disconnections in case of defaulting User; and (v) reconnections and (vi) dealing with the un-authorized or illegal connections;
- (b) preparing, issuing, and collecting a bill for water service for every User, and dealing with under-payment or non-payment; including reporting all outstanding accounts to the Authority, once in every three months;
- (c) the issuance of dummy volumetric bills for a period of [three (3)] months after conversion to continuous pressurized water supply to allow Users to understand the implications of volumetric charging and to undertake improvements to internal plumbing for prevention of leakage or overflows or wastage; and
- (d) (i) meter reading procedures and arrangements, (ii) meter reader control (iii) efficient and accurate meter reading practices (iii) respond to reports of malfunctioning meters from Users; (iv) testing and calibrating meters as required (v) replacing old, malfunctioning or low accuracy meters (vi) replacing all meters older than ten (10) years and of metrological class lower than Class B; and (iv) how water consumption is estimated for un-metered Customers.

17.12.6 The Concessionaire shall develop detailed revenue collection procedures, and plans for establishing facilities for achieving the prescribed level of revenue collection efficiency such as billing offices or through Banks and electronic transfers.

17.12.7 The Concessionaire shall prepare a plan to set up a water meter testing bench for testing and calibrating water meters.

17.12.8 The Concessionaire shall develop a plan to install a water meter at every stand-post or other service connection supplying water public and municipal buildings or property directly connected to the public network or fed from a storage tank filled from the public network.

17.13 Maintenance Manual

17.13.1 No later than 90 (ninety) days prior to the COD, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Facilities in conformity with the Technical Specifications, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 3 (three) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

17.13.2 Without prejudice to the provision of Article 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of the Project Facilities and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Facilities, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.14 Damages for breach of maintenance obligations

17.14.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the specified time limit or is unable to perform any of the obligations stated in this Article 17 or meet the Key Performance Indicators, it shall be deemed to be in breach of this Agreement. The Authority shall be entitled to recover Damages at the rate stated in Schedule 5 for the respective Key Performance Indicators which the Concessionaire has been unable to achieve. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.14.2 The Damages set forth in Clause 17.14.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a lesser sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safe operation of the Project Facilities. In particular, the Concessionaire shall comply with the safety requirements set forth in Schedule 11 (the “**Safety Requirements**”).
- 18.1.2 The Independent Engineer shall carry out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Inspection and measurement of Key Performance Indicators

The Independent Engineer shall inspect the Project Facilities at least once in [a month] and measure the compliance of the Concessionaire with the Key Performance Indicators. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the O&M Plan and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.2 Tests

For determining that the Project Facilities conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.3 Remedial measures

19.3.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Articles 19.1 and 19.2 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.3.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Article 19.3 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with Schedule 5.

ARTICLE 20

INDEPENDENT ENGINEER

20.1 Appointment of Project Management Consultant

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in the Tamil Nadu Transparency in Tenders Act, 1998 and read with the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 and any amendments thereof to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 60 (sixty) days from the Effective Date and shall initially be for a period of 5 (five) years which may be extended for a further term of 5 (five) years. On expiry of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further terms in accordance with the provisions of the above stated legislations and such procedure shall be repeated after expiry of each appointment.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule 12.

20.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule 12.

20.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

20.2.4 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority. The Authority shall also have the option of adjusting the remuneration of the Independent Engineer from the payments due to the Concessionaire under this Agreement.

20.4 Termination of appointment

20.4.1 The Authority, subject to Article 20.4.2, may terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Article 20.1.

20.4.2 If the Authority / the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, the Authority shall, where applicable after receiving a written representation from the Concessionaire, hold a tripartite meeting with the Concessionaire and the Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Article 20.1.

20.5 Authorized signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

20.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 21

FINANCIAL CLOSE

21.1 Financial Close

21.1.1 The Concessionaire may at its discretion avail project financing for the Project. In the event the Concessionaire decides to avail financing for the Project it hereby agrees and undertakes that it shall achieve Financial Close within 240 (two hundred and forty) days from the Effective Date. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Construction Period Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 240 (two hundred and forty) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 330 (three hundred and thirty) days from the Effective Date, the Concessionaire shall be entitled to a further period not exceeding 95 (ninety five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Construction Period Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 330 (three hundred and thirty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure.

21.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

21.2 Termination due to failure to achieve Financial Close

21.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 26.3.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

21.2.2 Upon Termination under Article 21.2.1, the Authority shall be entitled to encash the Bid Security or the Construction Period Performance Security, as the case may be, and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or the Construction Period Performance Security, as the case may be.

ARTICLE 22

PAYMENTS

22.1 Composite Quote

22.1.1 The Parties expressly agree that the aggregate cost of:

- (i) Construction of the facilities as envisaged in the CIP;
- (ii) O&M of the Existing Project Facilities as well as the Additional Project Facilities, to the extent developed, during the Initial Operation Period; and
- (iii) the O&M of the Project Facilities during the Operation Period;

is Rs. [•] (in words) (the “Composite Quote”).

Composite Quote shall be the aggregate of the EPC Quote and the O&M Quote submitted by the Successful Bidder as part of the financial proposal in the Bid for the entire Concession Period.

The Parties further agree that the Composite Quote specified herein for payment to the Concessionaire includes the cost of construction, physical contingencies, all applicable Taxes and all other costs, expenses and charges for and in respect of construction of the facilities to be provided as part of the CIP and O&M of the Existing Project Facilities and the Project Facilities, respectively, save and except any additional costs and benefits arising on account of penalties, incentives, Change of Scope, Change in Law or breach of this Agreement, which costs shall be due and payable to the Concessionaire or payable by the Concessionaire in accordance with the provisions of the Agreement. It is hereby clarified that apart from the payments stated hereinabove, the Concessionaire shall bear the expenses to be incurred in construction of any additional facilities envisaged in the CIP. However, in the event of increase in number of House Service Connections the cost shall be borne by the Authority.

22.1.2 Annuity Payment of Composite Quote

The Composite Quote shall be paid in a staggered annuity manner during the Concession Period as per the following year-wise breakup subject to various adjustments as per the provisions of this Agreement (“**Staggered Annuity Payment**”).

Concession Year (Calculated from Appointed Date)	Yearwise Composite %	Cumulative Composite %
1	2.500%	2.500%
2	3.300%	5.800%
3	6.800%	12.600%
4	7.400%	20.000%
5	1.980%	21.980%
6	2.080%	24.060%
7	2.180%	26.240%
8	2.380%	28.620%
9	2.480%	31.100%
10	2.680%	33.780%

11	2.880%	36.660%
12	3.050%	39.710%
13	3.220%	42.930%
14	3.410%	46.340%
15	3.600%	49.940%
16	3.820%	53.760%
17	4.040%	57.800%
18	4.290%	62.090%
19	4.530%	66.620%
20	4.780%	71.400%
21	5.080%	76.480%
22	5.380%	81.860%
23	5.700%	87.560%
24	6.040%	93.600%
25	6.400%	100.000%

The Cumulative Staggered Annuity Payment Eligibility of the Concessionaire is calculated as the product of the Composite Quote and the applicable Cumulative Composite % indicated above.

*For interim payments during a Concession Year, the Yearwise Composite % indicated above for the relevant Concession Year shall be prorated based on the ratio of the number of completed days in such Concession Year and the total number of days in the Concession Year. The prorated Yearwise Composite % so calculated shall be added to the Cumulative Composite % of the preceding Concession Year for arriving at the interim Cumulative Composite %.

22.1.3 EPC Deduction

The EPC work targets for the Concessionaire during the Construction Period shall be as follows:

Concession Year	1	2	3	4
EPC Target %	10%	15%	35%	40%
Cumulative EPC Target %	10%	25%	60%	100%

The applicable deduction in the EPC payment is calculated as follows:

Cumulative EPC Deficit % = % shortfall in the execution of overall certified EPC works *vis a vis* the Cumulative EPC Target %.

Cumulative EPC Deduction = EPC Quote x EPC Deficit % x (1 - Mobilisation Adjustment) x (1- Preservation Adjustment)

Where:

Mobilisation Adjustment = 10%

Preservation Adjustment = 20%

22.1.4 Mobilisation Deduction

The cumulative mobilisation deduction shall be computed as follows:

Cumulative Mobilisation Deduction = EPC Quote x % completion of EPC works as certified by the Independent Engineer subject to a maximum of applicable interim EPC Target % x Mobilization Adjustment.

22.1.5 Penalties

The penalties imposed on the Concessionaire as per the various provisions of this Agreement.

Cumulative Damages = sum total of all the applicable penalties imposed on the Concessionaire till date.

22.1.6 Incentives

The incentives claimed by the Concessionaire as per the various provisions of this Agreement.

Cumulative Incentive = sum total of all the applicable incentives claimed by the Concessionaire till date

22.1.7 EPC Payment Claim

Cumulative EPC Payment Claim shall be determined as follows:

Cumulative EPC Payment Claim = EPC quote x (% completion of EPC works as certified by the Independent Engineer subject to a maximum of applicable interim EPC Target %)

% completion of EPC works is the ratio, of the total invoices raised by the Concessionaire till date (excluding the change of scope claims) vis a vis the EPC Quote submitted by the Concessionaire, expressed as a %.

22.1.8 Payments under Staggered Annuity Model

The payment under the Staggered Annuity Model shall be:

Cumulative EPC Payment Claim + prorated Cumulative O&M Quote - Cumulative Mobilisation Deduction - Cumulative Damages + Cumulative Incentive – Cumulative payments received till date.

However, in any case the actual payment made under Staggered Annuity Model as calculated above shall not exceed the following amount: Cumulative Staggered Annuity Payment Eligibility - Cumulative EPC Deduction - Cumulative Mobilisation Deduction - Cumulative Damages + Cumulative Incentive – Cumulative payments received till date – deductions due to reduction in scope as per Article 16.4;

The difference amount in such scenarios shall be withheld by the Authority. The payment mechanism will automatically ensure that such withheld amounts will get released to the Concessionaire in due course of time, subject to the Concessionaire meeting the various applicable provisions of the Agreement.

22.1.9 Except for deduction on account of applicable Taxes and duties, the Authority shall not retain any part of the payments made to the Concessionaire in accordance with Article 22.1.8.

22.1.10 The Concessionaire may claim his payments on a quarterly basis by submitting the necessary invoices in support of its claim. The EPC claim shall be on the basis of the CIP and the O&M claim shall be on the basis of the prorated O&M Quote for the relevant Concession Year.

22.2 Additional Payments

(i) Change of Scope

In addition to the amounts calculated under Article 22.1.8, the Concessionaire shall be eligible for payments under Article 16.3 for additional scope of works performed in accordance with Article 16. The payments so made shall not be considered as part of the Cumulative payments received till date, while computing the payments under Article 22.1.8.

(ii) Early completion of EPC works

In the event the Concessionaire is able to achieve work targets over and above the interim Cumulative EPC Target % as on date, the Concessionaire shall be entitled to claim for the additional works completed after adjusting the Mobilization Adjustment and Preservation Adjustment. The payment so made shall be considered as part of the Cumulative payments received till date, while computing the payments under Article 22.1.8.

22.3 Mobilization Advance

The Concessionaire shall provide to the Authority no later than 7 (seven) days from the Effective Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to the Mobilization Advance in the form set forth in Schedule 8 (the “**Mobilization Advance Security**”). The Mobilization Advance shall not bear any interest.

The Authority shall, on request of the Concessionaire, made at any time after submission of the Mobilization Advance Security, make an advance payment in a sum not exceeding 10% (ten per cent) of the EPC Quote stated in the Composite Quote (the “**Mobilization Advance**”). The Mobilization Advance shall be paid by the Authority within 7 (seven) days from the date of receipt of the request from the Concessionaire. The Mobilization Advance shall be deducted by the Authority from the payments made to the Concessionaire in accordance with the provisions of Article 22.1.8.

22.4 Treatment of incomplete works

22.4.1 The Parties acknowledge and agree that in the event COD occurs upon issuance of a Provisional Certificate, the payments made as per this Article 22 shall be made as if all works comprising the Project Facilities have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith.

22.4.2 In the event the Authority determines that any incomplete works referred to in Article 22.4.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 16 and the payments shall be reduced on account of such reduction of scope as per the provisions of Article 16 and Article 22.

ARTICLE 23

ESCROW ACCOUNT

23.1 Escrow Account

- 23.1.1 The Concessionaire and the Authority, anytime after 110 (one hundred ten) days from the Effective Date, agree open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement. The Parties agree that the Escrow Bank shall not be any bank with which either of the Parties have transactions.
- 23.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule 13.
- 23.1.3 The Parties shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in and withdrawals from the Escrow Account. The Parties agree the Escrow Account shall consist of separate sub-accounts namely the collection of the User Charges and the payment of Staggered Annuity Payments. In the event, as per applicable municipal rules, the User Charges are deposited in any other account designated by the Authority, the Authority shall cause such amounts to be transferred to the account opened in accordance with Article 23.2 within 1 (one) business day.
- 23.1.4 The Authority shall at any time during the Concession Period, maintain an amount not less than three months Staggered Annuity Payments due to the Concessionaire.

23.2 Reserve Fund Account

The Authority shall set up a separate account (“**Reserve Fund Account**”) wherein the grants provided by GoI, GoTN, TNIDB shall be deposited. The Concessionaire shall upon receiving instructions from the Authority deposit the User Charges in the Reserve Fund Account. The amounts collected from the User Charges shall first be used for accumulating the Staggered Annuity payments due for one year and thereafter the Authority shall use the amounts collected as User Charges for meeting its expenses as may be required to be incurred from time to time.

At any time during the Concession Period, in the event of a shortfall in the payment of the Annuity from the Escrow Account, the Authority shall upon receiving notice from the Escrow Bank transfer the shortfall amount from the Reserve Fund Account to the Escrow Account.

ARTICLE 24

INSURANCE

24.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Preliminary Operation Period, the Initial Operation Period, the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

24.2 Insurance Cover

Without prejudice to the provisions contained in Article 24.1, the Concessionaire shall, during the Preliminary Operation Period, the Initial Operation Period, the Construction Period and the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Facilities, including the Exiting Project Facilities handed over by the Authority to the Concessionaire, at replacement value;
- (b) Comprehensive third party liability insurance including injury to or death of personnel of the Authority during the execution of the Project;
- (c) The Concessionaire's general liability arising out of the Concession;
- (d) Liability to third parties for goods or property damage;
- (e) Workmen's compensation insurance; and
- (f) 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(a) to (e) above.

24.3 Notices to the Authority

No later than 45 (forty five) days prior to commencement of the Preliminary Operation period, the Initial Operation Period, the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply

24.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

24.5 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

24.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 24 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

24.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

24.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

24.9 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

ARTICLE 25

ACCOUNTS AND AUDIT

25.1 Audited accounts

- 25.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Annuities under this Agreement), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by the Independent Auditor, by the month of September of the subsequent Accounting Year. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Independent Auditor.
- 25.1.2 On or before the thirtieth day of September each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by the Independent Auditor giving summarized information on the expenses incurred in the operation and maintenance of the Project Facilities, the Annuity Payments and such other information as the Authority may reasonably require

25.2 Appointment of auditors

- 25.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as the Independent Auditor, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule [•]. All fees and expenses of the Independent Auditor shall be borne by the Concessionaire.
- 25.2.2 The Concessionaire may terminate the appointment of its Independent Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Independent Auditors being appointed from the Panel of Chartered Accountants.
- 25.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Independent Auditor is required to do, undertake or certify pursuant to this Agreement.

25.3 Certification of claims by the Independent Auditor

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by the Independent Auditor. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

25.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Article shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

25.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Independent Auditor, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

ARTICLE 26

FORCE MAJEURE

26.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 26.2, 26.3 and 26.4 respectively, if it affects the performance of the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

26.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Service Area);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 7 (seven) days, and not being an Indirect Political Event set forth in Article 26.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (e) the discovery of geological conditions, toxic contamination or archaeological remains in any part of the Service Area that could not reasonably have been expected to be discovered through a site inspection;

26.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 7 (seven) days;

- (c) any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

26.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 35 and its effect, in financial terms, exceeds the sum specified in Article 35.1;
- (b) compulsory acquisition in national interest or expropriation of any part of the Project Facilities or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit; or
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

26.5 Duty to report Force Majeure Event

26.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

26.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 26.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

26.6 Effect of Force Majeure Event on the Concession

26.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 21.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

26.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs before COD, the Concession Period and the dates set forth in the Implementation Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

26.7 Allocation of costs arising out of Force Majeure

26.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

26.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of construction of the Additional Project Facilities on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Annuity or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

26.7.3 Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

26.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 26, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

26.9 Termination Payment for Force Majeure Event

26.9.1 Upon Termination of this Agreement pursuant to Article 26.8 above, prior to COD, the following Termination Payment shall be made to the Concessionaire:

- (a) If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (Ninety per cent) of the Debt Due less Insurance Cover.
- (b) If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (i) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - (ii) 110% (one hundred and ten per cent) of the Adjusted Equity.
- (c) If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to:
 - (i) Debt Due; and
 - (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity.

26.9.2 Upon Termination of this Agreement pursuant to Article 26.8 above, after COD, the following Termination Payment shall be made to the Concessionaire:

- (a) If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- (b) If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (i) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
 - (ii) 80% of the Discounted Value of Future Net Cash Flows to the Equity; the discounting factor applied being the then SBI PLR – (minus) 3%
- (c) If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to:

- (i) Debt Due; and
- (ii) 100% (one hundred percent) of the Discounted Value of Future Net Cash Flows to the Equity; the discounting factor applied being the then SBI PLR – (minus) 3%.

26.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

26.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 27

COMPENSATION FOR BREACH OF AGREEMENT

27.1 Compensation for default by the Concessionaire

Subject to the provisions of Article 27.3, in the event of the Concessionaire being in material breach or default of this Agreement at any time after the Effective Date, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 27.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

27.2 Compensation for default by the Authority

Subject to the provisions of Article 27.3, in the event of the Authority being in material breach or default of this Agreement at any time after the Effective Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

27.3 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 28

SUSPENSION OF CONCESSIONAIRE’S RIGHTS

28.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default which affects or is likely to affect the operation and maintenance of the Existing Project Facilities during the Preliminary Operation Period or the Initial Operation Period and the Project Facilities during the Operation Period, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

28.2 Authority to act on behalf of Concessionaire

28.2.1 During the period of Suspension, the Authority shall, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account.

28.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred- during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Article 28.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

28.3 Revocation of Suspension

28.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

28.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

28.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders’ Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the

Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 28.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

28.5 Termination

- 28.5.1 At any time during the period of Suspension under this Article 28, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 28.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 29 as if it is a Concessionaire Default under Article 29.1.
- 28.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 28.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 29

TERMINATION

29.1 Termination for Concessionaire Default

29.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days or any other duration as mutually agreed between the Parties, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Construction Period Performance Security or the Operation Period Performance Security, as the case may be, has been encashed and appropriated in accordance with Article 9.2 and the Concessionaire fails to replenish or provide fresh Construction Period Performance Security or the Operation Period Performance Security, as the case may be, within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Construction Period Performance Security in accordance with Article 9.2, the Concessionaire fails to cure the Concessionaire Default, for which whole or part of the Construction Period Performance Security or the Operation Period Performance Security was appropriated, within a Cure Period of 90 (ninety) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the Implementation Schedule and continues to be in default for 270 (two hundred and seventy) days;
- (d) The Concessionaire abandons or manifests intention to abandon the construction of the Additional Project Facilities or operation of the Project Facilities without the prior written consent of the Authority;
- (e) the Concessionaire is in material breach of its obligations under Article 17 or the Safety Requirements, as the case may be;
- (f) the Punch List items have not been completed within a period set forth in Article 14.1;
- (g) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (h) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (i) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (j) a Change in Ownership has occurred in breach of the provisions of Article 5.3;
- (k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under this Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (l) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (m) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the execution of the Project;
- (n) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

- (o) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date.
- (p) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (q) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (r) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (s) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect;
- (t) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days.

29.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Article 29.1.3.

29.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 29.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

Provided further that upon written request from the Lenders’ Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

29.2 Termination for Authority Default

29.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with the provisions of Articles 6.1.2 (b), 6.1.2 (c), 6.1.2 (i) of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) The Authority has failed to make payment of 3 (three) consecutive Annuity Payments due to the Concessionaire within the period specified in this Agreement;
- (c) The Authority fails to provide, the Right of Way required for construction of the Additional Project Facilities.

29.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

29.3 Termination Payment

29.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall:

- (a) pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.
- (b) encash and appropriate the Construction Period Performance Security and or the Operation Period Performance Security as the case may be;
- (c) encash and appropriate the Mobilization Advance Security, for and in respect of the Mobilization Advance outstanding, if any and interest thereon, as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the works and maintenance activities under this Agreement.

29.3.2 Upon Termination on account of a Concessionaire Default during the Construction Period, the Authority shall:

- (a) pay as Termination Payment, the Annuity Payments which are due based on the Milestone achieved which is in terms of the Physical Progress made by the Concessionaire in the Project but have remained unpaid.
- (b) encash and appropriate the Construction Period Performance Security and or the Operation Period Performance Security as the case may be;
- (c) encash and appropriate the Mobilization Advance Security, for and in respect of the Mobilization Advance outstanding, if any and interest thereon, as agreed pre-determined compensation to the Authority for any losses, delays and cost of completing the works and maintenance activities under this Agreement

29.3.3 Upon Termination on account of an Authority Default, Authority shall pay to the Concessionaire:

- (a) if such Termination occurs during the Construction Period, by way of Termination Payment, an amount equal to:
 - (i) Debt Due; and
 - (ii) 120% (one hundred and twenty per cent) of the Adjusted Equity.
- (b) if such Termination occurs during the Operation Period, by way of Termination Payment, an amount equal to:
 - (i) Debt Due; and
 - (ii) 100% (one hundred per cent) of the discounted value of future net cash flows to the Equity; the discounting factor applied being the then SBI PLR – (minus) 3%.
- (c) Along with the payment under Article 29.3.3, the Authority shall:
 - (i) return the Construction Period Performance Security and / or the Operation Period Performance Security as the case may be, forthwith;
 - (ii) encash and appropriate the Mobilization Advance Security, for and in respect of the Mobilization Advance outstanding, if any and interest thereon.

29.3.4 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days from the date of Termination and demand made by the Concessionaire to the Authority with necessary details and in the event of any delay, the Authority shall pay interest at the Bank Rate, on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

29.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 29 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

29.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project Facilities forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Service Area for which the payment has been made as part of the Termination Payment;
- (c) Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Service Area or any part of the Project Facilities;
- (d) Require the Concessionaire to comply with the Divestment Requirements set forth in Article 30.1;
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the agreements with Contractors as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

29.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 29.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 30

DIVESTMENT OF RIGHTS AND INTEREST

30.1 Divestment Requirements

30.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Facilities;
- (b) deliver forthwith the actual or constructive possession of the Project Facilities, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Facilities of all defects and deficiencies so that the Project Facilities are compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all the Project Facilities shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project Facilities and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facilities, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

30.1.2 Subject to the exercise by the Authority of its rights under this Agreement to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

30.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving

due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the maintenance of the Project Facilities in comparison with the requirements of operation and maintenance under this Agreement, shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 30. Provided if the Termination occurs any time after the COD, if the Concessionaire fails to rectify any of the defaults in the maintenance of the Project Facilities, the Authority may rectify such default and adjust the costs incurred thereof, from the Operation Period Performance Guarantee.

30.3 Cooperation and assistance on transfer of Project

30.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project Facilities in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Service Area.

30.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of Concession Period and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

30.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Article 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

30.4 Vesting Certificate

The divestment of all rights, title and interest in the Project Facilities shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 15 (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project Facilities, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Facilities on the footing that all Divestment Requirements have been complied with by the Concessionaire.

30.5 Divestment costs etc.

30.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Facilities in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

30.5.2 In the event of any dispute relating to matters covered by and under this Article 30, the Dispute Resolution Procedure shall apply.

ARTICLE 31

ASSIGNMENT AND CHARGES

31.1 Restrictions on assignment and charges

31.1.1 Subject to Articles 31.2 and 31.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

31.1.2 Subject to the provisions of Article 31.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

31.2 Permitted assignment and charges

The restraints set forth in Article 31.1 shall not apply to:

- (a) mortgages/pledges/hypothecation of goods/assets other than the Project Facilities and their related documents of title, arising or created in the ordinary course of business and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements availed in relation to this Agreement. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (b) assignment of rights, interest and obligations of the Concessionaire to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

31.3 Substitution Agreement

31.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule 14.

31.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

31.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire and based on mutual agreement of the Parties, assign and/ or transfer any of its rights and benefits and/or obligations under this

Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 32

LIABILITY AND INDEMNITY

32.1 General indemnity

32.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User, or from any negligence of the Concessionaire under contract or tort, save and except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

32.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense arising out of:

- (a) The Authority commits a material default in complying with the provisions of Articles 6.1.2 (b), 6.1.2 (c), 6.1.2 (i) of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) The Authority has failed to make payment of 3 (three) consecutive Annuity Payments due to the Concessionaire within the period specified in this Agreement; or
- (c) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;

which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement, and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

32.2 Indemnity by the Concessionaire

32.2.1 Without limiting the generality of Article 32.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives;
- (c) any amounts due to the suppliers of material or service to the Concessionaire or its Contractors;
- (d) the Concessionaire not implementing the Project as per the Implementation Schedule, resulting in time and cost overruns;
- (e) the Contractor not adhering to the Key Performance Indicators which has resulted in the deterioration of services provided to the Users residing in the Service Area and/or action initiated by such Users against the Authority;
- (f) default by the Concessionaire under the Financing Agreements;

- (g) any defects in the Designs and Drawings leading to claim for damage by third parties against the Authority; or
- (h) any material breach of the representations and warranties provided by the Concessionaire under this Agreement.

32.2.2 Without limiting the generality of the provisions of this Article 32, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project Facilities. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Facilities, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Technical Specifications, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

32.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 32 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

32.4 Defense of claims

32.4.1 The Indemnified Party 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 such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 32, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be

reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

32.4.2 If the Indemnifying Party has exercised its rights under Article 32.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

32.4.3 If the Indemnifying Party exercises its rights under Article 32.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) The employment of counsel by such party has been authorized in writing by the Indemnifying Party;
- (b) The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
- (c) The Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-Articles (b), (c) or (d) of this Article 32.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

32.5 Survival on Termination

The provisions of this Article 32 shall survive Termination.

ARTICLE 33

RIGHTS AND TITLE OVER THE SERVICE AREA

33.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Service Area as a licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project Facilities by third parties in accordance with and subject to the provisions of this Agreement.

33.2 Access rights of the Authority and others

33.2.1 The Concessionaire shall allow free access to the Service Area at all times for the authorized representatives and vehicles of the Authority and/or its contractors, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

33.3 Property taxes

All property taxes on the Service Area shall be payable by the Authority as owner of the Service Area; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Service Area shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of license comprising this Agreement shall be paid by the Concessionaire. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand therefor.

33.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Service Area, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Facilities.

ARTICLE 34

USER CHARGES

34.1 Collection of User Charges

34.1.1 On and from the Construction Period, the Concessionaire shall for and on behalf of the Authority, collect User Charges from the Users of the Existing Project Facilities and parts of the Additional Project Facilities, as and when constructed, subject to and in accordance with this Agreement and the bye-laws/circulars/directions/rules made by the Authority in this regard.

Upon achievement of the COD, the Concessionaire shall collect User Charges from the Users of the Project Facilities, subject to and in accordance with this Agreement and the rules made by the Authority in this regard.

34.1.2 Billing and Revenue Collection

The Concessionaire shall, amongst others undertake the following:

- (a) read all water meters installed at the location of the User in accordance with the applicable bye-laws;
- (b) register all water meter readings at the location of the User in the appropriate computer data base;
- (c) update database of User by conducting house to house surveys and checks;
- (d) maintain and updated User database and link to the GIS;
- (e) rotate regularly the meter readers and meter reading routes;
- (f) introduce handheld meter reading devices to minimize meter reading and transfer errors;
- (g) set up a thorough illegal connections detection program including prevention of misuse of fire hydrants;
- (h) conduct regular surveys for meter tampering and by-passes;
- (i) collect User Charges in the Services Area; and
- (j) introduce a public awareness programme and request the assistance of the customers in reducing fraudulent actions.

34.1.3 The Concessionaire shall be responsible for billing and collection of User Charges in the Service Area for and on behalf of the Authority during the Initial Operation Period and the Operation Period, which will be on a monthly basis unless agreed otherwise with the Authority.

34.1.4 The Concessionaire shall directly deposit all of the User Charges collected, whether in the form of cash, cheques or other form, into the Reserve Fund Account or such other account as designated by the Authority in accordance with the municipal rules applicable from time to time. The Concessionaire can propose as part of the CIP, any other form or mode of bill payment methods such as partnering with banks or other utility bill payment such as telephones, mobile money, electricity companies.

34.1.5 The Concessionaire shall identify and record all outstanding accounts and take all necessary measures to collect outstanding accounts and submit to the Authority a summary and analysis of unpaid accounts once in every three months.

ARTICLE 35

CHANGE IN LAW

35.1 Increase in costs

If as a result of Change in Law during the Construction Period, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) or 2% (two per cent) of the total annual Staggered Annuity Payments in any Concession Year during the Construction Period, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35.1 shall be restricted only to events of changes in law directly affecting the Concessionaire's costs of performing its obligations during the Construction Period under this Agreement.

35.2 Reduction in costs

If as a result of Change in Law during the Construction Period, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 2% (two per cent) of the total Staggered Annuity Payments in any Concession Year during the Construction Period, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35.2 shall be restricted only to changes in law directly affecting the Concessionaire's costs of performing its obligations during the Construction Period under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Articles 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Authority at its discretion shall use the Financial Plan or the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be the applicable Bank Rate.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Concession Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Concession Year. Any demand for cash compensation payable for and in respect of any subsequent Concession Year shall be made after the commencement of the Concession Year to which the demand pertains, but no later than 2 (two) years from the close of such Concession Year.

35.5 Additional Time

If as a result of a Change in Law, the execution of any of the obligations of the Concessionaire under this Agreement is affected the Concessionaire may notify the Authority and propose amendments to this Agreement. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement. The Concessionaire shall be entitled to extension of time for a period no more than the days for which the obligations of the Concessionaire were affected.

ARTICLE 36

DEFECTS LIABILITY

36.1 Defects Liability Period

36.1.1 The Concessionaire shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project Facilities or any part thereof, till the expiry of a period of 1 (one) year commencing from the date of Provisional Certificate (the “Defects Liability Period”). Provided that the Defects Liability Period shall in no case be less than 6 (six) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the Project Facilities or any part thereof shall form a part of the maintenance obligations of the Concessionaire as specified in Article 17.

36.2 Remediating Defects

The Concessionaire shall repair or rectify all Defects and deficiencies observed by the Independent Engineer during the Defects Liability Period within a period of 15 (fifteen) days from the date of notice issued by the Independent Engineer in this behalf, or within such reasonable period as may be determined by the Independent Engineer at the request of the Concessionaire, in accordance with Good Industry Practice.

36.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Article 36.2, including any additional testing, shall be carried out by the Concessionaire at its own risk and cost, to the extent that such rectification or repair is attributable to:

- (a) the design of the Additional Project Facilities;
- (b) plant, materials or workmanship not being in accordance with this Agreement and the Technical Specifications;
- (c) improper maintenance during construction of the Project by the Concessionaire.

36.4 Concessionaire’s failure to rectify Defects

In the event that the Concessionaire fails to repair or rectify such Defect or deficiency within the period specified in Article 36.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Concessionaire’s cost so as to make the Project Facilities conform to the Technical Specifications and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Concessionaire, be determined by the Independent Engineer. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Authority from the Concessionaire and may be deducted by the Authority from any monies due to the Concessionaire or from the Construction Period Performance Guarantee.

36.5 Concessionaire to search cause

36.5.1 The Independent Engineer may instruct the Concessionaire to examine the cause of any Defect in the Additional Project Facilities or part thereof before the expiry of the Defects Liability Period.

36.5.2 In the event any Defect identified under Article 36.5.1 is attributable to the Concessionaire, the Concessionaire shall rectify such Defect within the period specified by the Independent Engineer, and shall bear the cost of the examination and rectification of such Defect.

36.5.3 In the event such Defect is not attributable to the Concessionaire, the Independent Engineer shall, after due consultation with the Authority and the Concessionaire, determine the costs incurred by the Concessionaire on such examination and notify the same to the Concessionaire, with a copy to the Authority, and the Concessionaire shall be entitled to payment of such costs by the Authority.

36.6. Extension of Defects Liability Period

The Defects Liability Period shall be deemed to be extended till the identified Defects under Article 36.2 have been remedied.

36.7 Replacement of assets upon expiry of Defects Liability Period

Upon expiry of the Defects Liability Period, any replacement of the assets in the Project Facilities shall be performed in accordance with the process provided in the Volume III of the RFP.

ARTICLE 37

DISPUTE RESOLUTION

37.1 Dispute resolution

- 37.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 37.2.
- 37.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

37.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the [Commissioner] of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 37.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 37.3.

37.3 Arbitration

- 37.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 37.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Article 37.3.2. Such arbitration shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 and rules made thereunder (“**Arbitration Act**”). The place of such arbitration shall be Chennai and the language of arbitration proceedings shall be English.
- 37.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration Act.
- 37.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 37 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 37.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

37.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 38

MISCELLANEOUS

38.1 Governing law and jurisdiction

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

38.2 Waiver

38.2.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

38.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

38.3 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Designs and Drawings submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- (b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

38.4 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

38.5 Survival

38.5.1 Termination shall:

- (a) Not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

38.5.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

38.6 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

38.7 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

38.8 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

38.9 Third parties

This Agreement is intended solely for the benefit of the Parties and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement including any Concessionaire's Contractor.

38.10 Successors and assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

38.11 Limitation of Liability

38.11.1 Neither Party shall be liable to the other Party for loss of use of any works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement, save and except as provided under Article 29 and Article 32.

38.11.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Article 29 and Article 32, shall not exceed the 20% of the EPC Quote during the Construction Period and 100% of the O&M Quote for the applicable Concession Year during the Operation Period. For the avoidance of doubt, this Article shall not limit the liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

38.12 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Coimbatore may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

Attention:
Designation:

Address:
Fax No:
Email:

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire.

Name:

Designation:
Address:
Fax No:
Email:

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

38.13 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

38.14 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN. SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:
(Signature)
(Designation)
(Name)
(Address)
(Fax No.)
(e-mail)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the [•] day of [•], 2016 hereunto affixed in the presence of [•] Director, who has signed these presents in token thereof and, Company Secretary /Authorized Officer who has countersigned the same in token thereof:

(Signature)
(Designation)
(Name)
(Address)
(Fax No.)
(e-mail)

SCHEDULE 1
MAP OF THE SERVICE AREA

SCHEDULE 2

[Indicative List of Existing Project Facilities.]

I. Siruvani

1. Intake Tower

Diameter of Intake Towers	:	6.00 m
Height of Tower	:	29.50 m
No. of off takes	:	4 Nos.
Level of off take points	:	874.70 m 870.59 m 866.47 m 861.50 m
Size of the off take	:	900 mm dia

2. Tunnel

Size of Tunnel	:	1.80 m x 2.10 m
Length of Tunnel	:	1.55 km
Sill level at tunnel entry	:	856.44 m
Sill level at tunnel exit	:	837.08 m
Slope	:	1 in 80

3. Pick Up Weir

Length of Anaiyar Stream	:	1.60 km
Length of weir	:	12.00 m
Height of weir	:	1.40 m
Dia of collection well	:	3.00 m

4. Treatment Works

A full scale treatment plant of 101.40 MLD capacity consists of the following components :

Aeration Chamber	:	16.20 m x 23.40 m
Chemical House	:	14.00 m x 25.00 m
Dividing Chamber	:	4.50 m Dia
Flash Mixer I and II	:	3.50 m Dia (each)
Clariflocculator I and II	:	52.00 m Dia (each)
Filter House with 16 beds	:	64.00 m x 22.00 m

5. Clear Water Reservoir

Capacity	:	45.00 lakhs litres
No. of compartments	:	2 Nos
Diameter	:	45.00 m
Depth of storage	:	3.00 m
Detention time	:	60 minutes

6. Transmission Main

Size of main	:	1000.00 mm Dia PSC pipe
Length of main	:	31.33 km

7. Break Pressure Tank

Diameter	:	6.00 m
Height	:	10.80 m

8. Service Reservoirs and Distribution Systems

No. of Service Reservoirs	:	24 nos.
Total capacity	:	260.75 lakhs litres
Total length of Distribution System	:	351 km

II. Pillur - II

1. Head Works

Diameter of collection well cum pump house	:	Depth of Well - 28 m
No. of Intake pipes	:	2 Nos.
Raw water pumpsets	:	4 x 376 HP (280kw) + 2 nos. standby
Duty	:	24000 lpm x 51.01 m

2. Raw Water Main

Raw water main	:	327 m (1500 mm dia MS pipe)
Length of Raw Water Tunnel	:	3850 m of 2.20 m dia
Shape of Tunnel	:	D shape (partly lined upto spring level)
Hydraulic level at Raw water Tunnel inlet	:	+451.40 m
Sill level of the Raw water Tunnel	:	446.00 m
Longitudinal slope of the Tunnel	:	1 in 900

Transverse slope of the Tunnel	:	1 in 24
Length of Raw water main from Tunnel		
Exit to treatment plant at Velliangadu	:	1500 mm PSC pipe - 1210 m
Discharge level at Treatment works site	:	441.50 m

3. Treatment Works

Capacity of Treatment Plant	:	125 MLD
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Pre Sedimentation Tank

Size of unit	:	100.50 m x 40 m x 3.90/4.90 m
Capacity	:	16.5 ML
Inlet arrangement	:	600 mm dia MS pipe
Sludge withdrawal arrangement	:	150 mm dia CI pipe

Aerator

Number of Units	:	1 No. (Cascade type)
Diameter of Aerator	:	10.3 m
No of Trays	:	4 drops

Parshall Flume

Number of Units	:	1 no.
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Flash Mixer & Stilling Chamber

Number of Units	:	2 nos. (one for each Clariflocculator)
Size of each Unit	:	3.0 m x 1.5 m x 3.4 m
Detention Time	:	60 seconds
No. of Agitator in flash Mixer	:	1 no.

Clariflocculator

Number of Units	:	2 Nos. (Radial flow Clarifier with concentric Flocculator)
Overall dia of Clariflocculator	:	48.30 m
Depth of water	:	3.90 m
Capacity	:	6.60 ML

Filter House

Number of Filter Units	:	8 working + 2 standby
Capacity of each Unit	:	536 cum/hr

Size of Unit	:	49.5 m x 28.3 m
size of each Bed	:	10.6 m x 8.4 m x 4.3 m
Rate of Filtration	:	6 cum/sqm/hour
Air Blower	:	2 nos. With 50HP
Top water level in Filter	:	433.50 m
Top water level in Clear water Channel	:	430.70 m

Wash Water Tank

Capacity of the wash water tank	:	6 LL
Size of the tank	:	12.6 m dia x 5.5 m depth
Stagging Height	:	8.0 m

Clear Water

Storage Capacity	:	5.2 ML
Clear Water Sump		
Size of the sump	:	38.5 m x 38.5 m x 3.9 m
Clear water pumpsets (Turbine)	:	555 HP 4 nos + 2nos standby (Vertical)
Duty of pumpsets (each)	:	21700 lpm x 75 m

4. Chlorination Room

System	:	Vacuum Chlorination System.
Pre Chlorination	:	15 kg/hr
Post Chlorination	:	20 kg/hr

5. Clear Water Transmission Main

Diameter	:	1100 mm
Length of pipe from WTP to Tunnel	:	10915 m
Length of Clear Water Tunnel (Across Kattan Hills)	:	800 m
Diameter of the Tunnel	:	2.20 m (Fully Lined)
Length of pipe from Tunnel to MSR	:	23370 m

6. Master Service Reservoir

Location	:	Ramakrishnapuram
Capacity of Reservoir	:	30 Lakh litres

List of Existing Service Reservoirs & Sumps

Sl. No.	Zone	Location of SR	No.	Capacity (LL)	Source
1	I	Dewan Baghdadur Road	1	28.00	SIRUVANI
2		Koilmedu	1	2.00	
3		Nataraj layout (Boopathy layout)	1	20.00	
4		Venkatapuram	1	2.00	
5		Bharathi Park MSR	5	38.87	
6		Chinthamani Nagar (Sanganur Part A)	1	5.00	
7		Tatabad	1	11.00	
8	II	Gandhi Park OHT	2	19.80	SIRUVANI
9		Gandhi Park	2	22.72	
10		D.B.Road Near 3 Post	1	20.00	
11		Jeyaram Nagar	1	10.00	
12		Madathur (P.N.Pudur)	1	5.00	
13		Iswarya Nagar (Seeranaicken Palayam)	1	10.00	
14		Revathi Nagar (Linamar)	1	3.00	
15	Vysial Street	1	9.00		
16	III	Jai Nagar, Goundampalayam	1	10.00	SIRUVANI
17		R.G.Nagar (Kannappa Nagar)	1	6.00	
18		Kamarajapuram	1	6.00	
19		Rathinapuri (Not in use)	1	6.00	
20		Ramakrishnapuram (Ganapathy MSR)	1	30.00	PILLUR
21		Ganapathy Ma Nagar (7.00-Sump)	1	3.00	
22		TNUDP Colony Gandhi Ma Nagar (11.00-Sump)	1	6.00	
23		Krishnarayapuram Zone I Avarampalayam	1	2.50	
24	Krishnarayapuram Zone II Kamadenu Nagar	1	3.00		
25	Rayappa Nagar	1	15.00		

Sl. No.	Zone	Location of SR	No.	Capacity (LL)	Source
26		Maniakampalayam Zone-I (Not in use)	1	1.00	
27		V V Nagar	1	0.50	
28		Police Quarters	1	0.50	
29	IV	Peelamedu Zone I	1	15.00	PILLUR
30		Peelamedu Zone II Uppilipalayam Zone III Part D.J.Nagar	1	10.00	
31		Karunanidhi Nagar (2 tier)	1	4.00 6.00	
32		Sowripalayam Zone I Udayampalayam (Meena Estate)	1	5.00	
33		Sowripalayam Zone II G.V Residency	1	6.00	
34		Uppilipalayam Zone I VRP	1	10.00	
35		Anna Nagar Neelikonampalayam	1	16.00	
36		Singanallur	1	7.00	
37		Nethaji puram	1	12.00	
38		SIHS Colony (7.00-Sump)	1	3.00	
39		V	District IV -B Sidhapudur	1	
40	District IX – B Puliakulam		1	24.00	
41	District IX –A Townhall		1	16.00	
42	V.O.C Park		1	27.00	SIRUVANI
43	Nanjundapuram		1	2.00	
Grand Total			49	478.89	

SCHEDULE 3

NOT USED

SCHEDULE 4

Guidelines for preparing the CIP and O&M Plan

Capital Investment Plan (CIP)

1. Overview of the CIP
 - 1.1 Based on the findings from the Comprehensive Assessment, the Concessionaire shall prepare the CIP and the activities to be carried out during the Initial Operation Period and the Construction Period in accordance with Applicable Laws and Good Industry Practice.
 - 1.2 The objectives of the activities presented in the CIP shall include but not be limited to the following:
 - (a) To ensure safe, efficient, continuous pressurized water supply services to the Users to meet the growing demand needs of the Service Area;
 - (b) To ensure availability of sufficient volume of bulk raw or treated water to meet the growing demands of Users, taking into account the permissible levels of losses in treatment, transmission and distribution;
 - (c) To ensure optimization of performance of existing pumping machinery for energy consumption in the transmission of treated water from source to the User;
 - (d) To ensure an effective program of non-revenue water control including active leakage control by applying continuous and vigilant monitoring, leak detection and good quality and long lasting leak repair techniques;
 - (e) To ensure efficient and effective commercial and customer services in management of the Project Facilities for providing un-interrupted water supply to the Users, duly redressing and resolving complaints and problems from existing Users and providing network connectivity to new Users and ensuring timely expansion of networks and system capacities; and
 - (f) To ensure establishment of utility management systems and processes including standard operating procedures for ensuring sustainable water services capable of forward planning, timely decision making and attending to emergencies.
 - (g) To establish performance monitoring systems so as to enable: (i) monitoring of Key Performance Indicators as per Schedule 5; and (ii) overall collection and disclosure of data related to water supply services in the Service Area.
 - 1.3 In preparing the CIP the following design horizons will be adopted for any investments in physical infrastructure required to meet the Key Performance Indicators. No additional investment is expected beyond the Construction Period except for investments to meet network growth beyond that included in the CIP, and for routine replacement of plant, equipment, and computer systems at the end of their design life.
 - (a) Raw Water Intakes and Transmission Pipelines – 30 years
 - (b) Water Treatment system – 15 years
 - (c) Pump Stations – 15 years
 - (d) Treated Water Transmission and Feeder Pipelines – 30 years
 - (e) Storage Reservoirs – 15 years

(f) Water Distribution Systems – 30 years

In case additional land is required for the construction of any new facility the Concessionaire shall inform the Authority and the Authority shall accordingly provide the land to the extent required for the construction of new facility.

1.4 All proposed interventions or works, installation and workmanship shall conform to relevant standards provided by Bureau of Indian Standards, and in the absence of which to the relevant standards of International Standards Organisation and to the guidelines in the CPHEEO Manual.

1.5 In preparing the CIP, the Concessionaire shall adopt the following standards for estimating cost of road restoration on completion of laying of pipes and refilling of the trench.

1.5.1 Specification for restoration of Bituminous (Asphalt) Roads

- a) Wet mix macadam – 150 mm thick
- b) Primer coat - 0.6 kg per sq metre
- c) Tack Coat – 0.2 kg per sq metre.
- d) Bituminous macadam – 50 mm thick
- e) Open graded pre mix carpet – 20 mm thick

1.5.2 Specification for restoration of Concrete Roads

- a) Wet mix macadam – 150 mm thick.
- b) Sub base mix M 5 grade concrete – 100 mm thick
- c) Unreinforced Pavement Quality Concrete (PQC) M20/M30 – 100 mm thick

1.5.3 Specification for restoration of Macadam Road

- a) Wet mix macadam – 150 mm thick.

2. The elements constituting the CIP should include, but not be limited to, those outlined below:

2.1 Raw water intakes, pumping stations and transmission mains

2.1.1 The Concessionaire will plan to improve the existing raw water intake, pumping machinery and transmission mains with a view to increasing security of supply, optimizing the energy input in service delivery, and utilizing existing assets to the extent possible.

2.1.2 If necessary, the Concessionaire shall plan and design new capital works to increase the supply of raw water to the Project Facilities to meet the Key Performance Indicators. The Concessionaire shall make its proposals based on an assessment of the available flows and reliabilities at the proposed water abstraction points identifying clearly any issues related to water rights and land availability that the Authority would have to resolve in order to proceed with such proposal.

2.1.3 The Concessionaire, in making its proposals for increasing the supply of raw water, shall identify other viable solutions, and assess the costs and benefits of each, explaining why the proposed solution is considered optimal.

2.2 Rehabilitation and Expansion of Existing Project Facilities and Construction of Additional Project Facilities

2.2.1 The Concessionaire shall plan and design the necessary capital works forming part of the Additional Project Facilities to ensure a sufficient supply of treated water from the raw water sources to meet the Performance Standards. This will include a mix of rehabilitation and expansion of existing treatment plants and possible construction of new treatment plant. The designed hydraulic capacity will ensure that during the times of sufficient raw water availability the Concessionaire can produce necessary volumes of treated water to meet the water demand in the Service Area.

2.2.2 The Concessionaire shall investigate and propose necessary works for taking over the existing functioning tube wells and open wells fitted with power pumps and ensuring that the water is disinfected to the required standard for residual chlorine and supplied to Users through an appropriate blending or supplementing strategy with treated surface water. Proposals for such works shall be carefully examined and evaluated by the Concessionaire as to whether the tube well and open well would have the capacity to sustain the required quantity and quality of water up to the end of the Concession Period. If the evaluation is not positive, the Concessionaire shall, with the permission of the Authority, discontinue implementation of rehabilitation works for the affected tube wells.

2.3 Detailed Plan for Setting up District Metered Areas

2.3.1 The Concessionaire shall, based on the results of the hydraulic network model, review the present distribution zones and design for setting up hydraulically isolated district metered areas (“DMA”s) within the Service Area with each DMA comprising of about 2,000 to 3,000 User connections. Each DMA shall preferably have one inflow point and be isolated by installing boundary isolation valves. The inflow shall be fitted with a pressure reducing valve and an electro-magnetic bulk flow meter of reputable brand synchronized with a sufficient capacity data logger with the facility to record, store, monitor and analyze the consumption and pressure pattern in the respective DMA. The Concessionaire shall identify and propose at least three Critical Measurement Points (“CMP”s) in each DMA for continuous logging of pressure, and the CMPs shall be such that one point shall be at the inlet of DMA, second at the highest elevation within the DMA boundary and the third shall be the farthest point from the DMA inlet. The Concessionaire shall propose necessary actions/tasks for periodical calibration of the flow and pressure monitoring equipment and capture the data generated by the respective equipment, analyze and monitor the consumption and level of losses in the DMAs and take remedial actions as necessary to meet the Performance Standards.

2.3.2 It is envisaged that the DMA chambers will be standardized in size and type of equipment to be housed inside (including flow control valve, pressure reducing valve flow meter and pressure transducer and the data loggers for speed and efficiency of construction. It is expected that some of the DMA construction and associated telemetry equipment will be part of the Advance Procurement Plan.

2.4 Rehabilitation of Water Supply Transmission and Feeder Networks

2.4.1 Using the hydraulic model and simulating both present and future conditions, the Concessionaire shall review the capacity of the networks required from a continuous water service perspective and propose network strengthening measures in a cost effective manner.

- 2.4.2 An essential objective of the treated water feeder main improvements shall be to ensure availability of sufficient supply volume in all neighbourhoods of the Service Area so as to ensure equity and rapid service improvements across the Service Area pending conversion to continuous pressurized water supply.
- 2.4.3 The Concessionaire will identify existing feeders that are in good operational condition and could be utilized to enable the Concessionaire to meet the Performance Standards. Deteriorated feeders will be identified and replaced or rehabilitated in a cost effective manner. The Concessionaire will assess options for any new feeder mains to serve existing or new storage reservoirs and propose the optimum solution. The works for such new feeders may be considered for inclusion in the Advance Procurement Plan to ensure completion and commissioning of the works by the end of the Construction Period.
- 2.5 Optimizing Service Storage
- 2.5.1 The Concessionaire’s proposals for ensuring adequate service storage capacity for the Service Area shall use existing reservoirs to the extent possible with abandonment only in the event that a reservoir is structurally unsafe. A key factor to be taken into account is the highly restrictive availability of land for installation of new reservoirs and hence the proposals should focus on expanding the utilizable storage through improved hydraulics and assigned demand patterns.
- 2.6 Rehabilitation and expansion of distribution networks
- 2.6.1 The Concessionaire should propose a plan for new networks to currently unserved areas of the Service Area and for the optimal mix of rehabilitation, repair, and replacement of the existing distribution network in currently served areas. In the latter case the Concessionaire should optimize capital and operational solutions to develop the most cost effective solutions and using the existing assets to the extent possible.
- 2.6.2 The proposals shall be in two parts with the first part to provide new infrastructure in the areas which are not provided with network access.
- 2.6.3 The second part of the improvements shall be a structured, continuous program of rehabilitation, repair and replacement of existing networks to ensure, by the end of the Construction Period, sufficient network capacity and levels of water losses to achieve the Performance Standards to the end of the Term.
- 2.6.4 The proposed network improvements shall be on the basis of a carefully planned progressive DMA-wise transformation to continuous pressurized supply taking into account possible increased leakage in the short term and the need to minimize supply deterioration in other DMAs serviced with intermittent water supply.
- 2.6.5 In all network improvements or expansions, or replacement or construction of new house connections, the Concessionaire will be responsible for road restoration in a manner contemplated in the CIP.
- 2.6.6 The Concessionaire shall identify the relevant specifications, standards on all materials, equipment and goods proposed to be used in CIP. The CIP shall also include a plan for establishing the quality of materials, pipes and fittings to be used, as well as setting workmanship protocols and standards.
- 2.6.7 The Concessionaire shall include in their rehabilitation and expansion plan for replacing house connections and User meters as needed, installing customer meters in

non-metered connections, and installing new house connections with meters to unconnected households and those with illegal connections.

2.7 UfW Control

- 2.7.1 The Concessionaire shall propose a detailed program of activities for effective reduction and long term control of UfW in the entire water supply chain from source to Customers.
- 2.7.2 The network and service pipe repair, rehabilitation and replacement program covering transmission, feeder and distribution networks shall be based on an effective UfW monitoring activity and active leakage control. Timely and high quality leak repair shall be supplemented by network and service pipe replacement as needed.
- 2.7.3 The Concessionaire shall propose necessary parts of this package of activities under the Advance Procurement Plan.

2.8 Miscellaneous Items

- 2.8.1 In addition to identifying and costing the Capital Works required during the Construction Period, in accordance with the standards of service set out in Schedule 5.

3. Service Delivery Improvement Plans

The Concessionaire shall prepare a service delivery improvement plan (the “Service Delivery Improvement Plan”) which shall outline the following:

- 3.1 Migration Plan from Intermittent to Continuous Water Supply
- 3.2 Integrated Management Information System linking GIS, Water Resource Monitoring, Water Flow and Pressure Measurement, Billing and Collection System, Asset Register and User Services.
- 3.3 The Concessionaire will detail a methodology for measurement of performance as per the Performance Standards in Schedule 5. The Concessionaire will detail the method for recording of data, method of compilation, reporting formats, and methods for cross verification and frequency of reporting.
- 3.4 The Concessionaire will also detail the interim arrangements for measurement of performance and reporting that will be followed, including manual record keeping, till the setting up of the Management Information Systems as per the Milestones in Schedule 5.

4. Implementation Schedule

- 4.1 The Concessionaire shall prepare a detailed project management program showing the all activities to be undertaken during the Construction Period (including the advance procurement plans) the start and end dates and dependencies between the activities. The critical path items will be clearly identified.
- 4.2 Where the implementation plan requires action to be taken by the Authority such activities will be highlighted and separately identified with a clear description of the activity, the projected start date, and the time allowed for the Authority to undertake said activity.

5. Land Requirements

- 5.1 The Concessionaire shall produce a list of any additional land that will be required to allow implementation of the CIP and inform the Authority.

Operation and Maintenance Plan (O&M Plan)

1. The Concessionaire shall prepare an annual operation and maintenance plan for the Existing Project Facilities and the Project Facilities (the “O&M Plan”) with critical and routine operating tasks at each unit of water supply chain with the objective of achieving and maintaining the Required Service Levels.
2. The O&M Plan shall comprise the responsibilities for unit operations, monitoring and emergency response, related processes, systems, protocols, procedures including detailed costs for each activity of operations and maintenance etc.
3. The O&M Plan will differentiate between those areas with intermittent water supply and those with Continuous Pressurized Water Supply.
4. O&M Plan will present in detail the monitoring protocol for water quality measurement around the system. This protocol will cover the whole process from designing the sampling regime, taking samples, testing samples, and reporting samples. The O&M Plan will also present the on-line water quality reporting system required to meet the Concessionaire’s obligations under Schedule 5.

SCHEDULE 5

KEY PERFORMANCE INDICATORS

1. Construction Period:

During the Construction Period the Concessionaire shall have the obligation to achieve the following targets of connections:

- (a) A minimum of [20%] of connections identified in the CIP or 30,000 connections, whichever is lower; by the end of [Second Year] from Appointed Date.
- (b) A minimum of [40%] of connections identified in the CIP or 60,000 connections, whichever is lower; by the end of [Third Year] from Appointed Date
- (c) A minimum of [100%] of connections identified in the CIP or 150,000 connections, whichever is lower; by the end of [Fourth Year] from Appointed Date.

Each connection shall be considered completed upon

- (i) Installation of User Meter
- (ii) Inclusion of customer in the GIS based customer database

Provided however, if the Concessionaire has failed to achieve any or all of the mile-stones as mentioned in (a) (b) and (c) above, the Liquidated Damages will be computed @ Rs. 10,000/- (Rupees Ten Thousand Only) for each day of default beyond 180 days for delays applicable to events stated in (a), (b) or (c), as the case may be. However, in the event the project completion extends beyond a period of one year from the proposed COD, the Concessionaire shall pay Liquidated Damages at the rate of Rs. 25,000/- (Rupees Twenty Five Thousand Only) for each day of default in achieving the target specified in (c) above. However, it is expressly clarified that this Liquidated Damage shall not be payable if the delay is due to any reason not attributable to the Concessionaire's fault, and for which the Authority has provided Extension of time to complete the obligations.

2. Operation Period

The Concessionaire has to achieve minimum performance standards as detailed here in below:

In the event the Concessionaire achieves exceptional service levels, a mechanism has been provided to remunerate these exceptional services. Similarly for poor performances below the minimum performance standards will attract penalties.

Minimum performance standards to be maintained:

- Unaccounted for Water (UfW)
- Pressure to be maintained
- Water quality in the Distribution system
- Customer Complaint Resolution
- Collection efficiency

3. The Concessionaire shall achieve and maintain the Required Service Levels stipulated in Table below: Except for Water Quality at User Tap identified below all other KPIs to be checked from the COD.

Service Level Requirements

Sl.No.	Description	Details
1.	Parameter	Percentage of total household connections converted to Continuous Pressurized Water Supply, measured on Quarterly basis
	Required Performance Level/ Milestone	Minimum 7 m water head at the ferrule point except when there is supply shortage due to inadequate supply by CCMC. Supply shortage is defined as any deficit in the daily volume supplied at outlet of each MBR / MSR against the measured daily demand and the approved UFW losses for the given Concession Year.
	Measured by	On or before COD, all the connections in the DMZ that were certified by Independent Engineer, as having been converted to Continuous (24/7) Pressurized Water Supply and have demonstrated 7 days of maintaining Continuous Pressurized Water Supply. Maintenance of Continuous Pressurized Water Supply shall be monitored based on pressure logs in Critical Measurement Points of such certified DMZs
	Monitored by	Independent Engineer based on supervision of testing of continuous pressurized supply, and pressure logs in Critical Measurement Points of such certified DMZs. The assessment shall be carried out on Quarterly basis
	Allowable Exclusions	The Concessionaire shall be excused from meeting this KPI in the following cases: <ul style="list-style-type: none"> • Any Extension of Time granted to the Concessionaire for the Milestone for achieving conversion. • No more than five incidents of default allowed per quarter, in each DMZ. Each default incident shall be defined as continuous period of more than 6-hours during which the pressure falls below stipulated 7m pressure in the DMZ under review. • Occurrence of any event given below and for any such event not attributable to the Concessionaire : <ol style="list-style-type: none"> i. Interruption due to bursts of any feeder networks operated by the Authority ii. Shortage of bulk water supplied by CCMC at the bulk offtake points iii. Third Party causes such as power failure and fire fighting iv. Third Party damage of network causing burst or heavy leaks needing to pressure loss across DMZ
	Penalty / Damages	1% of monthly O&M Quote in that year * (Number of DMZs not meeting the KPI / Total number of DMZs)
	Incentive	No incentive

2	Parameter	Resolution of User Complaints, measured on Quarterly basis
	Required Service Level	<p>80% of complaints should be resolved within the time period provided for respective category of complaint.</p> <p>Complaints to be resolved within 24 hours: Complaints related to water quality</p> <p>Complaints to be resolved within 48 hours: leakages in HSCs, No Water</p> <p>Complaints to be resolved within 7 days: Complaints related to delay in providing connection, meter not working properly, delay/errors/problems in billing and collection, change in customer database, reconnection, temporary disconnection, arrears and other complaints connected to customer database, billing or collection.</p> <p>Complaints for which Redressal beyond the control of the Concessionaire to be listed separately and to be certified by the Technical Auditor.</p> <p>In the event a complaint is not redressed within twice the time period provided for such redressal period, the same shall be considered as an additional complaint by the same Complainant. The accumulation of complaints shall continue till it has been resolved.</p> <p>It is hereby clarified that the complaint resolution targets of the Concessionaire shall not include complaints pertaining to water shortage and / or resultant low pressure during the period of inadequate water supply by CCMC. Supply shortage is defined as any deficit in the daily volume supplied at outlet of each MBR / MSR against the measured daily demand and the approved UFW losses for the given Concession Year</p>
	Measured By	Percentage of total number of customer requests resolved during the quarter under review over the total number of customer requests received and recorded during that quarter
	Monitored by	<p>Until electronic registry is established, manual record to be established. An electronic registry maintained by the Concessionaire, the registry shall include detailed database and summary tables including:</p> <ul style="list-style-type: none"> ▪ Time and date ▪ Complaint number ▪ User name ▪ User identification number ▪ DMZ number ▪ Nature of complaint ▪ Time and date at which User complaint is resolved ▪ Action taken report
	Allowable exclusions	Redressal beyond the control of the Concessionaire to be agreed as part of the CIP
	Damages	(80% - % of Total customer complaints redressed within the stipulated timelines during the quarter) x Rs. 1 crore
	Incentive	(% of Total customer complaints redressed within the stipulated timelines during the quarter – 90%) x Rs. 1 crore

3.	Parameter	Annual Unaccounted for Water (UFW), measured on annual basis
	Required Performance Level/ Milestone	From Year immediately after COD till 10 th year from the Appointed Date: 20% From 11 th year onwards: 15%
	Measurement by	For the year under review, expressed as percentage. Annual UfW = (Total supply volume measured at the outlet of MSR / MBR during the year – Total Water Volume Billed during the year - Water Volume legally supplied but not billed) / (Total supply volume measured at the outlet of the MSR / MBR) Water Volume Legally Supplied but Not Billed means <ul style="list-style-type: none"> ○ Water supplied to slums and stand posts ○ Free Water Supply, as per the Authority’s discretion ○ Operational use (scouring, etc) ○ Estimated Meter reading errors ○ Illegal connection until the Authority has disconnected them
	Monitored By	An electronic registry maintained by the Concessionaire; the registry shall include detailed database and summary tables for supply input volume, billed volume and authorized unbilled consumption as measured by meter readings. All supply points will be metered. The database shall include: <ul style="list-style-type: none"> ▪ Month ▪ Cumulative supply input volume ▪ Cumulative DMZ wise authorized consumption Technical Auditor will review select meter readings to verify the accuracy of working condition of meters.
	Allowable Exclusions	None
	Damages	X being the Annual UfW (in %) achieved during the period under review, the applicable damages will be: From Year immediately after COD till 10 th year from the Appointed Date: (X-20%) of Monthly O&M Quote in that year From 11 th year onwards: (X - 15%) of Monthly O&M Quote in that year
	Incentive	X being the Annual UfW (in %) achieved during the period under review, the applicable incentive will be From Year immediately after COD till 10 th year from the Appointed Date: (20% - X) of Monthly O&M Quote in that year / 3 From 11 th year onwards: (15% - X) of Monthly O&M Quote in that year / 3

4.	Parameter	Treated water quality at User taps
	Required Service Level	At User Tap: 90% samples conforming to the permissible level of residual chlorine to be maintained, other than where the Emergency Response Plan is triggered. (upto COD) At User Tap: 100% samples conforming to the permissible level of residual chlorine to be maintained, other than where the Emergency Response Plan is triggered. (after COD)
	Measured By	Number of samples from User taps tested and not conforming to residual chlorine levels based on a minimum of 10 samples per DMZ on a quarterly basis.
	Monitored By	An electronic registry maintained by the Concessionaire; the registry shall include detailed database and summary tables to be maintained as part of the water quality surveillance protocols agreed as part of the CIP. The water quality testing database shall include: <ul style="list-style-type: none"> ▪ Time and date ▪ Sample location(User Identification Number) ▪ Sample number ▪ Details of water quality tests conducted including the results of tests. ▪ Details of remedial actions taken in case of water quality problem ▪ Time and date of resumption of service level
	Allowable exclusions:	Pollution event covered by Emergency procedures
	Damages	For each sample at consumer tap not confirming to residual chlorine standards, Rs. 1000, escalated at the rate of 5% per annum from the Appointed Date.
	Incentive	No incentive
5.	Parameters	Annual Collection efficiency
	Required Service Level	From year immediately after COD to 10 th year from the Appointed Date: 80% From 11 th year onwards: 90%
	Measured by	The total amount collected by the Concessionaire during the given Concession Year / Total amount billed by the Concessionaire during the given Concession Year. The final Collection efficiency shall be finalised based on collections which were billed during the relevant Concession Year and collected within 90 days after the end of the Concession year.
	Monitored by	Periodic collection reports by Concessionaire (depending on billing frequency)
	Exclusions	<ol style="list-style-type: none"> 1. Details of habitual defaulters notified by the Concessionaire and approved by the Authority. 2. Disconnections not permitted by the Authority

	Damages	<p>X being the Annual Collection Efficiency (in %) achieved during any year, the applicable damages will be</p> <p>From year immediately after COD to 10th year from the Appointed Date: $(80\% - X)$ of Monthly O&M Quote in that year</p> <p>From 11th year onwards: $(90\% - X)$ of Monthly O&M Quote in that year</p>
	Incentive	<p>X being the Collection Efficiency (in %) achieved during any year, the applicable incentive will be</p> <p>From year immediately after COD to 10th year from the Appointed Date: $(X - 80\%)$ of Monthly O&M Quote in that year / 3</p> <p>From 11th year onwards: $(X - 90\%)$ of Monthly O&M Quote in that year / 3</p>

SCHEDULE 6

TECHNICAL SPECIFICATIONS

[Provided as part of Section IV, Part I, Volume III]

SCHEDULE 7

APPLICABLE PERMITS

The Concessionaire, to the extent applicable in respect of the Project, shall obtain and maintain the following Applicable Permits:

- (a) Planning permissions
- (b) Building permits
- (c) Right to use Electrical power
- (d) Vehicle and equipment licenses
- (e) Licenses to work during other than normal working hours
- (f) Licenses if any to operate water supply facilities
- (g) Health and Safety certificates
- (h) Fire certificate
- (i) Approval from Labour Department

Apart from the licenses and approvals stated above the Concessionaire shall be responsible to procure and maintain all such licenses as may be required from time to time during the execution of the works under this Agreement.

Indicative list of such Applicable Permits to be procured by the Authority in respect of the Project would include the following:

- (a) Public way-leaves that may be required from time to time
- (b) Permission from Roads and Traffic departments
- (c) Permissions to enter public and industrial properties of the Users

SCHEDULE 8

FORMAT OF CONSTRUCTION PERIOD PERFORMANCE SECURITY

The Commissioner,
Coimbatore City Municipal Corporation
Coimbatore

WHEREAS:

- (A) [•] (the “**Concessionaire**”) and the Commissioner, Coimbatore City Municipal Corporation (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the work for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system on design, build, transfer and operate (“**BTO**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [•] crores (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, [•] through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of [Executive Engineer] in the Coimbatore City Municipal Corporation, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of 60 (sixty) days from the Defects Liability Period under the Agreement and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This guarantee shall also be operational at our branch at Coimbatore, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [•] years and [•] months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)
(Designation)
(Code Number)
(Address)

FORMAT OF OPERATION PERIOD PERFORMANCE SECURITY

The Commissioner,
Coimbatore City Municipal Corporation
Coimbatore

WHEREAS:

- (A) [•] (the “**Concessionaire**”) and the Commissioner, Coimbatore City Municipal Corporation (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the work for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system on design, build, transfer and operate (“**BTO**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [•] crores (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Initial Operation Period/Operation Period (as defined in the Agreement).
- (C) We, [•] through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due performance of the Concessionaire’s obligations during the [Initial Operation Period / Operation Period], under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of [Executive Engineer] in the Coimbatore City Municipal Corporation, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to

extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the expiry of 30 (thirty) days from the end of the Concession Period or the Transfer Date under the Agreement, whichever is earlier and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This guarantee shall also be operational at our branch at Coimbatore, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [•] years and [•] months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)
(Code Number)
(Address)

FORMAT OF MOBILIZATION ADVANCE SECURITY

The Commissioner,
Coimbatore City Municipal Corporation
Coimbatore

WHEREAS:

- (A) [•] (the “**Concessionaire**”) and the Commissioner, Coimbatore City Municipal Corporation (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the work for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system on design, build, transfer and operate (“**BTO**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Mobilization Advance Security to the Authority in a sum of Rs. [•] crores (the “**Guarantee Amount**”) as security for the Mobilization Advance (as defined in the Agreement) received in accordance with the Agreement.
- (C) We, [•] through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Mobilization Advance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due performance of the Concessionaire’s obligations during the Construction Period against which the Mobilization Advance is paid, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of [Executive Engineer] in the Coimbatore City Municipal Corporation, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to

extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the Mobilization Advance has been recovered in full from the payments received by the Concessionaire under the Agreement and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This guarantee shall also be operational at our branch at Coimbatore, from whom, confirmation regarding the issue of this guarantee or extension/renewal thereof shall be made available on demand. In the contingency of this guarantee being invoked and payment thereunder claimed, the said branch shall accept such invocation letter and make payment of amounts so demanded under the said invocation.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [•] years and [•] months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)
(Code Number)
(Address)

SCHEDULE 9

NOT USED

SCHEDULE 10

FORMAT OF COMPLETION CERTIFICATE

1. I/We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated(the “Agreement”), for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “Project”) on build, transfer and operate (BTO) basis, through.....(Name of Concessionaire), hereby certify that the tests and inspection have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the day of [•], 20....

SIGNED, SEALED AND DELIVERED

For and on behalf of
INDEPENDENT ENGINEER by:

(Signature)
(Name)
(Designation)
(Address)

FORMAT OF PROVISIONAL COMPLETION CERTIFICATE

1. I/We,..... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement Dated..... (the “Agreement”), for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “Project”) on build, transfer and operate (BTO) basis through..... (Name of Concessionaire), hereby certify that the tests and inspection as per the Agreement have been undertaken for the Project/section..... of the Project to determine compliance thereof with the provisions of the Agreement.
2. The works during the Construction Period forming part of the Project/section of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project/section..... of the Project, pending completion thereof.
3. In view of the foregoing, I/We am/are satisfied that the Project/section of the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project/section of the Project is hereby provisionally declared fit for entry into commercial operation on this the day of..... 20....

**ACCEPTED, SIGNED, SEALED SIGNED,
SEALED AND DELIVERED**
FOR AND ON BEHALF OF
CONCESSIONAIRE by:

(Signature)
(Name and Designation)
(Address)

**ACCEPTED, SIGNED, SEALED SIGNED,
SEALED AND DELIVERED**
FOR AND ON BEHALF OF **INDEPENDENT
ENGINEER by:**

(Signature)
(Name and Designation)
(Address)

SCHEDULE 11

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to the properties resulting from accidents on the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) Manual for Water Supply and Treatment, issued by CPHEEO;
- (c) relevant Technical Specification;
- (d) provisions of this Agreement; and
- (e) Good Industry Practice.
- (f) Appoint a safety officer to ensure all the safety measures are implemented by the concessionaire.

SCHEDULE 12

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for the upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “**Project**”) on build, transfer and operate (“**BTO**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review and approval of the project execution plan submitted by the Concessionaire;
 - (ii) review and approval of the Designs and Drawings and Documents as set forth in Paragraph 4;
 - (iii) review, inspection and monitoring of construction works as set forth in Paragraph 4;
 - (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 4;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - (vi) during the construction period, at the end of every quarter or as may be required by the Authority, certify the value of civil works done by the Concessionaire, for that quarter, or for the period specified;
 - (vii) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
 - (viii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

- (ix) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (x) undertake safety audit of the Project as per Schedule [•]
- (xi) assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
- (xii) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development and Construction Period

4.1 During the Preparatory Period, the Independent Engineer shall undertake a detailed review of the Designs and Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and approval and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Designs and Drawings. In particular, such comments shall specify the conformity or otherwise of such Designs and Drawings with the Scope of the Project and Technical Specifications.

4.2 The Independent Engineer shall review and approve any modified Designs and Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Designs and Drawings or Documents.

4.3 The Independent Engineer shall review the Designs and Drawings and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Designs and Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review and approve the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.5 In respect of the Designs and Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

4.6 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

4.7 The Independent Engineer shall inspect the construction works and the Project frequently in a month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of construction works with the Scope of the Project and the Technical Specifications. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in

the construction of the Project. The Inspection Report shall also contain a review of the maintenance of the existing lanes in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 4.8 The Independent Engineer shall inspect the Project on regular basis, to identify any lapses, defects or deficiencies, and ensure that corrective remedial steps are taken up by the Concessionaire.
- 4.9 For determining that the Additional Project Facilities conform to Technical Specifications, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 4.10 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Project Facilities into conformity with the Technical Specifications, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.13 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Additional Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.14 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Additional Project Facilities that should be suspended for ensuring safety in respect thereof.
- 4.15 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent

- Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.16 If suspension of Additional Project Facilities is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Implementation Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 4.17 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of the Agreement.
- 4.18 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in the Agreement and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 4.19 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.
- 4.20 The Independent Engineer shall be entirely responsible for ensuring the quality of implementation. Corrective steps towards quality enhancement, based on site visits and tests shall be carried out. Technical designs with cost implications to the Authority shall be arrived at after consent from IE, as and when the need for the same arises, prior to the communication to Concessionaire.

5 Operation Period

- 5.1 In respect of the Designs and Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.4 The Independent Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.5 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.

- 5.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 5.7 In respect of any defect or deficiency, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Technical Specifications and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 5.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any lane(s) of the carriageway for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such lane(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority.
- 5.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire.
- 5.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6. Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 6.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

SCHEDULE 13

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the day of 20....

AMONGST

1. LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2.name and particulars of Lenders” Representative and having its registered office atacting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3.name and particulars of the Escrow Bank and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. The Coimbatore Municipal Corporation, represented by its Commissioner and having its office at [•] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for the upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “**Project**”) on build, transfer and operate (“**BTO**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Senior Lenders namely _____ and _____ have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements. The Senior Lenders appointed _____ as Lenders Representative as their duly authorised agent with regard to matters relating to the Financial Arrangements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:
- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
 - (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
 - (c) all Annuity received by the Concessionaire; and
 - (d) all proceeds received pursuant to any insurance claims.
- 3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Annuity and any other monies disbursed by the Authority to the Concessionaire; and
- (b) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account. In the event of a shortfall in the payment of the Annuity from the Escrow Account, the Authority shall upon receiving notice from the Escrow Bank transfer the shortfall amount from the Reserve Fund Account set up in accordance with the Concession Agreement.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in relation to its obligations under the Concession Agreement;
- (b) all payments relating to construction of the Additional Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) payments to Independent Engineer;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (e) O&M Expenses and other costs incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the joint instructions of the Concessionaire and the Authority.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in relation to its obligations under the Project;
- (b) amount of the Debt Due approved by the Authority as part of the Termination Payment, excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including claims in connection with or arising out of Termination;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 36 of the Concession Agreement;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under the Concession Agreement; and
- (i) balance, if any, in accordance with the joint instructions of the Concessionaire and the Authority. Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the

requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 28 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each payment date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant payment dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new

Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under

the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Chennai and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Chennai shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.3 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.4 Waiver

11.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Parties; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.4.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.5 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.6 Survival

11.6.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.6.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.7 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.8 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

11.9 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an

additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.10 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.11 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.12 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof :

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the
Lenders" Representative:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
ESCROW BANK by:

(Signature)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE COIMBATORE CITY MUNICIPAL CORPORATION by:

(Signature)

SCHEDULE 14

SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the.....day of.....20.....

AMONGST

1 The Coimbatore City Municipal Corporation, represented by and having its principal offices at (Hereinafter referred to as the “Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (Hereinafter referred to as **the “Concessionaire”** which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

3 (insert name and particulars of Lenders’ Representative) and having its registered office at....., acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **“Lenders’ Representative”**, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated..... With the Concessionaire (the **“Concession Agreement”**) for the upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the **“Project”**) on build, transfer and operate (**“BTO”**) basis, in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Substitution Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them: **“Agreement”**

means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Article 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2. ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favor of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favor of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “Notice of Financial Default”) along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 30 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders’ Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders’ Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders’ Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days’ time to the Lenders’ Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders’ Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders’ Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders’ Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders’ Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Article 3.3.2, as the case may be, the Lenders’ Representative may, without prejudice to any of the other rights or

remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) Accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) Endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) Enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favor of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favor of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer

by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Agreements

The Concessionaire shall ensure and procure that each agreement with Contractors contains provisions that entitle the Nominated Company to step into such agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 30 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Article 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) No sum remains to be advanced and no sum are outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any

loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

(a) Shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

9.9 Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the.....day of the20.....here unto affixed in to the presence of.....the Director, who has signed these presents in token thereof, Authorized Signatory who has countersigned the same in token thereof	SIGNED, SEALED AND DELIVERED For and behalf of THE AUTHORITY by:
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

SCHEDULE 15

VESTING CERTIFICATE

1. The Commissioner, Coimbatore City Municipal Corporation (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for upgrade, operate and maintain the existing water supply system in Coimbatore City into 24x7 water supply system (the “**Project**”) on build, transfer and operate (BTO) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Article 30.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 20..... at.....

SIGNED, SEALED AND DELIVERED For and behalf of THE CONCESSIONAIRE by:	SIGNED, SEALED AND DELIVERED For and behalf of THE AUTHORITY by:
--------------------------------------------------------------------------	---------------------------------------------------------------------

SCHEDULE 16

MAINTENANCE REQUIREMENTS

1. Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Initial Operation Period, the Operation Period, conform to the maintenance requirements set forth in this Schedule 16 (the “Maintenance Requirements”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency within the time limit agreed between the Parties and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Article 17.14 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall be to undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer. The Independent Engineer shall specify the permissible limit of deviation or deterioration with reference to the Technical Specifications and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule 16, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity the Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

4. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule 16, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

5. Periodic Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic visual inspection of the Project in accordance with the O&M Plan and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

6. Divestment Requirements

All defects and deficiencies specified in this Schedule 16 shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.