

CONCESSION AGREEMENT
for
DEVELOPMENT OF SEWAGE TREATMENT PLANTS
ON Hybrid Annuity Model BASIS
in Kolkata Municipal Corporation Area, State of West Bengal

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CONCESSION AGREEMENT

This Concession Agreement (**Agreement**) is executed on this [●] day of [●] Two Thousand and Eighteen at -----:

AMONGST

- (1) **Kolkata Municipal Corporation**, a statutory body constituted under the (Name of the act under which the entity is constituted), with its registered office at ----- (hereinafter referred to as the “**KMC**” -----, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **NATIONAL MISSION FOR CLEAN GANGA**, a statutory body constituted under the Environment (Protection) Act, 1986, with its registered office at 1st Floor, Major Dhyanchand National Stadium, India Gate, New Delhi - 110002 (hereinafter referred to as “**NMCG**”, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (3) [_____][*insert name of the Concessionaire*], a company organized, incorporated, registered and existing under the Companies Act, **1956/2013** with its registered office at _____ [*insert address*] acting through _____, _____ [*insert name of the authorised signatory and his/her designation*] duly authorized by resolution dated _____ [*insert date of the Board Resolution*] (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

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

WHEREAS:

- A. The GoI, recognizing that long-term rejuvenation of the river Ganga will have significant social

and economic benefits on the lives of the 500 million people living along its basin, has identified cleaning of the river Ganga as one of its priorities. For this purpose, in May 2015, the GoI approved the flagship Namami Gange programme for cleaning, rejuvenation, and protection of the river Ganga. In January 2016, the GoI approved a hybrid annuity model to implement STP projects under the Namami Gange programme on a PPP basis.

- B. Subsequently, the MoWR issued the River Ganga (Rejuvenation, Protection and Management) Authorities Order, 2016 (**“Ganga 2016 Order”**) to constitute various authorities to assist the GoI in achieving its aim of effective abatement of pollution in the river Ganga. The Ganga 2016 Order designated NMCG as the nodal agency for the implementation of the Ganga 2016 Order.

- C. The KMC has the power to develop, maintain and regulate water supply and sewerage works in the state of West Bengal. With a view to implement the Namami Gange programme and the Ganga 2016 Order, the KMC, in association with NMCG, has decided to undertake development/renovation/operation and maintenance of STPs, Pumping Stations and Trunk Sewers (**“Facility”** singularly, **“Facilities”** collectively) on a PPP basis, through a hybrid annuity model.

- D. For this purpose, the KMC intends to engage a concessionaire who will
 - (I) Design, Finance, renovate, complete, construct, operate and maintain the Tolly’s Nallah Facilities and Garden Reach Facilities
 - (II) Operate and maintain Keorapukur Facilities

and after the expiry of the Term, transfer the Facilities to the KMC, in accordance with this Agreement (collectively **“Project”**). **“Schedule Facilities”**, for the purpose of this Agreement, shall mean any or all these Facilities collectively, as the context may require.

- E. On , the KMC commenced a competitive Bid Process for the Project by issuing a request for proposal (**“RFP”**), inviting interested parties to submit their qualification proposals and financial proposals to the KMC for undertaking the Project.

- F. Pursuant to the terms of the RFP, the KMC received proposals from various bidders, including a proposal submitted by the Selected Bidder on [insert date].

- G. Following a process of evaluation of qualification proposals and financial proposals submitted by the bidders (including the Selected Bidder), the KMC has on [insert date] accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, the KMC has issued the letter of award dated [Insert date] to the Selected Bidder (the **LOA**).

- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance

with the terms of this Agreement.

- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement.

- J. The KMC and NMCG have agreed to enter into this Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Acres	means a unit of land area equal to 43,560 sq.ft.
Additional Performance Security	means a performance security that must be submitted by the Selected Bidder to the <i>KMC, along with Performance Security and ESHS Security</i> , to secure the obligations of the Concessionaire/Bidder in relation to the <i>clause 16.5 of the RFP document</i> .
Adjoining Property	means any land and/or property adjoining or adjacent to the Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
Adjusted DG Set Units	has the meaning ascribed to it in Article 9.4(g)(ii)(B)(II)
Affected Party	means the Party affected by a Force Majeure Event.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government (including the GoWB), any Government authority or any local government having jurisdiction over the Parties, the Site or the Project, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules, Ganga 2016 Order, and the CMWSA (Calcutta Metropolitan Waste and Sanitation KMC Act, 1966)
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws.
Appointed Date	means the date of signing of this Agreement
Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended from time to time.

Article	means an Article of this Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Consortium, a Person who Controls, or is Controlled by the Selected Bidder or Member of the Selected Bidder, as the case may be.
Tolly's Nallah STP 1	means the Sewage Treatment Plant to be constructed at the <i>Tolly's Nallah Site</i> with capacity of 5.7 MLD, as part of the Project
Tolly's Nallah STP 2	means the Sewage Treatment Plant at the <i>Tolly's Nallah Site</i> with a Design Capacity of 15.30 MLD, as part of the Project
Tolly's Nallah STP 3	means the Sewage Treatment Plant at the <i>Tolly's Nallah Site</i> with a Design Capacity of 5.06 MLD, as part of the Project
Tolly's Nallah Associated Infrastructure	Means Tolly's Nallah Associated Infrastructure 1 and/or Tolly's Nallah Associated Infrastructure 2, as the case may be.
Tolly's Nallah Associated Infrastructure Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted for both Dry Weather Flow (DWF) and Storm Weather Flow (SWF) by the Selected Bidder in the Financial Proposal, which it expects to consume during the Tolly's Nallah O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), for operation and maintenance of Tolly's Nallah Associated Infrastructure (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the operation and maintenance of Associated Infrastructure.
Tolly's Nallah Basic Engineering Designs	means the following designs and documents to be submitted by the Concessionaire and approved by the KMC as a Condition Precedent in relation to the <i>Tolly's Nallah Facilities</i> : <ul style="list-style-type: none"> (a) process description, process calculations, and hydraulic calculations; (b) list of design codes and standards; (c) master drawing schedule; (d) drainage design; (e) STP facilities layout; (f) process flow diagram; (g) hydraulic flow diagram; (h) mass balance diagram;

	<ul style="list-style-type: none"> (i) process and instrumentation diagram; (j) single line diagram; (k) electrical load list; (l) structure design and drawing; (m) pump characteristics; and (n) general arrangement diagrams of all units of the <i>Tolly's Nallah</i> Facilities.
Tolly's Nallah Bid Project Cost	means [] (Rupees []), being the cost of construction and renovation of the <i>Tolly's Nallah</i> Facilities, as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes and all other pre-operative expenses in relation to the <i>Tolly's Nallah</i> Facilities.
Tolly's Nallah Capex Annuity	means the amount payable to the Concessionaire per quarter during the Tolly's Nallah O&M Period, towards reimbursement of 60% of the Tolly's Nallah Completion Cost.
Tolly's Nallah Completion Cost	means the cost of completing the <i>Tolly's Nallah</i> Facilities, as calculated in accordance with Article 9.4(b).
Scheduled Tolly's Nallah STP 1 Construction Completion Date	means the date which is 21 months from the Effective Date, by which the Concessionaire is required to achieve the <i>Tolly's Nallah STP 1</i> Construction Completion Date.
Scheduled Tolly's Nallah STP 2 Construction Completion Date	means the date which is 21 months from the Effective Date, by which the Concessionaire is required to achieve the <i>Tolly's Nallah STP 2</i> Construction Completion Date.
Scheduled Tolly's Nallah STP 3 Construction Completion Date	means the date which is 21 months from the Effective Date, by which the Concessionaire is required to achieve the <i>Tolly's Nallah STP 3</i> Construction Completion Date.
Scheduled Tolly's Nallah Associated Infrastructure 1	means the date which is 21 months from the Effective Date, by which the Concessionaire is required to achieve the <i>Tolly's Nallah Associated Infrastructure 1</i> Construction Completion Date.

Construction Completion Date	
Scheduled Tolly's Nallah Associated Infrastructure 2 Construction Completion Date	means the date which is 12 months from the Effective Date, by which the Concessionaire is required to achieve the <i>Tolly's Nallah Associated Infrastructure 2</i> Construction Completion Date.
Tolly's Nallah Construction Completion Certificate	<p>means collectively the following certificates</p> <p>(1) <i>Tolly's Nallah STP 1</i> Construction Completion Certificate</p> <p>(2) <i>Tolly's Nallah STP 2</i> Construction Completion Certificate</p> <p>(3) <i>Tolly's Nallah STP 3</i> Construction Completion Certificate</p> <p>(4) <i>Tolly's Nallah Associated Infrastructure 1</i> Construction Completion Certificate and</p> <p>(5) <i>Tolly's Nallah Associated Infrastructure 2</i> Construction Completion Certificate</p> <p>issued by the KMC to the Concessionaire to certify completion of construction/renovation of all the Tolly's Nallah Facilities and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement</p>
Tolly's Nallah STP 1 Construction Completion Certificate	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of the <i>Tolly's Nallah STP 1</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Tolly's Nallah STP 2 Construction Completion Certificate	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of the <i>Tolly's Nallah STP 2</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Tolly's Nallah STP 3 Construction Completion Certificate	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of the <i>Tolly's Nallah STP 3</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Tolly's Nallah Associated	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of the <i>Tolly's Nallah Associated</i>

Infrastructure 1 Construction Completion Certificate	<i>Infrastructure 1</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Tolly's Nallah Associated Infrastructure 2 Construction Completion Certificate	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of the <i>Tolly's Nallah Associated Infrastructure 2</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Tolly's Nallah STP 1 Construction Completion Date	means the date on which the <i>Tolly's Nallah STP 1</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.
Tolly's Nallah STP 2 Construction Completion Date	means the date on which the <i>Tolly's Nallah STP 2</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.
Tolly's Nallah STP 3 Construction Completion Date	means the date on which the <i>Tolly's Nallah STP 3</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.
Tolly's Nallah Associated Infrastructure 1 Construction Completion Date	means the date on which the <i>Tolly's Nallah Associated Infrastructure 1</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.
Tolly's Nallah Associated Infrastructure 2 Construction Completion Date	means the date on which the <i>Tolly's Nallah Associated Infrastructure 2</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.
Tolly's Nallah Construction Completion Date	means the date by which all of (1) <i>Tolly's Nallah STP 1</i> Construction Completion Certificate (2) <i>Tolly's Nallah STP 2</i> Construction Completion Certificate (3) <i>Tolly's Nallah STP 3</i> Construction Completion Certificate (4) <i>Tolly's Nallah Associated Infrastructure 1</i> Construction Completion Certificate and (5) <i>Tolly's Nallah Associated Infrastructure 2</i> , are issued or deemed to be issued to the

	Concessionaire, in accordance with this Agreement
Tolly's Nallah Construction Period	means the period from Effective Date till until the Tolly's Nallah Construction Completion Date during which the Concessionaire is required to design, construct and renovate all the <i>Tolly's Nallah Facilities</i> in accordance with the Concession Agreement.
Tolly's Nallah STP 1 Construction Period	means the period from Effective till until the Tolly's Nallah STP 1 Construction Completion Date during which the Concessionaire is required to design and construct the <i>Tolly's Nallah STP 1</i> in accordance with the Concession Agreement. It has the meaning ascribed to it in Clause 7.1.
Tolly's Nallah STP 2 Construction Period	means the period from Effective Date till until the Tolly's Nallah STP 2 Construction Completion Date during which the Concessionaire is required to design and construct the <i>Tolly's Nallah STP 2</i> in accordance with the Concession Agreement. It has the meaning ascribed to it in Clause 7.1
Tolly's Nallah STP 3 Construction Period	means the period from Effective Date till until the Tolly's Nallah STP 3 Construction Completion Date during which the Concessionaire is required to design and construct the <i>Tolly's Nallah STP 3</i> in accordance with the Concession Agreement. It has the meaning ascribed to it in Clause 7.1
Tolly's Nallah Associated Infrastructure 1 Construction Period	means the period from Effective Date till until the Tolly's Nallah Associated Infrastructure 1 Construction Completion Date during which the Concessionaire is required to design and construct the <i>Tolly's Nallah Associated Infrastructure 1</i> in accordance with the Concession Agreement. It has the meaning ascribed to it in Clause 7.1
Tolly's Nallah Associated Infrastructure 2 Construction Period	means the period from Effective Date till until the Tolly's Nallah Associated Infrastructure 2 Construction Completion Date during which the Concessionaire is required to design and construct the <i>Tolly's Nallah Associated Infrastructure 2</i> in accordance with the Concession Agreement. It has the meaning ascribed to it in Clause 7.1
Scheduled Tolly's Nallah STP 1 COD	means the date which is 4 months from <i>Tolly's Nallah STP 1 Construction Completion Date</i> , by which the Concessionaire is required to achieve <i>Tolly's Nallah STP 1 COD</i>
Scheduled Tolly's Nallah STP 2 COD	means the date which is 4 months from <i>Tolly's Nallah STP 2 Construction Completion Date</i> , by which the Concessionaire is required to achieve <i>Tolly's Nallah STP 2 COD</i>
Scheduled Tolly's Nallah STP 3 COD	means the date which is 4 months from <i>Tolly's Nallah STP 3 Construction Completion Date</i> , by which the Concessionaire is required to achieve <i>Tolly's Nallah STP 3 COD</i>
Scheduled	means the date which is 4 months from <i>Tolly's Nallah Associated Infrastructure 1</i>

Tolly's Nallah Associated Infrastructure 1 COD	<i>Construction Completion Date</i> , by which the Concessionaire is required to achieve <i>Tolly's Nallah Associated Infrastructure 1 COD</i>
Scheduled Tolly's Nallah Associated Infrastructure 2 COD	means the date which is 4 months from <i>Tolly's Nallah Associated Infrastructure 2 Construction Completion Date</i> , by which the Concessionaire is required to achieve <i>Tolly's Nallah Associated Infrastructure 2 COD</i>
Scheduled Tolly's Nallah COD	means the date which is 4 months from <i>Tolly's Nallah STP 1 Construction Completion Date</i> or <i>Tolly's Nallah STP 2 Construction Completion Date</i> or <i>Tolly's Nallah STP 3 Construction Completion Date</i> , whichever is later
Tolly's Nallah STP 1 COD	means the date on which the COD Certificate is issued or deemed to be issued for <i>Tolly's Nallah STP 1</i> to the Concessionaire in accordance with Article 7.15(a).
Tolly's Nallah STP 2 COD	means the date on which the COD Certificate is issued or deemed to be issued for <i>Tolly's Nallah STP 2</i> to the Concessionaire in accordance with Article 7.15(a).
Tolly's Nallah STP 3 COD	means the date on which the COD Certificate is issued or deemed to be issued for <i>Tolly's Nallah STP 3</i> to the Concessionaire in accordance with Article 7.15(a).
Tolly's Nallah Associated Infrastructure 1 COD	means the date on which the COD Certificate is issued or deemed to be issued for <i>Tolly's Nallah Associated Infrastructure 1</i> to the Concessionaire in accordance with Article 7.15(a).
Tolly's Nallah Associated Infrastructure 2 COD	means the date on which the COD Certificate is issued or deemed to be issued for <i>Tolly's Nallah Associated Infrastructure 2</i> to the Concessionaire in accordance with Article 7.15(a).
Tolly's Nallah COD	Means Tolly's Nallah STP 1 COD or Tolly's Nallah STP 2 COD or Tolly's Nallah STP 3 COD, whichever is later
<i>Tolly's Nallah Scheduled Maintenance Programme</i>	means, for each year of the <i>Tolly's Nallah O&M Period</i> , the schedule for undertaking preventive and corrective maintenance of the <i>Tolly's Nallah Facilities</i> , as prepared by the Concessionaire and approved by the KMC in accordance with Article 8.11(f).
Tolly's Nallah Construction Payments	means the payments to be made to the Concessionaire during the <i>Tolly's Nallah Construction Period</i> , upon satisfactory completion of the relevant <i>Tolly's Nallah Payment Milestones</i> , which shall, in aggregate, be equivalent to 40% of the <i>Tolly's Nallah Bid Project Cost</i> , as adjusted from time to time to reflect the

	variation in the Construction Price Index.																																																																							
Tolly's Nallah Construction Plan	means the detailed construction plan for the <i>Tolly's Nallah Facilities</i> to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve each of the 8 <i>Tolly's Nallah</i> Payment Milestones, in a manner such that the <i>Tolly's Nallah</i> Facilities are completed on or prior to the Scheduled <i>Tolly's Nallah</i> Construction Completion Date.																																																																							
Tolly's Nallah Facilities	<p>means collectively, the <i>Tolly's Nallah</i> STP 1, the <i>Tolly's Nallah</i> STP 2, the <i>Tolly's Nallah</i> STP 3, the Online Monitoring System for the <i>Tolly's Nallah</i> STPs and SPS, the on-site testing laboratory facilities, the <i>Tolly's Nallah</i> Associated Infrastructure and such other facilities associated with the <i>Tolly's Nallah</i> STPs or <i>Tolly's Nallah</i> Associated Infrastructure, required to set up or renovated by the Concessionaire, as described in the Technical Specifications and Schedule 1 (Scope of Work).</p> <table border="1"> <thead> <tr> <th>S. No</th> <th>Name</th> <th>Asset type</th> <th>Name of Asset</th> </tr> </thead> <tbody> <tr> <td>1</td> <td rowspan="22">Tolly's Nallah Facilities</td> <td>Sewage Treatment Plant</td> <td>Tolly's Nallah STP1</td> </tr> <tr> <td>2</td> <td>Sewage Treatment Plant</td> <td>Tolly's Nallah STP2</td> </tr> <tr> <td>3</td> <td>Sewage Treatment Plant</td> <td>Tolly's Nallah STP3</td> </tr> <tr> <td>4</td> <td>Main Pumping Stations</td> <td>New-Brijji road pumping</td> </tr> <tr> <td>5</td> <td>Pumping Stations</td> <td>New PS Kabitirtha park</td> </tr> <tr> <td>6</td> <td>Pumping Stations</td> <td>Hastings PS LS- 4</td> </tr> <tr> <td>7</td> <td>Pumping Stations</td> <td>Naktala LS- 3</td> </tr> <tr> <td>8</td> <td>Pumping Stations</td> <td>Moor avenue LS - 4</td> </tr> <tr> <td>9</td> <td>Pumping Stations</td> <td>Bansdroni LS - 2A</td> </tr> <tr> <td>10</td> <td>Pumping Stations</td> <td>Izzatulla LS - 7</td> </tr> <tr> <td>11</td> <td>Pumping Stations</td> <td>Kalitala LS - 2B</td> </tr> <tr> <td>12</td> <td>Pumping Stations</td> <td>Charu avenue</td> </tr> <tr> <td>13</td> <td>Trunk Sewer</td> <td>S&D Network</td> </tr> <tr> <td>14</td> <td>Pumping Stations</td> <td>Kamdahari PS</td> </tr> <tr> <td>15</td> <td>Pumping Stations</td> <td>Rathala LS - 1A</td> </tr> <tr> <td>16</td> <td>Pumping Stations</td> <td>Usha gate LS- 1B</td> </tr> <tr> <td>17</td> <td>Pumping Stations</td> <td>Siriti LS-3</td> </tr> <tr> <td>18</td> <td>Pumping Stations</td> <td>Canal road PS</td> </tr> <tr> <td>19</td> <td>Pumping Stations</td> <td>Chetla PS</td> </tr> <tr> <td>20</td> <td>Pumping Stations</td> <td>Kalighat PS</td> </tr> <tr> <td>21</td> <td>Pumping Stations</td> <td>Thackeray road LS-2</td> </tr> <tr> <td>22</td> <td>Pumping Stations</td> <td>Sasi sekhar bose road LS- 3</td> </tr> </tbody> </table>	S. No	Name	Asset type	Name of Asset	1	Tolly's Nallah Facilities	Sewage Treatment Plant	Tolly's Nallah STP1	2	Sewage Treatment Plant	Tolly's Nallah STP2	3	Sewage Treatment Plant	Tolly's Nallah STP3	4	Main Pumping Stations	New-Brijji road pumping	5	Pumping Stations	New PS Kabitirtha park	6	Pumping Stations	Hastings PS LS- 4	7	Pumping Stations	Naktala LS- 3	8	Pumping Stations	Moor avenue LS - 4	9	Pumping Stations	Bansdroni LS - 2A	10	Pumping Stations	Izzatulla LS - 7	11	Pumping Stations	Kalitala LS - 2B	12	Pumping Stations	Charu avenue	13	Trunk Sewer	S&D Network	14	Pumping Stations	Kamdahari PS	15	Pumping Stations	Rathala LS - 1A	16	Pumping Stations	Usha gate LS- 1B	17	Pumping Stations	Siriti LS-3	18	Pumping Stations	Canal road PS	19	Pumping Stations	Chetla PS	20	Pumping Stations	Kalighat PS	21	Pumping Stations	Thackeray road LS-2	22	Pumping Stations	Sasi sekhar bose road LS- 3
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Tolly's Nallah Associated Infrastructure 1	means collectively, the on-site testing laboratory facilities, for the below mentioned Tolly's Nallah Facilities and any other facilities associated with them, required to set up or renovated by the Concessionaire, as described below and in																																																																							

the Technical Specifications and Schedule 1 (Scope of Work).

S. No	Group	Facility Type	Facility Name
1	Tolly's Nallah Associated Infrastructure 1	Pumping Stations	Hastings PS LS- 4
2		Pumping Stations	Naktala LS- 3
3		Pumping Stations	Moor avenue LS - 4
4		Pumping Stations	Bansdroni LS - 2A
5		Pumping Stations	Izzatulla LS - 7
6		Pumping Stations	Kalitala LS - 2B
7		Pumping Stations	Charu avenue
8		Trunk Sewer	S&D Network

Tolly's Nallah Associated Infrastructure 2

means collectively, the on-site testing laboratory facilities, for the below mentioned Tolly's Nallah Facilities and any other facilities associated with them, required to set up or renovated by the Concessionaire, as described below and in the Technical Specifications and Schedule 1 (Scope of Work).

S. No	Group	Facility Type	Facility Name
1	Tolly's Nallah Associated Infrastructure 2	Pumping Stations	Kamdahari PS
2		Pumping Stations	Rathala LS - 1A
3		Pumping Stations	Usha gate LS- 1B
4		Pumping Stations	Siriti LS-3
5		Pumping Stations	Canal road PS
6		Pumping Stations	Chetla PS
7		Pumping Stations	Kalighat PS
8		Pumping Stations	Thackeray road LS-2
9		Pumping Stations	Sasi sekhar bose road LS- 3

Tolly's Nallah Guaranteed

means, in relation to the
i. Tolly's Nallah Associated Infrastructure 2, the availability of

<p>Interim Availability</p>	<p>Pumping Stations to accept Sewage after the Tolly's Nallah Associated Infrastructure 2 COD until Tolly's Nallah COD</p> <p>ii. Tolly's Nallah Associated Infrastructure 1, the availability of Pumping Stations to accept Sewage after the Tolly's Nallah Associated Infrastructure 1 COD until Tolly's Nallah COD, if applicable</p> <p>iii. Tolly's Nallah STP 1, the availability of such STP to accept and treat the Sewage from the Tolly's Nallah STP 1 COD until Tolly's Nallah COD, as determined in accordance with Clause 8.12(a)(vi), if applicable</p> <p>iv. Tolly's Nallah STP 2, the availability of such STP to accept and treat the Sewage from the Tolly's Nallah STP 2 COD until Tolly's Nallah COD, as determined in accordance with Clause 8.12(a)(vi), if applicable</p> <p>v. Tolly's Nallah STP 3, the availability of such STP to accept and treat the Sewage from the Tolly's Nallah STP 3 COD until Tolly's Nallah COD, as determined in accordance with Clause 8.12(a)(vi), if applicable</p>
<p>Tolly's Nallah Inlet Point(s)</p>	<p>means the point mutually agreed to between the KMC and the Concessionaire at the <i>Tolly's Nallah</i> STP(s) where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the <i>Tolly's Nallah</i> STP(s).</p>
<p><i>Tolly's Nallah</i> Mobilization Advance</p>	<p>means an amount equivalent to 10% of the <i>Tolly's Nallah</i> Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction at the Tolly's Nallah Site in accordance with Article 9.3(b).</p>
<p><i>Tolly's Nallah</i> O&M Charges</p>	<p>means the amount required by the Concessionaire per quarter to operate and maintain the <i>Tolly's Nallah</i> Facilities, excluding the Power Charges, during the <i>Tolly's Nallah</i> O&M Period. The O&M Charges for the first quarter after the <i>Tolly's Nallah</i> COD will be determined on the basis of the O&M Charges quoted by the Selected Bidder (in the Financial Proposal) for the first month from the <i>Tolly's Nallah</i> COD, which amount shall then be adjusted to reflect the variation in the O&M Price Index, for each quarter till the expiry of the <i>Tolly's Nallah</i> O&M Period.</p>
<p><i>Tolly's Nallah</i> O&M Period</p>	<p>means the period commencing from the <i>Tolly's Nallah</i> COD and ending on the Expiry Date, during which the Concessionaire is required to operate and maintain the <i>Tolly's Nallah</i> Facilities.</p>
<p><i>Tolly's Nallah</i></p>	<p>has the meaning ascribed to it in Article 5.5</p>

O&M Security	
Tolly's Nallah Guaranteed Energy Consumption	means the sum of <i>Tolly's Nallah</i> STP(s) Guaranteed Energy Consumption and <i>Tolly's Nallah</i> Associated Infrastructure Guaranteed Energy Consumption
<i>Tolly's Nallah</i> Payment Milestones	means the 8 milestones listed in Article 9.3(e)(i) for release of the <i>Tolly's Nallah</i> Construction Payments to the Concessionaire, and <i>Tolly's Nallah</i> Payment Milestone' shall mean any one of them, as the context may require.
<i>Tolly's Nallah</i> Performance Security	has the meaning ascribed to it in Clause 5.1.
<i>Tolly's Nallah</i> Power Charges	means the cost of the power consumed by the Concessionaire to operate and maintain the <i>Tolly's Nallah</i> Facilities during the <i>Tolly's Nallah</i> O&M Period, which will be calculated on the basis of the prevailing Power Unit Rate, the Fuel Price, to the extent applicable and such other applicable charges as per the guidelines of the relevant Government Authorities.
Tolly's Nallah STP 1 Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume for handling both Dry Weather Flow (DWF) and Storm Weather Flow (SWF) at the STP during the Tolly's Nallah O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), and to operate and maintain Tolly's Nallah STP 1 at varying volumes and BOD of Sewage (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the STPs at the average volume and BOD of Sewage treated in such quarter (such average to be calculated in accordance with the KPI Adherence Report).
Tolly's Nallah STP 2 Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume for handling both Dry Weather Flow (DWF) and Storm Weather Flow (SWF) at the STP during the Tolly's Nallah O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), to operate and maintain Tolly's Nallah STP 2 at varying volumes and BOD of Sewage (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the STPs at the average volume and BOD of Sewage treated in such quarter (such average to be calculated in accordance with the KPI Adherence Report).

<p>Tolly’s Nallah STP 3 Guaranteed Energy Consumption</p>	<p>means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume for handling both Dry Weather Flow (DWF) and Storm Weather Flow (SWF) at the STP during the Tolly’s Nallah O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), to operate and maintain Tolly’s Nallah STP 3 at varying volumes and BOD of Sewage (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the STPs at the average volume and BOD of Sewage treated in such quarter (such average to be calculated in accordance with the KPI Adherence Report).</p>
<p>Tolly’s Nallah STP Outlet Point(s)</p>	<p>means the outlet of the <i>Tolly’s Nallah</i> STP(s) where the sample of the Treated Effluent shall be drawn periodically to test compliance with the relevant Discharge Standards.</p>
<p>Tolly’s Nallah STP 1 Site</p>	<p>means the land admeasuring [●] Acres in <i>Tolly’s Nallah</i> zone, Kolkata, required by the Concessionaire to construct the <i>Tolly’s Nallah STP 1</i>, as quoted by the Selected Bidder as its <i>Tolly’s Nallah</i> Land Requirement in the Financial Proposal.</p>
<p>Tolly’s Nallah STP 2 Site</p>	<p>means the land admeasuring [●] Acres in <i>Tolly’s Nallah</i> zone, Kolkata, required by the Concessionaire to construct the <i>Tolly’s Nallah STP 2</i>, as quoted by the Selected Bidder as its <i>Tolly’s Nallah</i> Land Requirement in the Financial Proposal.</p>
<p>Tolly’s Nallah STP 3 Site</p>	<p>means the land admeasuring [●] Acres in <i>Tolly’s Nallah</i> zone, Kolkata, required by the Concessionaire to construct the <i>Tolly’s Nallah STP 3</i>, as quoted by the Selected Bidder as its <i>Tolly’s Nallah</i> Land Requirement in the Financial Proposal.</p>
<p>Tolly’s Nallah Site</p>	<p>means the: (i) Tolly’s Nallah STP 1 Site, Tolly’s Nallah STP 2 Site and Tolly’s Nallah STP 3 Site and (ii) site for setting up the Tolly’s Nallah Associated Infrastructure 1 and Tolly’s Nallah Associated Infrastructure 2</p>
<p>Tolly’s Nallah Supporting Infrastructure</p>	<p>means the supporting infrastructure facilities required for the operation of the <i>Tolly’s Nallah</i> Facilities, which will be provided, operated and maintained by the KMC during the term</p>
<p>Tolly’s Nallah STP 1 Trial Operations</p>	<p>means the operation of the <i>Tolly’s Nallah STP 1</i> on a trial basis for a period of 3 months from the <i>Tolly’s Nallah Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.</p>

<i>Tolly's Nallah STP 2 Trial Operations</i>	means the operation of the <i>Tolly's Nallah STP 2</i> on a trial basis for a period of 3 months from the <i>Tolly's Nallah Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.
<i>Tolly's Nallah STP 3 Trial Operations</i>	means the operation of the <i>Tolly's Nallah STP 3</i> on a trial basis for a period of 3 months from the <i>Tolly's Nallah Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.
<i>Tolly's Nallah Associated Infrastructure 1 Trial Operations</i>	means the operation of the <i>Tolly's Nallah Associated Infrastructure 1</i> on a trial basis for a period of 3 months from the <i>Tolly's Nallah Associated Infrastructure 1 Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.
<i>Tolly's Nallah Associated Infrastructure 2 Trial Operations</i>	means the operation of the <i>Tolly's Nallah Associated Infrastructure 2</i> on a trial basis for a period of 3 months from the <i>Tolly's Nallah Associated Infrastructure 2 Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.
Associated Infrastructure	means infrastructure facilities associated with operation of an STP including but not limited to sewage pumping stations (including main pumping stations, intermediate pumping stations and any other pumping stations) and the rising mains, as described in greater details in technical specifications of each STP in relevant Facility Schedule, which need to be constructed and/or renovated and/or operated and maintained by the Concessionaire in accordance with this Agreement.
KMC	Refers to Executing Agency i.e. 'Kolkata Municipal Corporation'
KMC Applicable Permits	means the Applicable Permits which are required to be obtained by the KMC to undertake the Project, as set out in Schedule 8.
KMC Event of Default	has the meaning ascribed to it in Article 16.3.
KMC Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the KMC, acting in that capacity; (b) any contractor or subcontractor of the KMC and their directors, officers, servants, employees or agents, acting in that capacity; or (c) any Person acting on behalf of the KMC. <p>For the avoidance a doubt, 'KMC Related Parties' does not include the Concessionaire or NMCG.</p>

KMC's Representative	means any officer nominated by the KMC, from time to time, to act on its behalf and liaise with the Concessionaire and NMCG for the purposes of this Agreement and notified as such in writing to the Concessionaire and NMCG.
Availability	means the availability of the Facilities to convey, accept and/or treat the Sewage, as determined in accordance with Article 8.12(a)(i) and the term ' Available ' shall be construed accordingly.
Availability Liquidated Damages	means the compensation payable by the Concessionaire to the KMC for failure to achieve the Guaranteed Availability, in accordance with Article 8.12(a)(v).
Existing Facilities	As defined in the Article 3.8 (a)
<i>Garden Reach</i> Associated Infrastructure	means the infrastructure facilities associated with the operation of the Garden Reach STP, including the sewage pumping stations (including the main pumping station, the intermediate pumping station and any other pumping stations) and the rising mains, as described in greater detail in the Technical Specifications, which need to be renovated, constructed, operated and maintained by the Concessionaire in accordance with this Agreement.
<i>Garden Reach</i> Associated Infrastructure Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the Garden Reach O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), for operation and maintenance of Garden Reach Associated Infrastructure (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the operation and maintenance of Associated Infrastructure.
<i>Garden Reach</i> Basic Engineering Designs	means the following designs and documents to be submitted by the Concessionaire and approved by the KMC as a Condition Precedent in relation to the <i>Garden Reach</i> Facilities: <ul style="list-style-type: none"> (o) process description, process calculations, and hydraulic calculations; (p) list of design codes and standards; (q) master drawing schedule; (r) drainage design; (s) STP facilities layout; (t) process flow diagram; (u) hydraulic flow diagram;

	<p>(v) mass balance diagram;</p> <p>(w) process and instrumentation diagram;</p> <p>(x) single line diagram;</p> <p>(y) electrical load list;</p> <p>(z) structure design and drawing;</p> <p>(aa) pump characteristics; and</p> <p>(bb) general arrangement diagrams of all units of the <i>Garden Reach</i> Facilities.</p>
Garden Reach Bid Project Cost	means [] (Rupees []), being the cost of construction and renovation of the <i>Garden Reach</i> Facilities, as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes and all other pre-operative expenses in relation to the <i>Garden Reach</i> Facilities.
Garden Reach Capex Annuity	means the amount payable to the Concessionaire per quarter during the <i>Garden Reach</i> O&M Period, towards reimbursement of 60% of the <i>Garden Reach</i> Completion Cost.
Garden Reach Completion Cost	means the cost of completing the renovation of <i>Garden Reach</i> Facilities, as calculated in accordance with Article 9.4(b).
<i>Garden Reach</i> Scheduled Maintenance Programme	means, for each year of the <i>Garden Reach</i> O&M Period, the schedule for undertaking preventive and corrective maintenance of the <i>Garden Reach</i> Facilities, as prepared by the Concessionaire and approved by the KMC in accordance with Article 8.11(f).
Scheduled <i>Garden Reach</i> Construction Completion Date	means the date which is 12 months from the Effective Date, by which the Concessionaire is required to complete the renovation of <i>Garden Reach STP</i> and achieve the <i>Garden Reach</i> Construction Completion Date.
Garden Reach Construction Completion Certificate	means the certificate issued by the KMC to the Concessionaire to certify completion of construction and renovation of all <i>Garden Reach STP</i> and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with the concession agreement
Garden Reach Construction Completion Date	means the date on which the <i>Garden Reach</i> Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with this Agreement.

Garden Reach Construction Period	means the period commencing from the Effective Date until the <i>Garden Reach COD</i> , during which the Concessionaire is required to design and renovate the <i>Garden Reach STP</i> in accordance with the Concession Agreement.																										
Garden Reach COD	means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire, after successful Trial Operations and testing of the Garden Reach STP 1, in accordance with Clause 7.15(a).																										
Garden Reach Construction Payments	means the payments to be made to the Concessionaire during the <i>Garden Reach Construction Period</i> , upon satisfactory completion of the relevant <i>Garden Reach Payment Milestones</i> , which shall, in aggregate, be equivalent to 40% of the <i>Garden Reach Bid Project Cost</i> , as adjusted from time to time to reflect the variation in the Construction Price Index.																										
Garden Reach Construction Plan	means the detailed construction plan for the <i>Garden Reach Facilities</i> to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve each of the <i>Garden Reach Payment Milestones</i> , in a manner such that the <i>Garden Reach Facilities</i> are completed on or prior to the Scheduled <i>Garden Reach Construction Completion Date</i> .																										
Garden Reach Facilities	means collectively, the <i>Garden Reach STP</i> , the Online Monitoring System for the <i>Garden Reach STP</i> and SPS, the on-site testing laboratory facilities, the <i>Garden Reach Associated Infrastructure</i> and such other facilities associated with the <i>Garden Reach STP</i> or <i>Garden Reach Associated Infrastructure</i> , required to set up or renovated by the Concessionaire, as described below and in the Technical Specifications and Schedule 1 (Scope of Work). <table border="1" data-bbox="435 1474 1352 1879"> <thead> <tr> <th>S. No</th> <th>Group</th> <th>Facility Type</th> <th>Facility Name</th> </tr> </thead> <tbody> <tr> <td>1</td> <td rowspan="7">Garden Reach Facilities</td> <td>Sewage Treatment Plant</td> <td>Garden Reach STP</td> </tr> <tr> <td>2</td> <td>Pumping Stations</td> <td>Podirathi PS</td> </tr> <tr> <td>3</td> <td>Pumping Stations</td> <td>Dhanketi Khal LS</td> </tr> <tr> <td>4</td> <td>Pumping Stations</td> <td>Trenching ground LS</td> </tr> <tr> <td>5</td> <td>Pumping Stations</td> <td>Santoshpur PS</td> </tr> <tr> <td>6</td> <td>Pumping Stations</td> <td>Behala flying club PS</td> </tr> <tr> <td>7</td> <td>Pumping Stations</td> <td>Jinjirabazar MPS</td> </tr> </tbody> </table>	S. No	Group	Facility Type	Facility Name	1	Garden Reach Facilities	Sewage Treatment Plant	Garden Reach STP	2	Pumping Stations	Podirathi PS	3	Pumping Stations	Dhanketi Khal LS	4	Pumping Stations	Trenching ground LS	5	Pumping Stations	Santoshpur PS	6	Pumping Stations	Behala flying club PS	7	Pumping Stations	Jinjirabazar MPS
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<p>Existing Garden Reach Facilities</p>	<p>means collectively, the on-site testing laboratory facilities, the Garden Reach Associated Infrastructure and such other facilities associated with the Existing Garden Reach Facilities, required to set up or renovated by the Concessionaire, as described in below and in the Technical Specifications and Schedule 1 (Scope of Work).</p> <table border="1" data-bbox="436 541 1352 911"> <thead> <tr> <th>S. No</th> <th>Group</th> <th>Facility Type</th> <th>Facility Name</th> </tr> </thead> <tbody> <tr> <td>1</td> <td rowspan="6">Existing Garden Reach Facilities</td> <td>Pumping Stations</td> <td>Podirathi PS</td> </tr> <tr> <td>2</td> <td>Pumping Stations</td> <td>Dhanketi Khal LS</td> </tr> <tr> <td>3</td> <td>Pumping Stations</td> <td>Trenching ground LS</td> </tr> <tr> <td>4</td> <td>Pumping Stations</td> <td>Santoshpur PS</td> </tr> <tr> <td>5</td> <td>Pumping Stations</td> <td>Behala flying club PS</td> </tr> <tr> <td>6</td> <td>Pumping Stations</td> <td>Jinjirabazar MPS</td> </tr> </tbody> </table>	S. No	Group	Facility Type	Facility Name	1	Existing Garden Reach Facilities	Pumping Stations	Podirathi PS	2	Pumping Stations	Dhanketi Khal LS	3	Pumping Stations	Trenching ground LS	4	Pumping Stations	Santoshpur PS	5	Pumping Stations	Behala flying club PS	6	Pumping Stations	Jinjirabazar MPS
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<p>Garden Reach Guaranteed Interim Availability</p>	<p>means, in relation to the</p> <ol style="list-style-type: none"> i. Garden Reach STP, the ability of the STP to accept and treat the Sewage during the Construction Period upto a maximum of 28 MLD, as laid out in Schedule 7, after Effective Date until Tolly’s Nallah COD ii. Existing Garden Reach Facilities, the availability of Pumping Stations to accept Sewage as laid out in Schedule 7, after the Effective Date until the until Tolly’s Nallah COD. 																							
<p>Garden Reach Inlet Point</p>	<p>means the point mutually agreed to between the KMC and the Concessionaire at the <i>Garden Reach</i> STP where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the <i>Garden Reach</i> STP.</p>																							
<p>Garden Reach Mobilization Advance</p>	<p>means an amount equivalent to 10% of the <i>Garden Reach</i> Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction at the <i>Garden Reach</i> Site in accordance with Article 9.3(b).</p>																							
<p>Garden Reach O&M Charges</p>	<p>means the amount required by the Concessionaire per quarter to operate and maintain the <i>Garden Reach</i> Facilities, excluding the Power Charges, during the</p>																							

	<i>Garden Reach</i> O&M Period. The O&M Charges for the first quarter after the <i>Tolly's Nallah COD</i> will be determined on the basis of the O&M Charges quoted by the Selected Bidder (in the Financial Proposal) for the first month from the <i>Tolly's Nallah COD</i> , which amount shall then be adjusted to reflect the variation in the O&M Price Index, for each quarter till the expiry of the <i>Garden Reach</i> O&M Period.
<i>Garden Reach</i> O&M Period	means the period commencing from the <i>Tolly's Nallah COD</i> and ending on the Expiry Date, during which the Concessionaire is required to operate and maintain the <i>Garden Reach</i> Facilities.
<i>Garden Reach</i> O&M Security	has the meaning ascribed to it in Article 5.5
<i>Garden Reach</i> Guaranteed Energy Consumption	means the sum of <i>Garden Reach</i> STP Guaranteed Energy Consumption and <i>Garden Reach</i> Associated Infrastructure Guaranteed Energy Consumption
<i>Garden Reach</i> Payment Milestones	means the 4 milestones listed in Article 9.3(e)(i) for release of the <i>Garden Reach</i> Construction Payments to the Concessionaire, and <i>Garden Reach</i> Payment Milestone' shall mean any one of them, as the context may require.
<i>Garden Reach</i> Performance Security	means a performance security that must be submitted by the Selected Bidder or the Concessionaire to the KMC on or before execution of the Concession Agreement to secure the obligations of the Concessionaire during the <i>Garden Reach</i> Construction Period in accordance with Clause 16.
<i>Garden Reach</i> Power Charges	means the cost of the power consumed by the Concessionaire to operate and maintain the <i>Garden Reach</i> Facilities during the <i>Garden Reach</i> O&M Period, which will be calculated on the basis of the prevailing Power Unit Rate, the Fuel Price, to the extent applicable and such other applicable charges as per the guidelines of the relevant Government Authorities.
<i>Garden Reach</i> STP	means the Sewage Treatment Plant to be constructed at the <i>Garden Reach</i> Site with capacity of 57 MLD, as part of the Project
Scheduled <i>Garden Reach</i> COD	means the date which is 4 months from the <i>Garden Reach</i> Construction Completion Date, by which the Concessionaire is required to achieve the <i>Garden Reach</i> COD
<i>Garden Reach</i> STP Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the <i>Garden Reach</i> O&M Period (other than any units expected to be generated and consumed from the Power Plant, if any), to operate and maintain <i>Garden Reach</i>

	STP at varying volumes and BOD of Sewage (as specified in the bid price sheet). The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal for the STPs at the average volume and BOD of Sewage treated in such quarter (such average to be calculated in accordance with the KPI Adherence Report).
Garden Reach STP Outlet Point	means the outlet of the <i>Garden Reach</i> STP where the sample of the Treated Effluent shall be drawn periodically to test compliance with the relevant Discharge Standards.
Garden Reach STP Site	means the land admeasuring [●] Acres in <i>Garden Reach</i> zone, Kolkata, where the existing <i>Garden Reach</i> STP has been set up.
Garden Reach Site	means the: (i) <i>Garden Reach</i> STP Site; and (ii) site of <i>Garden Reach</i> Associated Infrastructure.
Garden Reach Supporting Infrastructure	means the supporting infrastructure facilities required for the operation of the <i>Garden Reach</i> Facilities, which will be provided, operated and maintained by the KMC.
Garden Reach Trial Operations	means the operation of the <i>Garden Reach</i> STP on a trial basis for a period of 3 months from the <i>Garden Reach Construction Completion Date</i> or such longer period as may be determined in accordance with Article 7.14.
Bank	means [the International Bank for Reconstruction and Development (IBRD)/International Development Association (IDA)].
Basic Engineering Designs	Means <i>Garden Reach</i> Basic Engineering Designs and/or <i>Tolly's Nallah</i> Basic Engineering Designs
Bid	means the bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by the KMC to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Appointed Date.
Bid Project Cost	Means <i>Garden Reach</i> Bid Project Cost and/or <i>Tolly's Nallah</i> Bid Project Cost, as the context may require Bid Project Cost for a location means cost of construction in INR [] (Rupees []) of

	a Facility/Location as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes and all other pre-operative expenses in relation to the Facility, as the context may require and/or in terms of the RFP.
BOD	means biochemical oxygen demand.
Business Day	means any day other than Saturday, Sunday or any public holiday, on which the KMC and banks are open for business in Kolkata
Capex Annuity	Means Garden Reach Capex Annuity and/or Tolly's Nallah Capex Annuity as the context may require Capex Annuity for a location means the amount payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of 60% of Completion Cost, if applicable
Capital	means, in respect of the Concessionaire, the total capital of the Concessionaire that will be raised by the issuance of equity shares, preference shares and convertible instruments.
Change in Law	means the occurrence of any of the following events after the Bid Due Date: (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority; (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or (e) the introduction of any new Tax (including goods and services tax) or a change in the rate of an existing Tax. It is clarified that Change in Law shall not include any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire. i.
COD Certificate	means the certificate issued by the KMC to the Concessionaire upon issuance or deemed issuance of the Trial Operations Completion Certificates for Garden Reach Facilities and/or Tolly's Nallah Facilities, as the context may require, and satisfaction of relevant conditions in 7.15(a)
Commercial	Means Garden Reach COD and/or Tolly's Nallah COD, as the context may

Operations Date or COD	require,
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Completion Cost	Means the Garden Reach Facilities Completion Cost and/or Tolly's Nallah Facilities Completion Cost, as the context may require.
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, renovate, operate and maintain the Facilities, as set out in Schedule 8.
Concessionaire Event of Default	has the meaning ascribed to it in Article 16.1.
Concessionaire Related Parties	means any of the following: (a) the Selected Bidder or Associate(s) of the Selected Bidder; (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity; (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or (d) any Person acting on behalf of the Concessionaire.
Concessionaire's Representative	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the KMC and/or NMCG for the purposes of this Agreement and notified as such in writing to the KMC and NMCG.
Conditions Precedent	Means the obligations of the Concessionaire that are set out at Article 3.2, the obligations of the KMC that are set out at Article 3.3 and the obligations of NMCG that are set out at Article 3.4, and ' Condition Precedent ' means any one of these.
Confidential Information	means any part of this Agreement, or any information contained therein or any material provided to any Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise provides.
Construction Completion Certificate	means the Construction Completion Certificate issued by the KMC to the Concessionaire to certify completion of construction of Garden Reach Facilities or Tolly's Nallah Facilities and their relevant Associated Infrastructure and

	satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with Article 7.13, Article 7.14 and Article 7.15
Construction Completion Date	means date on which Construction Completion Certificate is issued or deemed to be issued to the Concessionaire in respect of of Garden Reach Facilities or Tolly's Nallah Facilities and their relevant Associated Infrastructure in accordance with Article 7.13(c)(iii). For purposes of this Agreement, renovation work for Garden Reach STP 2 shall be considered as construction.
Construction Payments	Means Garden Reach Construction Payments and/or Tolly's Nallah Construction Payments , as the context may require
Construction Period	Means Garden Reach Construction Period and/or Tolly's Nallah Construction Period, as the context may require.
Construction Plan	means Garden Reach Construction Plan and/or Tolly's Nallah Construction Plan , as the context may require
Construction Price Index	shall comprise: (a) 70% of WPI; and (b) 30% of CPI(IW), which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Control	means, with respect to a Person: (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term ' Controlled ' shall be construed accordingly.
Cost	means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-Stop Date	has the meaning ascribed to it in Article 3.5(a).
CPI(IW)	means the Consumer Price Index for Industrial Workers published by the Labour Bureau, GoI and shall include any index which substitutes the CPI(IW), and any

	reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published on the last date of the preceding quarter.
Debt Due	<p>means the aggregate of the following sums expressed in Rupees outstanding on the date of issuance of the Notice of Intent to Terminate:</p> <p>(a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing 45% of the Bid Project Cost but excluding any part of the principal that had fallen due for repayment 2 years prior to the date of the Notice of Intent to Terminate, as set out in the Financial Package; and</p> <p>(b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in (a) above until the date of the Notice of Intent to Terminate but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the date of the Notice of Intent to Terminate, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a KMC Event of Default or an NMCG Event of Default,</p> <p>provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken.</p> <p>For the purpose of calculating Debt Due:</p> <p>(A) the aggregate of the principal amounts of the debt provided by the Lenders under the Financing Documents shall, in no event, exceed 45% of the Bid Project Cost; and</p> <p>(B) any amount of Debt Due in foreign currency as on the date of the Notice of Intent to Terminate shall be converted to Rupees at the exchange rate published on the official website of the Reserve Bank of India as at 12 noon on the relevant date.</p>
Delay Liquidated Damages	has the meaning ascribed to it in Article 7.12(a).
Delay Event	has the meaning ascribed to it in Article 7.11(b).
Design Capacity	<p>Means,</p> <p>1. In context of Garden Reach Facilities, the average flow of Sewage that the Garden Reach STP should be designed to handle and treat in a day, which</p>

	<p>shall be 57 MLD.</p> <p>2. In context of Tolly's Nallah Facilities, the average flow of Sewage that the (i) Tolly's Nallah STP 1 should be designed to handle and treat in a day, which shall be 5.7 MLD (ii) Tolly's Nallah STP 2 should be designed to handle and treat in a day, which shall be 15.3 MLD (iii) Tolly's Nallah STP 3 should be designed to handle and treat in a day, which shall be 5.06 MLD</p> <p>3. In context of Keorapukur Facilities, the average flow of Sewage that the Keorapukur STP should be designed to handle and treat in a day, which shall be 50 MLD respectively</p>
Designs and Drawings	means, collectively, the Phase I Designs and Drawings and the Phase II Designs and Drawings.
DG Sets	means the backup diesel generators set maintained by the Concessionaire at the Site, to ensure continuous supply of power for the operation of the Facilities, when the supply of power from the grid is not available.
Digested Sludge	means the sludge which is obtained after the treatment and digestion of the Sewage
Direct Political Force Majeure Events	has the meaning ascribed to it in Article 14.1(b)(iii).
Discharge Points	means the points at which the Treated Effluents from the Kolkata STPs will be discharged, as set out in the Technical Specifications, and 'Discharge Point' shall mean any of these.
Discharge Standards	means the minimum standards set out in the Technical Specifications that the Treated Effluent and Digested Sludge must comply with.
Dispute	has the meaning ascribed to it in Article 21.1.
Dispute Meeting	has the meaning ascribed to it in Article 21.1.
Dispute Notice	has the meaning ascribed to it in Article 21.1.
Effective Date	means the date on which all the Conditions Precedent have been satisfied by the KMC, NMCG and the Concessionaire in accordance with this Agreement.
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of the KMC, the Project Engineer or the Concessionaire, may endanger the environment or lives or security of people at or around the Site or that poses an imminent threat of material damage to any property (including the Facilities) at or around the Site.

Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
Equity	means the sum expressed in INR representing the paid up equity share capital of the Concessionaire for meeting the equity component of its financial obligations under this Agreement and the Financing Documents, which, for the purpose of this Agreement, shall include convertible instruments that shall compulsorily convert into equity share capital and any loans provided by any shareholder of the Concessionaire.
Escrow Account	means the interest-bearing account opened by NMCG with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term.
Escrow Agreement	means the agreement to be executed amongst the KMC, NMCG, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, in the form set out at Schedule 4.
Escrow Bank	means the Scheduled Bank with which NMCG opens the Escrow Account, pursuant to the Escrow Agreement.
ESHS	means Environment, Social, Health and Safety requirements, including any requirements, which the Concessionaire is required to comply with in developing, rehabilitating, operating and maintaining the Facilities, as set out in Schedule 8
ESHS Documents	means collectively, the Safeguard Documents and Safety Documents prepared by the Concessionaire and approved by the KMC in accordance with Article 7.4.
ESHS Performance Securities	means the Tolly's Nallah ESHS Performance Security and/or Garden Reach ESHS Performance Security and/or Keorapukur ESHS Performance Security and/or Kudghat PS ESHS Performance Security, as the context may require and the term ESHS Performance Securities shall mean collectively, the Garden Reach ESHS Performance Security and the Tolly's Nallah ESHS Performance Security and the Keorapukur ESHS Performance Security and Kudghat PS ESHS Performance Security.
ESHS Performance Security	has the meaning ascribed to it in Article 5.1

ESMF	means the Environment and Social Management Framework agreed with the National Ganga River Basin KMC, available at http://nmcg.nic.in/Disclosure.aspx .
Event of Default	means KMC Event of Default, NMCG Event of Default or Concessionaire Event of Default, as the context may require.
Expiry Date	Means the 15 year period starting from Tolly's Nallah COD.
Facilities	Means Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapukur Facilities as the context may require and the term Facility shall be construed accordingly.
Locations	Means Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapukur Facilities as the context may require
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the [Selected Bidder/Member(s)] ¹ determined in accordance with the RFP.
Financial Close	means the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance.
Financial Package	means the financing package indicating the means of financing the Facilities, and includes all Financial Assistance specified in the Financing Documents and the Equity.
Financial Proposal	means the financial proposal submitted by the Selected Bidder in accordance with the RFP for undertaking the Project.
Financial Year	means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a company, then the 12-month period for which such company files its statutory audited accounts in the normal course of its business.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and/or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any

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

	document providing Security to the Lenders.
First Breach	has the meaning ascribed to it in Article 8.12(b)(iii)(A).
First Breach Notice	has the meaning ascribed to it in Article 8.12(b)(iii)(A).
FM Notice	has the meaning ascribed to it in Article 14.2(a).
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.
Forced Unavailability	means an interruption of or a reduction in the Availability of any Facility that is the result of: (a) a maximum capacity utilization of such Facility, as notified by the Concessionaire to the KMC in accordance with Article 8.9; (b) a suspension of the performance of the O&M services for such Facility pursuant to Article 15.1(a)(i) or Article 15.2(a)(i), to the extent any such event is not attributable to the Concessionaire; or (c) unavailability or breakdown of the Supporting Infrastructure for such Facility .
Fuel Price	means the prevailing price of diesel at Indian Oil Corporation Limited or Hindustan Petroleum Corporation Limited's in Kolkata, as determined on the 15 th day of a month.
Fundamental Change in Law	means any Change in Law that: (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or (b) renders a material part of this Agreement invalid, illegal or unenforceable; or (c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit or entitlement under this Agreement.
Ganga 2016 Order	has the meaning ascribed to it in Recital B.
GoI	means the Government of India.
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of the Facilities in India of the type and size similar to the Facilities.

GoWB	means the Government of West Bengal
Government Authority	means the GoI, any State Government (including the GoWB), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, KMC, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoWB exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Agreement.
Grace Period	has the meaning ascribed to it in Article 7.12(e).
Guaranteed Availability	has the meaning ascribed to it in Article 8.12(a)(i).
Guaranteed Interim Availability	Has meaning ascribed to it in Article 8.12 (a)(vi)
Hand-back Conditions	mean the condition in which the Site, the Facilities, and the Power Plant, if any, shall be handed back to the KMC or any entity nominated by the KMC on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement and are described in greater detail in the Technical Specifications.
Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the Facilities upon termination of the Project, as set out in Article 19.3.
Keorapukur Scheduled Handover Date	Means the date by when Keorapukur Facilities are to be handed over to the Concessionaire for the purpose of operation and maintainance. The Scheduled Handover Date for Keorapukur Facilities would tentatively be July 2023, subject to change at KMC's discretion.
Keorapukur Handover Date	Means the date when Keorapukur Facilities will be handed over to the Concessionaire for the purpose of operation and maintainance.
Kudghat Scheduled Handover Date	Means the date by when Kudghat PS are to be handed over to the Concessionaire for the purpose of operation and maintainance. The Scheduled Handover Date for Kudghat PS would tentatively be April 2025, subject to change at KMC's discretion.
Kudghat Handover Date	Means the date when Kudghat PS will be handed over to the Concessionaire for the purpose of operation and maintainance.
Kolkata STPs	Means the Garden Reach STP, Keorapukur STP, Tolly's Nallah STP 1, Tolly's

	Nallah STP 2 or the Tolly's Nallah STP 3, as the context may require
Keorapukur STP Site	means the land admeasuring [●] Acres in <i>Keorapukur</i> zone, Kolkata, where the existing <i>Keorapukur</i> STP has been set up.
Keorapukur Site	means the: (i) Keorapukur STP Site; and (ii) site of Keorapukur Associated Infrastructure.
Keorapukur Associated Infrastructure	means the infrastructure facilities associated with the operation of the Keorapukur STP, including the sewage pumping stations (including the main pumping station, the intermediate pumping station and any other pumping stations) and the rising mains, as described in greater detail in the Technical Specifications, which need to be renovated, constructed, operated and maintained by the Concessionaire in accordance with this Agreement.
Indirect Political Force Majeure Events	has the meaning ascribed to it in Article 14.1(b)(ii).
Influent Standards	means the permissible standards and characteristics set out in the Technical Specifications for the incoming Sewage.
Inlet Point	means the point mutually agreed to between the KMC and the Concessionaire at the Facilities where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the Schedule Facilities.
Intellectual Property Rights	means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Interim Availability	means, in relation to the STPs or pumping stations at any or all the locations as applicable, the availability of such STP to accept and/or treat the Sewage during the Construction Period, as determined in accordance with Article 8.12(a)(vi).
Interim Availability Liquidated Damages	means the compensation payable by the Concessionaire to the KMC for failure of the STPs and pumping stations to achieve the Guaranteed Interim Availability in accordance with Article 8.12(a)(vi)
Invoice	means an invoice for payment of: (a) the Construction Payments during the Construction Period; or (b) the Capex Annuity (along with interest), the O&M Charges and the Power Charges during the O&M Period, submitted by the

	Concessionaire to the KMC (with a copy to NMCG) in accordance with Article 9.
KPI Adherence Report	has the meaning ascribed to it in Article 8.12(c).
KPIs	means, in relation to each Facility, the key performance indicators (i.e., the Guaranteed Availability and the Discharge Standards, as the case may be) set out in Schedule 10, which such Facility must achieve during the relevant O&M Period.
Lead Member	[means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.] ²
Lenders	includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents but does not include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.
Liquidated Damages	means the Delay Liquidated Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the Power Consumption Liquidated Damages.
LOA	has the meaning ascribed to it in Recital G.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.
Member	[means, where the Selected Bidder is a Consortium, a member of the Selected Bidder.] ³
Milestone Completion Certificate	means, in respect of any Payment Milestone, a certificate issued by the KMC in accordance with Article 7.13(a), to certify that such Payment Milestone has been achieved in accordance with the requirements of this Agreement.
Minimum Escrow Balance	has the meaning ascribed to it in Article 9.5(b).

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

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

Minor Casualty	means any fire or other casualty that results in physical damage to the a Facility to the extent that the total cost (as estimated by the Project Engineer) of repairing and/or replacing the damaged portion of the Facility , as the case may be, to the same condition as previously existed would not exceed the amount of INR 25,00,000 (Rupees twenty five lakhs).
MLD	means million litres per day.
Mobilization Advance	means an amount equivalent to 10% of the Bid Project Cost for Garden Reach Facilities, Tolly’s Nallah Facilities, that is to be paid in advance to the Concessionaire for mobilization and execution of the construction works in accordance with Article 9.3(d).
Mobilization Advance Guarantee	Means Mobilisation Advance Guarantee for Garden Reach Facilities and/or Tolly’s Nallah Facilities, as the context may require. It has the meaning ascribed to it in Article 5.21.
MoWR	means the Ministry of Water Resources, River Development and Ganga Rejuvenation, GoI.
Net Worth	means the net worth of a company, which shall be determined as follows: (a) subscribed and paid up equity share capital; and (b) reserves LESS (c) revaluation reserves; (d) miscellaneous expenditure not written off; (e) reserves not available for distribution to equity shareholders; and (f) aggregate value of accumulated losses.
NMCG	has the meaning ascribed to it in the array of Parties.
NMCG Event of Default	has the meaning ascribed to it in Article 16.4.
NMCG’s Representative	means any officer nominated by NMCG, from time to time, to act on its behalf and liaise with the Concessionaire and/or the KMC and/or any entity or person for the purposes of this Agreement and notified as such in writing to the Concessionaire and the KMC.
Non-Political Force Majeure	has the meaning ascribed to it in Article 14.1(b)(i).

Event	
Notice of Arbitration	has the meaning ascribed to it in Article 21.2(a).
Notice of Intent to Terminate	means a notice of intent to terminate issued by the KMC in case of a Concessionaire Event of Default (in accordance with Article 16.2) or a notice of intent to terminate issued by the Concessionaire in case of KMC Event of Default or an NMCG Event of Default (in accordance with Article 16.5), stating its intention to terminate this Agreement.
O&M	means operation and maintenance.
O&M Charges	Means O&M charges for Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapurkur Facilities, as the context may require
O&M Payments	means, for each Facility, collectively the: (a) Capex Annuity; (b) interest on the reducing balance of 60% of the Completion Cost; (c) O&M Charges; and (d) Power Charges (subject to the cap of the Power Charges based on the Guaranteed Energy Consumption), to be paid by NMCG to the Concessionaire during the O&M Period, in accordance with this Agreement.
O&M Manual	means the manual required to be prepared by the Concessionaire and approved by the KMC for the operation and maintenance of in accordance with Article 8.2.
O&M Period	Means the O&M period of Garden Reach Facilities, Tolly's Nallah Facilities, Keorapurkur Facilities or Kudghat PS as the context may require. For Garden Reach Facilities, O&M period starts from the Tolly's Nallah COD date and extends upto Expiry Date For Tolly's Nallah Facilities, O&M period starts from the Tolly's Nallah COD date and extends upto Expiry Date For Keorapurkur Facilities, O&M period starts from the Keorapurkur Handover Date and extends upto Expiry Date For Kudghat PS, O&M period starts from the Kudghat Handover Date and extends upto Expiry Date
O&M Price Index	shall comprise: (a) 70% of CPI(IW); and (b) 30% of WPI, which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.

O&M Securities	means the O&M Security for Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapukur Facilities and/or Kudghat PS, as the context may require.
Online Monitoring System	means the monitoring system(s) to be set up by the Concessionaire as part of the Facilities for continuous monitoring of the volume, specifications and characteristics of the Sewage and the Treated Effluent.
Outlet Point	Means Outlet Point for Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapukur Facilities, as the context may require
Payment Certificate	has the meaning ascribed to it in Article 9.3(e)(v) for Construction Payments and Article 9.4(k) for O&M Payments.
Payment Milestones	Means Payment Milestones for Garden Reach Facilities and/or Tolly's Nallah Facilities, as the context may require.
Performance Liquidated Damages	means the compensation payable by the Concessionaire to the KMC for a failure to meet the Discharge Standards, in accordance with Article 8.12(b)(iii).
Performance Security	Means Performance Security for Garden Reach Facilities and/or Tolly's Nallah Facilities as the context may require
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
Phase I Designs and Drawings	means: (a) the Basic Engineering Designs; (b) the Screening Report; and (c) the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required for achieving the first Payment Milestones for Garden Reach Facilities, Tolly's Nallah Facilities.
Phase II Designs and Drawings	means the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required for achieving the remaining Payment Milestones for of Garden Reach Facilities, Tolly's Nallah Facilities
Power Charges	Means Power Charges for Garden Reach Facilities and/or Tolly's Nallah Facilities and/or Keorapukur Facilities, as the context may require.
Power Consumption Liquidated	has the meaning ascribed to it in Article 9.4(g)(ii)(C).

Damages	
Power Outage	means any interruption in the supply of electricity from the grid or any DG Sets maintained by the Concessionaire at the Site, which disrupts the continuous operation of any Facility.
Power Plant	means a biogas power plant or a rooftop solar plant that the Concessionaire decides to set up at the relevant Site as part of the Project, for production of clean energy.
Power Unit Rate	means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Site), which will be the prevailing tariff per unit of power charged by the relevant distribution licensee in the relevant month during the O&M Period.
PPP	means public private partnership.
Price Index	means, for the Construction Payments, the Construction Price Index, and for the O&M Payments, the O&M Price Index.
Price Index Multiple	<p>means, the variation multiple in the Price Index occurring between the Reference Index Date preceding the Bid Due Date and the Reference Index Date preceding the date of the Invoice, which is calculated by dividing the Price Index on the Reference Index Date preceding the date of the Invoice by the Price Index on the Reference Index Date preceding the Bid Due Date.</p> <p>For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Bid Due Date, say 30 May, 2017, is 200; (b) the Invoice is submitted on 15 April, 2020; and (c) the Price Index as on 31 March, 2020 is 210, then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05.</p>
Project	has the meaning ascribed to it in Recital D.
Project Engineer	means the engineering firm appointed by NMCG in accordance with Article 6.
Proposed Technology	means the proven technology(ies) proposed to be used by the Concessionaire to develop the Kolkata STPs, as specified by the Concessionaire in its Designs and Drawings. The proposed technology for each of the Kolkata STPs must be the same as the technology adopted for at least one of the STP(s) for which the Selected Bidder claimed technical experience in its Bid.

Qualifying Change in Law	means any Change in Law, which: (a) is directly applicable to the Project; (b) impacts the Cost or time for undertaking the Project; and (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Due Date.
Reference Index Date	means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.
Residual Grit	means the grit which is obtained as residual matter after the treatment of the Sewage at the STPs
RFP	has the meaning ascribed to it in Recital E.
Rupee or Rs. or INR	means Indian Rupees, the lawful currency of India.
Safeguard Documents	i. has the meaning ascribed to it in Article 7.4.
Safety Documents	has the meaning ascribed to it in Article 7.4.
SBI MCLR	means the prevailing marginal cost of fund based lending rate for a tenor of 1 year, notified by the State Bank of India.
Schedule	means a Schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled Garden Reach COD	means the date which is 4 months from the Construction Completion Date of a Garden Reach Facilities, by which the Concessionaire is required to achieve the commercial operations for Garden Reach Facilities.
Scheduled Maintenance	means a planned maintenance of any Facility that: (a) has been scheduled and allowed by the KMC in accordance with the Scheduled Maintenance Programme; and (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of such Facility, as the case may be.
Scheduled Maintenance	means, for each year of the O&M Period, the schedule for undertaking preventive and corrective maintenance of the Facilities, as prepared by the Concessionaire

Programme	and approved by the KMC in accordance with Article 8.11(f).
Scheduled Payment Milestone Completion Date	means the scheduled date of completion of the construction/renovation work corresponding to the relevant Payment Milestone, as specified by the Concessionaire in the relevant Construction Plan.
Scope of Work	means the scope of work for construction and O&M of the Facilities as set out in Schedule 1.
Screening Report	means, for each Facility, the environmental and social design safeguards screening report prepared by the Concessionaire and submitted to the KMC for its review as part of the Phase I Designs and Drawings, in the format set out in part [●] of Schedule 9
Screenings	means solids such as fibres, plastic and other products or things, which need to be removed from the Sewage, prior to the treatment of Sewage at the Kolkata STPs.
Second Breach	has the meaning ascribed to it in Article 8.12(b)(iii)(B).
Second Breach Notice	has the meaning ascribed to it in Article 8.12(b)(iii)(B).
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means the Bidder selected by the KMC for award of the Project.
Sewage	means the sewage that is in liquid, solid or semi-solid form and brought for treatment to the Facilities.
Sq. ft.	means square feet.
STP By-Products	means the by-products of the treatment process after the Sewage has passed through the Facilities comprising the Digested Sludge, the Residual Grit and the Screenings.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Substitution Agreement	means the substitution agreement to be executed by the KMC, NMCG, the Concessionaire and the Lenders, in the format set out in Schedule 3.
Supporting Infrastructure	means the Supporting Infrastructure Facilities for Garden Reach Facilities, Tolly's Nallah Facilities, Keorapukur Facilities, Kudghat PS as the context may require.

Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, goods and service tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors and the term Tax shall be construed accordingly.
Technical Capacity	means the technical capacity and experience of the [Selected Bidder/Member(s)] ⁴ determined in accordance with the RFP.
Term	has the meaning ascribed to it in Article 3.7.
Termination Compensation	means the compensation payable by NMCG upon termination of this Agreement, in accordance with Article 18.
Third Breach	has the meaning ascribed to it in Article 8.12(b)(iii)(C).
Third Breach Notice	has the meaning ascribed to it in Article 8.12(b)(iii)(C).
Threshold Limit	has the meaning ascribed to it in Article 13.2(e)(i).
Total Casualty	means any fire or other casualty that results in physical damage to any of the Facilities, to the extent that the total cost of repairing, replacing or restoring the damaged portion of any of the Facilities, as the case may be (as determined by the Project Engineer) to the same condition as existed previously would be more than 25% or more of the then total replacement cost of the affected Facility.
Treated Effluent	means water which is obtained after the treatment of the Sewage at the any of the STPs.
Trial Operation Procedures	means the procedures for conducting the Trial Operations, as set out in the Technical Specifications.
Trial Operations	means the operation of the Garden Reach Facilities and Tolly's Nallah Facilities on a trial basis for a period of 3 months from the Construction Completion Date or such longer period as may be determined in accordance with Article 7.14.
Trial Operations Completion Certificates	means the certificates issued by the KMC to the Concessionaire upon successful completion of the Trial Operations of the relevant Garden Reach Facilities and relevant Tolly's Nallah Facilities and the term Trial Operations Completion

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

	Certificate shall mean the certificate issued for either of the Facilities.
CMWSA Act	Means the Calcutta Metropolitan Waste and Sanitation KMC Act, 1966, as may be amended from time to time.
Unscheduled Outage	means an interruption of or a reduction in the Availability of any of the STPs that is not the result of a Forced Unavailability.
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by the KMC or proposed by the Concessionaire, in accordance with Article 20.
Variation Order	means an order issued by the KMC certifying its approval of a proposed Variation and recording the terms and condition on which the proposed Variation is required to be implemented.
Waste Disposal Site	means, for each Kolkata STP, the site identified by the KMC for disposal of the STP By-Products and other waste material (including silt) from the relevant STP.
Website	means the web portal of the KMC available at the url: https://www.kmcgov.in
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.
World Bank Group Safeguard Policies and Performance Standards	means the World Bank Group Safeguard Policies and Performance Standards, available at https://policies.worldbank.org/sites/PPF3/Pages/Manuals/Operational%20Manual.aspx , http://www.ifc.org/performancestandards and http://pubdocs.worldbank.org/en/497851495202591233/Managing-Risk-of-Adverse-impact-from-project-labor-influx.pdf
WPI	means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) A requirement that a payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The terms of the RFP form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement. In the event of any discrepancy between this Agreement and the RFP, the provisions set out in this Agreement shall prevail.

- (l) The provisions of the Articles, Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Articles, Clauses and the Schedules.

- (m) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
 - (i) between two Articles of this Agreement, the provisions of the specific Article relevant to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Articles and the Schedules, unless specified otherwise, the Articles shall prevail over the Schedules.

- (n) In the event of any discrepancy between various documents issued by or provided to the KMC as a part of the Bid Process, the following order of priority shall apply:
 - (i) this Concession Agreement;
 - (ii) the Schedules to the Concession Agreement;
 - (iii) the Financial Proposal submitted by the Selected Bidder;
 - (iv) the LOA issued to the Selected Bidder;
 - (v) the written clarifications, if any, issued to the bidders; and
 - (vi) the RFP.

- (o) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, the KMC and NMCG for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the KMC and NMCG shall be responsible to and indemnify the Concessionaire for the acts and omissions of the KMC Related Parties and the NMCG Related Parties, respectively, as if they were the acts and omissions of the KMC or NMCG, as the case may be.

- (p) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the KMC or NMCG, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the

approval, consent, review, knowledge or acknowledgement.

- (q) The rule of construction/renovation, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (r) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages , the Performance Liquidated Damages , the Availability Liquidated Damages and the Power Consumption Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.

1.3 Units of Measurement

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

2 SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION

2.1 Scope of the Project

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

- (a) Designing, financing, constructing and completing Tolly's Nallah STP 1 by Scheduled Tolly's Nallah STP 1 Construction Completion Date, Tolly's Nallah STP 2 by Scheduled Tolly's Nallah STP 2 Construction Completion Date and Tolly's Nallah STP 3 by Scheduled Tolly's Nallah STP 3 Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (b) Designing, financing, constructing/ renovating and completing Tolly's Nallah Associated Infrastructure 1 by the Scheduled Tolly's Nallah Associated Infrastructure 1 Construction Completion Date, Tolly's Nallah Associated Infrastructure 2 by the Scheduled Tolly's Nallah Associated Infrastructure 2 Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (c) Operating and maintaining Tolly's Nallah STP 1 from Tolly's Nallah STP 1 COD until Tolly's Nallah COD, Tolly's Nallah STP 2 from Tolly's Nallah STP 2 COD until Tolly's Nallah COD and Tolly's Nallah STP 3 from Tolly's Nallah STP 3 COD until Tolly's Nallah COD, as applicable, in accordance with Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim

Availability;

- (d) Operating and maintaining Tolly's Nallah Associated Infrastructure 1 from the Tolly's Nallah Associated Infrastructure 1 COD until Tolly's Nallah COD, Tolly's Nallah Associated Infrastructure 2 from Tolly's Nallah Associated Infrastructure 2 COD until Tolly's Nallah COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim Availability;
- (e) Operating and maintaining Tolly's Nallah Facilities from the Tolly's Nallah COD until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, the O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with KPIs, as applicable;
- (f) Operating and maintaining Kudghat PS from the Kudghat Handover Date until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, existing O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with the KPIs, as applicable.
- (g) Designing, financing, renovating and completing Garden Reach STP by Scheduled Garden Reach Construction Completion Date in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices;
- (h) Operating and maintaining Garden Reach STP and Existing Garden Reach Facilities from the Effective Date until Tolly's Nallah COD, in accordance with Applicable Laws, Applicable Permits, Technical Specifications and Good Industry Practices to ensure compliance with the Guaranteed Interim Availability;
- (i) Operating and maintaining Garden Reach Facilities from the Tolly's Nallah COD until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, the O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with KPIs, as applicable;
- (j) Operating and maintaining Keorapukur Facility from the Keorapukur Handover Date until Expiry Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Design and Drawings, existing O&M Manual, ESHS Documents and Good Industry Practices to ensure compliance with the KPIs, as applicable and installing and commissioning on-line monitoring systems within 4 months of Keorapukur Handover Date as per the scope mentioned in Schedule 1.
- (k) handback of the Facilities upon expiry or early termination of this Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements
- (l) The table below lists down the 1) Locations in the scope of the project; 2) Facilities within each Location 3) Groups under which the Facilities have been arranged for the better understanding of the agreement and 4) Dates from which each of the facility be operated and

maintained.

S. No	Location	Asset type	Name of Asset	Grouping	Scope of work	
1	Tolly's Nallah Facilities	Sewage Treatment Plant	Tolly's Nallah STP1	Tolly's Nallah STP 1	New construction, O&M from Tolly's Nallah STP 1 COD till Expiry Period	
2		Sewage Treatment Plant	Tolly's Nallah STP2	Tolly's Nallah STP 2	New construction, O&M from Tolly's Nallah STP 2 COD till Expiry Period	
3		Sewage Treatment Plant	Tolly's Nallah STP3	Tolly's Nallah STP 3	New construction, O&M from Tolly's Nallah STP 3 COD till Expiry Period	
4		Main Pumping Station	New-Briji road pumping	Tolly's Nallah Associated Infrastructure 1	New Construction, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
5		Pumping Station	New PS Kabitirtha park		New Construction, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
6		Pumping Station	Hastings PS LS-4		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
7		Pumping Station	Naktala LS- 3		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
8		Pumping Station	Moor avenue LS - 4		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
9		Pumping Station	Bansdroni LS - 2A		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
10		Pumping Station	Izzatulla LS - 7		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
11		Pumping Station	Kalitala LS - 2B		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
12		Pumping Station	Charu avenue		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
13		Trunk Sewer	S&D Network		Renovation, O&M from Tolly's Nallah Associated Infrastructure 1 COD till Expiry Date	
14		Pumping Station	Kamdahari PS		Tolly's Nallah Associated Infrastructure 2	Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date
15		Pumping Station	Rathala LS - 1A			Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date
16		Pumping Station	Usha gate LS- 1B			Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date
17		Pumping Station	Siriti LS-3	Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date		
18		Pumping Station	Canal road PS	Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date		
19		Pumping Station	Chetla PS	Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date		
20		Pumping Station	Kalighat PS	Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date		

21		Pumping Station	Thackeray road LS-2		Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date
22		Pumping Station	Sasi sekhar bose road LS- 3		Renovation, O&M from Tolly's Nallah Associated Infrastructure 2 COD till Expiry Date
23	Kughat PS	Pumping Station	Kudghat LS-5	Kudghat PS	O&M from Kudghat PS Handover Date till Expiry Date
24	Garden Reach Facilities	Sewage Treatment Plant	Garden Reach STP	Garden Reach STP	Renovation, O&M from Effective Date till Expiry Date
25		Pumping Station	Podirathi PS	Existing Garden Reach Facilities	O&M from Effective Date till Expiry Date
26		Pumping Station	Dhanketi Khal LS		O&M from Effective Date till Expiry Date
27		Pumping Station	Trenching ground LS		O&M from Effective Date till Expiry Date
28		Pumping Station	Santoshpur PS		O&M from Effective Date till Expiry Date
29		Pumping Station	Behala flying club PS		O&M from Effective Date till Expiry Date
30		Pumping Station	Jinjirabazar MPS		O&M from Effective Date till Expiry Date
31	Keorapukur Facilities	Pumping Station	Buroshibtala PS	Keorapukur Facilities	O&M from Keorapukur Handover Date till Expiry Date
32		Pumping Station	James long srarani PS		O&M from Keorapukur Handover Date till Expiry Date
33		Sewage Treatment Plant	Keorapukur STP		O&M from Keorapukur Handover Date till Expiry Date
34		Main Pumping Station	Keorapukur MPS		O&M from Keorapukur Handover Date till Expiry Date

2.2 Grant of Concession

- (a) On and from the Effective Date and subject to the terms of this Agreement, Applicable Laws and Applicable Permits, the KMC grants to the Concessionaire the exclusive right to
- a. Design, finance, construct, renovate and complete Tolly's Nallah Facilities, and Garden Reach Facilities
 - b. Design, finance, renovate and complete Garden Reach Facilities
 - c. Upon completion of construction/renovation of Tolly's Nallah Facilities and Garden Reach Facilities, operate and maintain facilities from relevant COD until Expiry Date subject to early termination of this Agreement in accordance with Clause 14.7
- (b) On and from the Keorapukur Handover Date and subject to the terms of this Agreement, Applicable Laws and Applicable Permits, the KMC grants to the Concessionaire the exclusive right to design, finance, renovate, operate and maintain Keorapukur Facilities from Keorapukur Handover Date until Expiry Date subject to early termination of this Agreement in accordance with Clause 14.7. Similarly, On and from the Kudghat Handover Date and subject to the terms of this Agreement, Applicable Laws and Applicable Permits, the KMC grants to the Concessionaire the exclusive right to design, finance, renovate, operate and maintain Kudghat PS from Kudghat Handover Date until Expiry Date subject to early termination of this Agreement in accordance with Clause 14.7.
- (c) The grant of the concession set out in Article 2.2(a) shall oblige or entitle the Concessionaire, as the case may be, to the following:
- i. access to the Tolly's Nallah Site, Garden Reach Site from the Effective Date, access to Keorapukur Site from Keorapukur Handover Date and access to Kudghat PS from Kudghat Handover Date for the sole purpose of implementing the Project;
 - ii. operate and maintain Existing Garden Reach Facilities from Effective Date until Expiry Date. It is clarified that while the Concessionaire's obligation to operate and maintain Existing Garden Reach Facilities will commence from the Effective Date, the Concessionaire's right to receive the relevant O&M Charges will commence from the Tolly's Nallah COD. The Concessionaire must operate and maintain Existing Garden Reach Facilities from Effective Date to Tolly's Nallah COD, above in accordance with Good Industry Practices, to ensure compliance with the Guaranteed Interim Availability;
 - iii. apply for and obtain all the Concessionaire Applicable Permits and utilities required to undertake the Project;
 - iv. raise funds (through both debt and equity financing) to finance 60% of the aggregate Bid Project Cost;
 - v. appoint Subcontractors, agents, advisors and consultants and enter into Subcontracts to undertake the Project, with the prior approval of the KMC;

- vi. complete the renovation of Garden Reach STP on or before Scheduled Garden Reach Construction Completion Date
- vii. complete the renovation of (1) Tolly's Nallah Associated Infrastructure 1 on or before the Scheduled Tolly's Nallah Associated Infrastructure 1 Construction Completion Date; (2) Tolly's Nallah Associated Infrastructure 2 on or before the Scheduled Tolly's Nallah Associated Infrastructure 2 Construction Completion Date;
- viii. complete the construction of (1) Tolly's Nallah STP 1 on or before Scheduled Tolly's Nallah STP 1 Construction Completion Date; (2) Tolly's Nallah STP 2 on or before Scheduled Tolly's Nallah STP 2 Construction Completion Date; (3) Tolly's Nallah STP 3 on or before Scheduled Tolly's Nallah STP 3 Construction Completion Date;
- ix. construct a biogas Power Plant or a solar rooftop Power Plant at its sole option and discretion; and
- x. receive the relevant Construction/renovation Payments during the relevant Construction Period and the relevant O&M Payments during the relevant O&M Period, subject to compliance with the terms and performance of the obligations under this Agreement;
- xi. upon completion of construction/renovation of the relevant facilities undertake Trial Operations of the relevant facilities;
- xii. upon successful completion of the construction/renovation of the Facilities at each location as evidenced by issuance of the relevant COD certificate(s), operate and maintain the Facilities of each Location until the Expiry Date;
- xiii. operate and maintain Garden Reach STP from Effective Date until Expiry Date. It is clarified that while the Concessionaire's obligation to operate and maintain Garden Reach STP will commence from the Effective Date, the Concessionaire's right to receive the relevant O&M Charges will commence from the Tolly's Nallah COD. The Concessionaire must operate and maintain Garden Reach STP from Effective Date to Tolly's Nallah COD, above in accordance with Good Industry Practices, to ensure compliance with the Guaranteed Interim Availability;
- xiv. operate and maintain (1) Tolly's Nallah STP 1 from Tolly's Nallah STP 1 COD until Expiry Date; (2) Tolly's Nallah STP 2 from Tolly's Nallah STP 2 COD until Expiry Date; (3) Tolly's Nallah STP 3 from Tolly's Nallah STP 3 COD until Expiry Date. It is clarified that while the Concessionaire's obligation to operate and maintain Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3 will commence from the Tolly's Nallah STP 1 COD, Tolly's Nallah STP 2 COD and Tolly's Nallah STP 3 COD, respectively, the Concessionaire's right to receive the relevant O&M Charges will commence from the Tolly's Nallah COD. The Concessionaire must operate and maintain (1) Tolly's Nallah STP 1 from Tolly's Nallah STP 1 COD until Tolly's Nallah COD (2) Tolly's Nallah STP 2 from Tolly's Nallah STP 2 COD until Tolly's Nallah COD and (3) Tolly's Nallah STP 3

from Tolly's Nallah STP 3 COD until Tolly's Nallah COD, above in accordance with Good Industry Practices, to ensure compliance with the Guaranteed Interim Availability;

- xv. operate and maintain (1) Tolly's Nallah Associated Infrastructure 1 from the Scheduled Tolly's Nallah Associated Infrastructure 1 COD until Expiry Date; (2) Tolly's Nallah Associated Infrastructure 2 from the Scheduled Tolly's Nallah Associated Infrastructure 2 COD until Expiry Date; and (3) Kudghat PS from Kudghat Handover Date to Expiry Date. It is clarified that while the Concessionaire's obligation to operate and maintain Tolly's Nallah Associated Infrastructure 1 and Tolly's Nallah Associated Infrastructure 2 will commence from the Tolly's Nallah Associated Infrastructure 1 COD and Tolly's Nallah Associated Infrastructure 2 COD, respectively, the Concessionaire's right to receive the relevant O&M Charges will commence from the Tolly's Nallah COD. The Concessionaire must operate and maintain (1) Tolly's Nallah Associated Infrastructure 1 from the Scheduled Tolly's Nallah Associated Infrastructure 1 COD until Tolly's Nallah COD; (2) Tolly's Nallah Associated Infrastructure 2 from the Scheduled Tolly's Nallah Associated Infrastructure 2 COD until Tolly's Nallah COD, if applicable, to ensure compliance with the Guaranteed Interim Availability. For the Kudghat PS, however, the Concessionaire will have the right to receive the relevant O&M charges as soon as O&M commences from Kudghat Handover Date;
- xvi. operate and maintain Keorapukur Facilities from Keorapukur Handover Date till Expiry Date in accordance with Good Industry Practices to ensure compliance with the KPIs, as applicable and install online monitoring systems as mentioned in Schedule 1
- xvii. receive, convey, handle, treat and process Sewage up to the Design Capacity of each STP;
- xviii. store, treat, market, sell or dispose of the STP By-Products, Treated Water and the Treated Effluent subject to and in accordance with this Agreement;
- xix. transfer the Facilities to the KMC upon the expiry of the Term or termination of this Agreement, after rectification of any defects in the Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements;

2.3 Description of the Facilities

- (a) The Facilities shall include the Kolkata STPs along with the associated infrastructure, referenced in Schedule 2, the Online Monitoring Systems, the on-site testing laboratory facilities, the Associated Infrastructure, and all other such facilities necessary or associated with the Kolkata STPs for treatment, processing and disposal of the Sewage/Treated Effluent, as described in greater detail in Schedule 1 (*Scope of Work*) and Schedule 11 (*Technical Specifications*).
- (b) The Concessionaire shall operate the Facilities and treat the Sewage in a manner such that during the relevant Construction Period, as applicable, the Guaranteed Interim Availability is achieved, and that during the O&M Period, the relevant KPIs are achieved, the Treated Effluent and Digested

Sludge comply with the relevant Discharge Standards.

- (c) The by-products of the Sewage treated at the Kolkata STPs (i.e., STP By-Products) will be bifurcated into the Screenings, the Digested Sludge and the Residual Grit. The Concessionaire will be required to dispose the STP By-Products and silt as follows:
 - (i) the Residual Grit, the Screenings and silt will be disposed at the relevant Waste Disposal Site to be identified by the KMC within a radius of 15 km from the relevant Site, in accordance with the Technical Specifications; and
 - (ii) the Concessionaire shall dry the Digested Sludge at a sludge handling facility available at or to be provided by the Concessionaire at the relevant Site, and have the option to sell the Digested Sludge to farmers/other third-party buyers or dispose the Digested Sludge at the relevant Waste Disposal Site. Provided that if the Concessionaire sells the Digested Sludge to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with the KMC.
- (d) The Concessionaire shall transfer the Treated Effluent from the Outlet point through the Supporting Infrastructure to any discharge point(s) indicated by KMC, for discharge in to the River Ganga, sale to third parties or utilization for irrigation purposes. The Concessionaire shall be obligated to release the Treated Effluent from Tolly's Nallah Site and Keorapukur Site back to Tolly's Nallah, wherever possible. However, the Concessionaire shall have the option to sell Treated Effluent from Garden Reach Site to third parties. Provided that the Concessionaire sells the Treated Effluent to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with the KMC.

2.4 Use of Proposed Technology

- (a) The Concessionaire shall design and develop the Kolkata STPs on the basis of the Proposed Technology, approved by the KMC as part of the Designs and Drawings.
- (b) If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop/operate the Facilities.

If the Selected Bidder does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will the KMC or NMCG be obliged to make any payment to the Concessionaire towards the licensing and use of the Proposed Technology.

- (c) Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining all the Kolkata STPs to the KMC at no additional cost to the KMC.
- (d) The Concessionaire shall indemnify the KMC and NMCG for any claims, losses, damages and

costs suffered by the KMC and/or NMCG as a result of an infringement of any third party's Intellectual Property Rights caused by the operation/use/maintenance of the Kolkata STPs.

- (e) If the Kolkata STPs are developed using different technologies, then, the provisions of this Article 2.4 shall apply to each such technology adopted for each of the STPs.

2.5 Use of Garden Reach STP and Keorapukur STP Technology

- (a) On and from the Effective Date, the KMC shall transfer all the documents, as available, and related rights to use the technology(ies) and other know-how on the basis of which the Garden Reach STP have been developed to the Concessionaire for the sole purpose of renovating, operating and maintaining the Garden Reach STP, at no additional cost to the Concessionaire.
- (b) On and from the Keorapukur Handover Date, the KMC shall also transfer all the documents and related rights to use the technology(ies) and other know-how on the basis of which the Keorapukur have been developed to the Concessionaire for the sole purpose of operating and maintaining the Keorapukur STP till Expiry Date, at no additional cost to the Concessionaire.
- (c) The Concessionaire shall indemnify the KMC for any claims, losses, damages and costs suffered by the KMC due to any infringement of the Intellectual Property Rights of the technology provider for the Garden Reach STP and Keorapukur STP, as a result of the wrongful use of such technology(ies) by the Concessionaire.
- (d) The KMC shall indemnify the Concessionaire for any claims, losses, damages and costs suffered by the Concessionaire as a result of an infringement of any third party's Intellectual Property Rights caused by use of the technology(ies) and know-how transferred to the Concessionaire for the renovation, operation and maintenance of Garden Reach STP and for operation and maintenance of Keorapukur STP, as the case may be.

3 CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1 Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied in accordance with this Article 3 shall be the Effective Date.
- (b) This Article 3 and Article 2 (*Scope of the Project and Grant of Concession*), Article 5 (*Performance Securities, ESHS Performance Securities, O&M Securities and Mobilization Advance Guarantees*), Article 6 (*Project Engineer*), Article 10 (*Financing Arrangements and Security*), Article 11.1 (*Indemnity and Limitation of Liability*), Article 12 (*Change in Ownership*), Article 13 (*Change in Law*), Article 14 (*Force Majeure*), Article 21 (*Dispute Resolution*), Article 22 (*Representations and Warranties*) and Article 23 (*Miscellaneous*) and the related Schedules, shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.

3.2 Conditions Precedent to be satisfied by the Concessionaire

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

- (a) For Tolly's Nallah Facilities
 - (i). submit the Phase I Designs and Drawings to the Authorities for KMC's approval in accordance with Article 7.2;
 - (ii). prepare the Construction/renovation Plan for Tolly's Nallah Facilities within 30 days from the Appointed Date and submit such plans to the KMC for its approval in accordance with Article 7.3;
 - (iii). submit the ESHS Documents 90 days from the Appointed Date to the KMC for its approval in accordance with Article 7.4;
 - (iv). execute and provide copy to the KMC of the technology license agreement(s) executed with the Selected Bidder or the third party technology supplier(s) for setting up the Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3.

- (v). submit to the KMC a certificate, duly attested by a Director, certifying due and satisfactory inspection/verification of Tolly's Nallah Facilities to be renovated and expressing its unconditional undertaking to renovate/repair the same without any defects/defaults under this Agreement
- (b) For Garden Reach Facilities,
- (i). submit the Phase I Designs and Drawings to the Authorities for KMC's approval in accordance with Article 7.2;
 - (ii). prepare the Construction/renovation Plan for Garden Reach Facilities within 30 days from the Appointed Date and submit such plans to the KMC for its approval in accordance with Article 7.3;
 - (iii). submit O&M Manual 30 days before the Effective Date for these facilities for KMC's approval and obtaining KMC's written approval in accordance with Article 8.2;
 - (iv). submit the ESHS Documents 90 days after Appointed Date to the KMC for its approval in accordance with Article 7.4;
 - (v). submit to the KMC a certificate, duly attested by a Director, certifying due receipt of the Garden Reach Facilities in a satisfactory condition latest by Effective Date and expressing its unconditional undertaking to renovate/repair the same without any defects/defaults under this Agreement;
- (c) execute the Substitution Agreement with the KMC, NMCG and the Lenders in the agreed form set out at Schedule 3;
- (d) submit to the KMC certified true copies of all resolutions adopted by the board of directors of the Concessionaire, authorizing execution, delivery and performance of this Agreement, Substitution Agreement and the Escrow Agreement by the Concessionaire;
- (e) obtain all Concessionaire Applicable Permits that are required for achieving Financial Close and for commencement of construction/renovation of the Facilities at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;
- (f) achieve Financial Close and submit a copy of the Financing Documents and the Financial Package to the KMC, duly certified by a director of the Concessionaire;

- (g) [execute a Shareholders' Agreement amongst the shareholders of the Concessionaire, and deliver to the KMC a certified true copy of the Shareholders' Agreement (attested by a director of the Concessionaire);]⁵
- (h) execute the Escrow Agreement with the KMC, NMCG, and the Escrow Bank in the agreed form set out at Schedule 4;
- (i) submit to the KMC certified true copies of the constitutional documents of the Concessionaire;
- (j) submit to the KMC a legal opinion stating that: (i) this Agreement, the Substitution Agreement and the Escrow Agreement have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement, the Substitution Agreement and the Escrow Agreement have been taken, fulfilled or done;
- (k) if [a Member/the Selected Bidder]⁶ has submitted unaudited annual accounts along with the Bid, the Concessionaire shall submit to the KMC , within 60 days of the Appointed Date: (i) a certified copy of [such Member's/the Selected Bidder's]⁷ duly audited balance sheet, annual report and profit and loss account for the latest Financial Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member]⁸ continues to meet the Financial Capacity specified in the RFP;
- (l) submit to the KMC a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire;

3.3 Conditions Precedent to be satisfied by the KMC

The KMC shall satisfy the following Conditions Precedent (if not already fulfilled on the Appointed Date, as applicable):

- (a) Before Effective Date

- (a) grant access to the Tolly's Nallah Site and Garden Reach Site and all necessary rights of

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

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

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

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

way to the Sites to the Concessionaire, free of Encumbrances and encroachments.

- (b) to the extent relevant, obtain any change in land use permission from the relevant Government authority to enable the Concessionaire to undertake the Project at the Site.
- (c) subject to Article 3.2, review and approve the Phase I Designs and Drawings in accordance with Article 7.2;
- (d) subject to Article 3.2, review and approve the Construction Plan in accordance with Article 7.3;
- (e) subject to Article 3.2, review and approve the ESHS Documents in accordance with Article 7.4;
- (f) obtain all approvals and consents, including the KMC Applicable Permits and approvals from the National Green Tribunal, required for the KMC to enter into this Agreement and undertake the Project;
- (g) execute the Substitution Agreement with the Concessionaire, NMCG and the Lenders in the agreed form set out at Schedule 3; and
- (h) execute the Escrow Agreement with the Concessionaire, NMCG and the Escrow Bank in the agreed form set out at Schedule 4.
- (i) provide access road(s) to the Site, which are capable of being used for transportation of equipment and materials for the construction/renovation and/or operation & maintenance of the Facilities;
- (j) fulfil the Handover Conditions in accordance with Article 3.8 and subject to the Concessionaire fulfilling the conditions specified in Article 3.2, hand over the Existing Facilities to the Concessionaire;
- (k) Additionally, review and approve the O&M Manual for Garden Reach Facilities in accordance with Article 8.2

3.4 Conditions Precedent to be satisfied by NMCG

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

- (a) obtain all approvals and consents that may be required for NMCG to enter into this Agreement and undertake the Project;

- (b) appoint the Project Engineer in accordance with Article 6;
- (c) execute the Substitution Agreement with the Concessionaire, the KMC and the Lenders in the agreed form set out at Schedule 3;
- (d) execute the Escrow Agreement with the Concessionaire, the KMC, and the Escrow Bank in the agreed form set out at Schedule 4 and open the Escrow Account with the Escrow Bank; and
- (e) fund the Escrow Account with an amount equivalent to the first two Payment Milestone.

3.5 Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, within 120 days from the Appointed Date (the CP Long-stop Date).
- (b) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the CP Long-stop Date (“CP Long-stop Date”) due to:
 - (i) a Force Majeure Event;
 - (ii) a Qualifying Change in Law;
 - (iii) in case of the Concessionaire, undue delay by the relevant Government Authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied for such Concessionaire Applicable Permit within the specified timelines, on payment of the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
 - (iv) delay by the other Parties in fulfilling any Condition Precedent required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent,

then the CP Long-stop Date shall be extended on a day-for-day basis for the period of such delay, provided that the CP Long-stop Date shall not be extended beyond the date which is 6 months from the Appointed Date.

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

3.6 Consequences of failure to satisfy Conditions Precedent

- (a) Subject to Article 3.6:
- (i) If the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Long-stop Date, as may be extended in accordance with Article 3.5(b), any Party may terminate this Agreement forthwith by issuing a notice to the other Parties.

It is clarified that if [the Selected Bidder/a Member] has submitted provisional unaudited annual accounts with its Bid and upon submission of the audited annual accounts of [the Selected Bidder/such Member] pursuant to Article 3.2(k), the [Selected Bidder/such Member] does not continue to demonstrate the minimum Financial Capacity as prescribed in the RFP, then the KMC may treat such variation as the Concessionaire's failure to satisfy the Condition Precedent set out in Article 3.2(k).

- (ii) If either the KMC or NMCG fails to satisfy any of the Conditions Precedents that they are required to fulfil by the CP Long-stop Date, as may be extended in accordance with Article 3.5(b), any Party may terminate this Agreement forthwith by issuing a notice to the other Parties.
- (iii) No Party shall be permitted to waive any Condition Precedent required to be fulfilled by any other Party.
- (b) If the Concessionaire has failed to satisfy any of the Conditions Precedents required to be satisfied by it other than due to the reasons set out in Article 3.5(b) and this Agreement is terminated in accordance with this Article 3.6, then:
- (i) the KMC shall be entitled to forfeit the Performance Securities up to INR 3,30,00,000 (Rupees three crores thirty lakhs) as a genuine pre-estimate of and reasonable compensation for loss and damage caused to the KMC as a result of the Concessionaire's failure to satisfy any of the Conditions Precedent and the consequent termination of this Agreement;
- (ii) the Concessionaire shall not be entitled to receive any payment or compensation from the KMC or NMCG for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Agreement (including preparing any Phase I Designs and Drawings, the Construction Plan and the **ESHS Documents**) prior to the termination of this Agreement;
- (iii) the Concessionaire shall hand over to the KMC all documents, designs, plans, data and any Confidential Information provided by the KMC or NMCG to the Concessionaire prior to termination of this Agreement;

- (iv) the KMC shall hand over to the Concessionaire the Phase I Designs and Drawings, the Construction Plan, the **ESHS Documents** and any other document and Confidential Information submitted by the Concessionaire to the KMC or NMCG prior to termination of this Agreement; and
 - (v) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the KMC, free from all Encumbrances.
- (c) If the KMC or NMCG has failed to satisfy any of the Conditions Precedents required to be satisfied by it; or the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it due to the reasons set out in Article 3.5(b), and this Agreement is terminated in accordance with this Article 3.6, then:
- (i) the KMC shall return the Performance Securities and the ESHS Performance Securities submitted by the Concessionaire;
 - (ii) the Concessionaire shall hand over to the KMC all documents, designs, plans, data and any Confidential Information provided by the KMC or NMCG to the Concessionaire prior to termination of this Agreement;
 - (iii) the KMC shall hand over to the Concessionaire the Phase I Designs and Drawings, the Construction Plan, the ESHS Documents and any other document and Confidential Information submitted by the Concessionaire to the KMC or NMCG prior to termination of this Agreement; and
 - (iv) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with the KMC, free from all Encumbrances.
- (d) Upon termination of this Agreement pursuant to this Article 3.6, other than to the extent specified in this Article 3.6, no Party shall have any liability to the other Parties in connection with this Agreement and the Concessionaire shall not be entitled to receive any termination compensation from NMCG or the KMC.

3.7 Term

Subject to early termination in accordance with Article 3.6 (*Consequences of failure to satisfy conditions*)

precedent) and Article 14 (*Force Majeure*) or Article 16 (*Events of Default*), this Agreement shall come into full force and effect on the Effective Date and remain in full force and effect until the Expiry Date.

3.8 Handover of Existing Facilities

(a) Transfer of the Existing Facilities

- (i). The KMC shall handover the Garden Reach Facilities to the Concessionaire on an 'as is where is' basis (subject to Article 3.8(b)), free of all Encumbrances, on or prior to the Effective Date, in accordance with Article 3.8(c).
- (ii). The KMC shall handover the Keorapukur Facilities to the Concessionaire on an 'as is where is' basis (subject to Article 3.8(b)), free of all Encumbrances, on or prior to the Keorapukur Handover Date, in accordance with Article 3.8(c).
- (iii). The KMC shall handover the Kudghat PS to the Concessionaire on an 'as is where is' basis (subject to Article 3.8(b)), free of all Encumbrances, on or prior to the Kudghat Handover Date, in accordance with Article 3.8(c)

Garden Reach Facilities and Keorapukur Facilities and Kudghat PS, collectively, they form the “**Existing Facilities**”

(b) Inspection of the Existing Facilities

- (i) The KMC shall provide the Concessionaire necessary access to: (i) Garden Reach Site, on and from the Appointed Date; (ii) Keorapukur Site, 90 days prior to the Keorapukur Handover Date; and (iii) Kudghat PS, 90 days prior to the Kudghat Handover Date, to enable the Concessionaire and any Concessionaire Related Party to inspect and survey the Existing Facilities to assess the condition of the Existing Facilities and the Site, including equipment, spare parts, assets, and other materials and structures relating to the Existing Facilities and available at or existing on the Site
- (ii) The Concessionaire shall complete its survey of the Existing Facilities and the Site, within 30 days from the Appointed Date for Garden Reach Facilities and within 60 days prior to the Keorapukur Handover Date for Keorapukur facilities and within 60 days prior to the Kudghat Handover Date for Kudghat PS. Upon completion of its survey of the Existing Facilities and the Site, the Concessionaire shall notify the KMC of any: (A) equipment, material or structures that it would want to retain at the relevant Site for the renovation (if applicable), operation or maintenance of the Existing Facilities; and (B) equipment, material (including any hazardous materials and substances), temporary installations or structures that it would want the KMC to remove from the relevant Site prior to the respective Effective Date or Handover Date, as applicable.
- (iii) The KMC shall provide the Concessionaire with copies of all existing contracts, if any,

for the Existing Facilities, including equipment supply contracts, agreements for supply of spare parts, consumables, chemicals and/or manpower, insurance contracts, technology agreements and agreements for the operation and maintenance of the Facilities (**Existing Facilities Contracts**), within 7 days from the Appointed Date for Garden Reach Facilities and at least 75 days prior to the relevant Handover Date for Keorapukur facilities and Kudghat PS. Within 15 days of the receipt of all the Existing Facilities Contracts, the Concessionaire shall notify the KMC of the Existing Facilities Contracts that it wishes to take over, to the extent permissible under the respective Existing Facilities Contracts. If the Concessionaire fails to notify the KMC of the Existing Facilities Contracts that it wishes to take over within the specified time period, then the Existing Facilities Contracts will be terminated in accordance with Article 3.8(c)(a)(iii) below.

- (iv) For Garden Reach Facilities, the Concessionaire shall submit an O&M Manual for KMC's approval 30 days before the Effective Date and obtain KMC's written approval in accordance with Article 8.2.
- (v) For Keorapukur Facilities, the Concessionaire shall submit an O&M Manual including design and details of online monitoring system for KMC's approval 30 days before the Keorapukur Handover Date and obtain KMC's written approval in accordance with Article 8.2. For Kudghat PS, the Concessionaire shall submit an O&M Manual for KMC's approval 30 days before the Kudghat Handover Date and obtain KMC's written approval in accordance with Article 8.2.
- (vi) For Garden Reach Facilities, Keorapukur facilities and Kudghat PS, the Concessionaire shall submit to the KMC a certificate, duly attested by a Director, certifying due receipt of the abovementioned Facilities in a satisfactory condition latest by Effective Date, Keorapukur Handover Date and Kudghat Handover Date respectively;
- (vii) For Garden Reach Facilities, Keorapukur facilities and Kudghat PS, the Concessionaire shall fulfil any other condition or obligation mutually agreed.

(c) **Handover Conditions**

- (i) Prior to the Effective Date for Garden Reach Facilities and prior to Keorapukur Handover Date for Keorapukur Facilities and prior to Kudghat Handover Date for Kudghat PS, the KMC or, as the case may be, KMC shall fulfil the following conditions (**Handover Conditions**):
 - (i) clear the Site of all debris, hazardous materials, surplus construction materials, temporary works, work sheds, labour camps, and other equipment, materials and temporary installations on the Site, except the spare parts maintained at the Site for the Existing Facilities and any equipment, or material that the Concessionaire has elected to takeover under Article 3.8(b).(ii)(B) above;

- (ii) hand over all documents relating to the Existing Facilities, including the available designs and drawings, metering data, operating logs, O&M manuals, reports and other records maintained in relation to the volume and characteristics of the Sewage treated by the Existing Facilities;
- (iii) transfer or cause to be transferred to the Concessionaire, any Existing Facilities Contract that the Concessionaire has chosen to take over and terminate all other Existing Facilities Contracts, except the technology agreements, if any, entered into with the technology providers for the Garden Reach STP and Keorapurkur STP and equipment supply contracts which have subsisting warranty obligations;
- (iv) provide copies of all Applicable Permits obtained for the Existing Facilities to the Concessionaire;
- (v) transfer all employees and workmen engaged by the KMC or the Municipal Corporation or any contractor of the KMC, from the Site to allow for the workforce of the Concessionaire to take over;
- (vi) provide to the Concessionaire, a list of all spare parts available at the Site for the Existing Facilities; and
- (vii) obtain the consent of any equipment supplier to assign all subsisting warranties for the equipment comprising the Existing Facilities, to the Concessionaire;
- (viii) obtain the consent of the relevant technology provider to transfer all the documents to use the relevant technology and other know-how relating to the Existing Facilities to the Concessionaire for the Term; and
- (ix) provide approval/comments on the O&M Manual submitted by the Concessionaire as per Article 8.2(e).
- (x) During the Handover, if the STP is not meeting the design standards, KMC may take corrective action or KMC in consultation with the Project Engineer may request the Concessionaire to undertake any work that is required to meet the design standards and all such additional work shall be treated as variation in scope.

(d) **Fulfilment of Handover Conditions**

- (i) Upon fulfilment of the Handover Conditions set out in Article 3.8(c) above, the KMC shall notify the Concessionaire of the completion of the Handover Conditions. The Concessionaire shall, within 7 days from the receipt of such notification from the KMC, either: (i) confirm in writing the fulfilment of the Handover Conditions; or (ii) notify the KMC of any Handover Conditions which, in the Concessionaire's opinion have not been satisfied by the KMC. Upon receipt of such notification from the Concessionaire

pursuant to (ii) above, the KMC shall promptly complete the pending Handover Conditions.

- (ii) The process set out in Article 3.8(d) above will continue until the Concessionaire is satisfied that the Handover Conditions have been fulfilled. The Handover Conditions will be deemed to be complete upon receipt of a confirmation from the Concessionaire pursuant to Article 3.8(d)(i).
- (iii) Any Dispute between the Parties with respect to the status of completion of the Handover Conditions shall be settled in a final and binding manner in accordance with Article 21 (*Dispute Resolution*).

(e) Handover of Keorapukur Facilities and Kudghat PS

- (i) 90 days before handover of the abovementioned facilities, the KMC shall issue a notice to the Concessionaire to apprise them of the Keorapukur Handover Date and the Kudghat Handover Date.
- (ii) Prior to the Keorapukur Handover Date and the Kudghat Handover Date, the KMC will facilitate visits of Concessionaire to the site as and when required by the concessionaire.

(f) O&M of Keorapukur and Garden Reach Facilities

- (i) For 30 days post the Keorapukur Handover Date for Keorapukur Facilities and for 30 days post the Kudghat Handover Date for Kudghat PS, the Concessionaire shall be exempt from meeting the KPI/availability standards. The concessionaire, would, however be obligated to maintain the effluent/ availability standards to the extent evidenced by the average ongoing performance parameters of the asset at least 6 months prior to relevant Handover Date.
- (ii) For 30 days post the Effective Date for Garden Reach STP, the Concessionaire shall be exempt from meeting the KPI standards, as laid out in Schedule 7. The concessionaire, would, however be obligated to maintain effluent standards to the extent evidenced by the average ongoing performance parameters of at least 6 months prior to Effective Date. For 30 days post the Effective Date for Existing Garden Reach Facilities, the Concessionaire shall be exempt from meeting the Guaranteed Interim Availability standards as laid out in Schedule 7.

(g) Satisfaction of Handover Conditions for Keorapukur Facilities and Kudghat PS

- (i) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Handover Conditions for Keorapukur Facilities and for

Kudghat PS that it is responsible for, before the relevant Scheduled Handover Date.

- (ii) If any Party fails to satisfy any Handover Conditions that it is required to fulfil by relevant Scheduled Handover Date due to:
 - i. a Force Majeure Event;
 - ii. a Qualifying Change in Law;
 - iii. in case of the Concessionaire, undue delay by the relevant Government authority in granting any Concessionaire Applicable Permit, despite the Concessionaire having applied for such Concessionaire Applicable Permit within the specified timelines, on payment of the prescribed fees and having complied with the requirements of Applicable Laws in making such application; or
 - iv. delay by the other Parties in fulfilling any Handover Conditions required to be satisfied by them or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Handover Conditions,

then the relevant Scheduled Handover Date shall be extended on a day-for-day basis for the period of such delay, provided that the relevant Handover Date shall not be extended beyond a period of 4 months.

- (d) Each Party shall cooperate and use its reasonable efforts to assist the other Parties in satisfying the Handover Conditions.
- (e) If the KMC fails to fulfil the Handover Conditions for Keorapukur Facilities or for Kudghat PS by relevant Scheduled Handover Date, as may be extended in accordance with Article 3.9(g)(ii), then the asset (and thereby any attached payments) will be considered to be excluded from the scope of the project.
- (f) If the Concessionaire fails to fulfil the Handover Conditions for Keorapukur Facilities or for Kudghat PS by relevant Scheduled Handover Date, as may be extended in accordance with Article 3.9(g)(ii), then the KMC and/or NMCG will be allowed to
 - (a) deduct the O&M securities for these facilities from the ongoing Construction and/or O&M payments
 - (b) charge 0.5% of the relevant location's O&M Security for each day of delay.

4 SITE AND ASSET OWNERSHIP

4.1 Grant of License over the Site

- (a) The **KMC** shall grant the Concessionaire a license over all Tolly's Nallah Site, Garden Reach Site, Keorapukur Site and Kudghat PS, along with all necessary rights of way, to enter upon, access and occupy the Sites, free of all Encumbrances in accordance with this Article 4.1, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:
- (i) Design, finance, construct/renovate, complete, operate and maintain Tolly's Nallah Facilities and Garden Reach Facilities
 - (ii) Operate and maintain Keorapukur Facilities and install online monitoring systems (from Keorapukur Handover Date)
 - (iii) Install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (iv) Use access roads, gates, fences and utilities at or about the Site;
 - (v) discharge, store, treat and manage the STP By-Products and the Treated Effluent produced by the Facilities; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Site.
- (b) On and from the Effective Date and subject to the provisions of this Agreement, the **KMC** shall grant the Concessionaire: (i) a license over the Tolly's Nallah Site including the exclusive right to occupy and use the sites to construct/renovate and/or operate and maintain the Tolly's Nallah Facilities, as per Schedule 1; (ii) a license over the Garden Reach Site including the exclusive right to occupy and use the sites to construct/renovate and/or operate and maintain the Garden Reach Facilities, as per Schedule 1; and (iii) all necessary rights of way to Tolly's Nallah Site and Garden Reach Site. On and from the relevant Handover Date and subject to the provisions of this Agreement, the **KMC** shall grant the Concessionaire: (i) a license over the Keorapukur Site and Kudghat PS including the exclusive right to occupy and use the sites to construct/renovate and/or operate and maintain the Keorapukur Facilities and Kudghat PS, as per Schedule 1; and (ii) all necessary rights of way to Keorapukur Site and Kudghat PS. Any charges payable for obtaining the right of way will be paid directly by the **KMC**.

- (c) The KMC shall provide the Site to the Concessionaire free of Encumbrances and encroachments as per Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Site, the KMC will remove such hazardous substances at its own cost and expense.
- (d) The Concessionaire shall not without the prior written consent or approval of the KMC use any of the Sites for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by the KMC.
- (e) The full ownership and title over the Site shall vest with the KMC for the entire Term.
- (f) The KMC warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy each Site, from such time that access is granted to the Concessionaire and until the expiry of the Term. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, the KMC shall, if called upon by the Concessionaire, defend such claims and proceedings.
- (g) Subject to any substitution rights exercised by the Lenders, the license granted by the KMC shall automatically terminate upon termination of this Agreement or expiry of the Term.

4.2 Right, Title and Interest in the Facilities

- (a) The full ownership, rights and title to the Facilities constructed, renovated or installed by the Concessionaire pursuant to this Agreement shall vest with the KMC during the entire Term and thereafter. The Concessionaire shall have the right to enter upon the Site, access and operate the Facilities during the Term, to exercise its rights and fulfil its obligations under this Agreement.
- (b) Except as otherwise provided in this Agreement, the Concessionaire shall not:
 - (i) sell or otherwise dispose or create any Security over the Facilities or any part thereof;
 - (ii) dispose any assets forming part of the Facilities, other than for the purposes of replacement due to normal wear and tear; or
 - (iii) transfer, assign or novate all of its rights and obligations under this Agreement, without the prior written consent of the KMC (such consent not being unreasonably withheld or delayed).

4.3 Site Data and Verification

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

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

4.4 Unforeseen Site Conditions

Without prejudice to Article 4.3 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Concessionaire may seek a Variation in accordance with Article 20.3. Upon receipt of a request for a Variation due to unforeseen Site conditions relating to one or more of the Site, if, in the opinion and sole discretion of the KMC, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then the KMC shall issue a Variation Order in accordance with Article 20. Any decision of the KMC regarding the existence of any unforeseen Site conditions shall be final and binding.

4.5 Site Related Covenants

The Concessionaire agrees and undertakes that:

- (a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of any of the Sites or its rights and interest in any of the Sites, other than as specifically permitted under this Agreement;
- (b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of any of the Sites and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from any of the Sites;
- (c) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;

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

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

If the construction/renovation works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjacent Property, the Concessionaire shall promptly and at its own cost obtain all necessary third-party consents and/or the approval of any Government authority to undertake such construction/renovation works and/or the O&M services. The KMC shall provide all reasonable assistance to the Concessionaire for procuring such approvals.

4.6 Access to KMC Related Parties, NMCG Related Parties and Government Authorities

The Concessionaire shall ensure that the KMC Related Parties, the NMCG Related Parties, the Bank and the relevant Government Authorities have access to all the Sites and the license granted to the Concessionaire over all the Sites shall always be subject to:

- (a) the rights of the KMC, the KMC 's Representative, NMCG's Representative, the Project Engineer, the Bank and other KMC Related Parties and NMCG Related Parties to enter upon and access any of the Sites to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the KMC and/or NMCG shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction/renovation and/or operation of the Facilities in any manner whatsoever; and

- (b) the rights of the Government Authorities or other utility providers to enter upon and access any of the Sites for laying or installing telegraph lines, electric lines or for any other public purpose.

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

5 PERFORMANCE SECURITIES, ESHS PERFORMANCE SECURITIES, O&M SECURITIES AND MOBILIZATION ADVANCE GUARANTEES

5.1 The Concessionaire shall have submitted to the KMC:

- (a) prior to the Appointed Date, (i) an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 9% of the Bid Project Cost for Tolly's Nallah Facilities towards "**Tolly's Nallah Performance Security**"; (ii) an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 9% of the Bid Project Cost for Garden Reach Facilities towards "**Garden Reach Performance Security**".
- (b) prior to the Appointed Date (i) an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Bid Project Cost for Tolly's Nallah Facilities towards "**Tolly's Nallah ESHS Performance Security**"; (ii) an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Bid Project Cost for Garden Reach Facilities towards "**Garden Reach ESHS Performance Security**", respectively;
- (c) prior to the Keorapukur Handover Date for Keorapukur Facilities, an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Total O&M cost and Power Charges (i.e. Monthly quoted O&M cost X 144 + Monthly quoted DWF Power Charges X 144 + Monthly quoted SWF Power Charges X 48) for Keorapukur Location towards "**Keorapukur ESHS Performance Security**";
- (d) prior to the Kudghat Handover Date for Kudghat PS, an unconditional and irrevocable bank guarantee for an amount corresponding to 1% of the Total O&M cost and Power Charges (i.e. Monthly quoted O&M cost X 120 + Monthly quoted DWF Power Charges X 120 + Monthly quoted SWF Power Charges X 40) for Kudghat PS towards "**Kudghat ESHS Performance Security**"
- (e) The Performance Security for all locations shall collectively be referred to as the Performance Security/Securities and the ESHS Performance Security for all the locations shall collectively be referred to as ESHS Performance Security/Securities.

5.2 The Performance Securities for Tolly's Nallah Facilities and Garden Reach Facilities shall remain valid until 25 months from the Effective Date or 1 month from the Tolly's Nallah COD and Garden Reach COD, whichever is later.

5.3 The Performance Securities shall be returned within 30 days of the COD.

5.4 The ESHS Performance Securities for each location shall be valid until the Expiry Date.

5.5 Within 60 days of the Construction Completion Date, the KMC will cause the concessionaire to submit

- I. As conditions precedent to Tolly's Nallah COD, an unconditional and irrevocable bank guarantee to the KMC for an amount equal to INR [] (Rupees []), corresponding to 4% of the Bid Project Cost for Tolly's Nallah Facilities (the **Tolly's Nallah O&M Security**)

- II. As conditions precedent to Garden Reach COD, an unconditional and irrevocable bank guarantee to the KMC for an amount equal to INR [] (Rupees []), corresponding to 4% of the Bid Project Cost for Garden Reach Facilities (the **Garden Reach O&M Security**)

- III. 30 days before the Keorapukur Handover Date an unconditional and irrevocable bank guarantee to the KMC for an amount equal to INR [] (Rupees []) towards **Keorapukur O&M Security**, corresponding to 4% of the aggregate of Total O&M cost and Power charges (i.e. Monthly quoted O&M cost X 144 + Monthly quoted DWF Power Charges X 144 + Monthly quoted SWF Power Charges X 48)

- IV. 30 days before the Kudghat Handover Date an unconditional and irrevocable bank guarantee to the KMC for an amount equal to INR [] (Rupees []) towards **Kudghat O&M Security**, corresponding to 4% of the aggregate of Total O&M cost and Power charges (i.e. Monthly quoted O&M cost X 120 + Monthly quoted DWF Power Charges X 120 + Monthly quoted SWF Power Charges X 40)

(collectively, **the O&M Securities**).

- 5.6** The Concessionaire shall furnish the O&M Securities in the same format as provided for the Performance Securities in the RFP, with necessary modifications. The Concessionaire shall maintain the O&M Securities in full force and effect until the Expiry Date. The O&M Securities shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the Expiry Date.
- 5.7** Each ESHS Performance Security shall secure the due performance of the Concessionaire's ESHS obligations during the relevant Construction Period and the O&M Period, as set out in the approved ESHS Documents.
- 5.8** Each Performance Security shall secure the due performance of all the Concessionaire's obligations during the Construction Period and the O&M Security shall secure the due performance of all the Concessionaire's obligations during the O&M Period.
- 5.9** The cost of procuring the Performance Securities, the ESHS Performance Securities and the O&M Securities shall be borne solely by the Concessionaire.
- 5.10** If any Performance Security is scheduled to expire before the relevant COD, then the Concessionaire shall arrange for an extension of such Performance Security at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the KMC shall be entitled to drawdown the total amount available under such Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Performance Security.
- 5.11** If any ESHS Performance Security is scheduled to expire before the expiry of the relevant O&M Period, the Concessionaire shall replace or arrange for an extension of the ESHS Performance Security at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the KMC shall be entitled to drawdown the total amount available under the ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Performance Security that is scheduled to expire.
- 5.12** If any of the O&M Securities is not renewed by the expiry of the 11th month of the relevant year of the O&M Period, then the KMC shall be entitled to drawdown the total amount available under such O&M Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of such O&M Security.
- 5.13**
- (a) The KMC shall be entitled to utilize such retained amount in the same manner as it would utilise the Performance Security, the ESHS Performance Security or the O&M Security, as the case may be.
 - (b) Upon receipt of a renewed or replacement Performance Security or within 30 days of the

relevant COD, the KMC shall return the unutilized cash security amount for the Performance Security to the Concessionaire

- (c) Upon receipt of a renewed or replacement ESHS Performance Security or within 30 days of the expiry of the Term, the KMC shall return the unutilized cash security amount for the ESHS Performance Security to the Concessionaire.
- (d) Upon receipt of a renewed or replacement O&M Security or within 30 days of the expiry of the Agreement, the KMC shall return the unutilized cash security amount for the O&M Security to the Concessionaire.
- (e) The interest earned on any retained amounts or cash security shall be the property of the KMC and the KMC shall not be required to account to the Concessionaire for any such interest.

5.14 The KMC shall have the right to draw on the Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the relevant Construction Period, or any amount due and payable by the Concessionaire to the KMC (including any Delay Liquidated Damages, Guaranteed Interim Availability Liquidated Damages and Termination Compensation), in accordance with this Agreement.

5.15 The KMC shall have the right to draw on the O&M Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the O&M Period, or any amount due and payable by the Concessionaire to the KMC (including any Availability Liquidated Damages, Performance Liquidated Damages, Termination Compensation and any amounts the Concessionaire is liable to pay under Article 19.2), in accordance with this Agreement.

5.16 Without prejudice to its right to draw on the Performance Securities or, as the case may be, the O&M Securities, the KMC shall have the right to draw on the ESHS Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its ESHS related obligations, responsibilities or commitments during the Construction Period or the O&M Period, as set out in the approved ESHS Documents, in accordance with this Agreement.

5.17 The KMC shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Securities, the ESHS Performance Securities or the O&M Securities, as the case may be. However, the KMC shall provide the Concessionaire with a copy of any demand notice issued by the KMC under the Performance Securities, the ESHS Performance Securities or the O&M Securities, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant Performance Security, ESHS Performance Security or the O&M Security.

5.18 If the KMC makes a demand under any Performance Security and/or ESHS Performance Security and/or O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than

15 days of such demand, restore the value of such Performance Security or ESHS Performance Security or O&M Security to the amount stated in Article 5.1 or Article 5.5.

5.19 Within 30 days from the COD or the termination of this Agreement, whichever is earlier, the Performance Securities or, as the case may be, the amount retained by the KMC as cash security under Clause 5.10, shall be released to the Concessionaire after the expiry of 30 days from the COD or termination of this Agreement, subject to the KMC 's right to receive any amounts from the Concessionaire before or upon COD or termination of this Agreement.

5.20 Upon the expiry of the O&M Period or the termination of this Agreement, whichever is earlier, the relevant O&M Securities, the ESHS Performance Securities or, as the case may be, the amount retained by the KMC as cash security under Article 5.11 or Article 5.12, shall be released to the Concessionaire after the expiry of 30 days from the Expiry Date or termination of this Agreement, subject to the KMC's right to receive any amounts from the Concessionaire before or upon such expiry or termination of this Agreement.

5.21 Mobilization Advance Guarantee

- (a) Within 30 days of the Effective Date, the Concessionaire shall submit to the KMC an unconditional and irrevocable bank guarantee for an amount equal to 110% of the aggregate of **Tolly's Nallah Mobilization Advance** and **Garden Reach Mobilization Advance** in the form set out at Schedule 5 ("**Mobilization Advance Guarantee**" **singularly or collectively** "**Mobilization Advance Guarantees**"). The Mobilization Advance Guarantees shall secure each location's Mobilization Advance paid to the Concessionaire in accordance with Article 9.3(d). The cost of procuring the Mobilization Advance Guarantees shall be borne solely by the Concessionaire.
- (b) Each Mobilization Advance Guarantee shall remain valid until the entire Mobilization Advance of relevant location secured by such Mobilization Advance Guarantee has been adjusted against the relevant Construction Payments. However, the Concessionaire may, at its discretion, progressively reduce the value of the relevant Mobilization Advance Guarantee by the amount of the Mobilization Advance adjusted against each of the 8 instalments of Construction Payments in case of Tolly's Nallah or against each of the 4 instalments of Construction Payments in case of Garden Reach in accordance with Article 9.3(d). For this purpose, the Concessionaire shall be required to furnish a replacement Mobilization Advance Guarantee of the reduced amount within 15 days of receipt of a Payment Certificate from the KMC on successful completion of the relevant Payment Milestone. The KMC shall return the relevant existing Mobilization Advance Guarantee upon receipt of a replacement Mobilization Advance Guarantee from the Concessionaire.
- (c) If the Mobilization Advance Guarantee for any location is scheduled to expire before the entire Mobilization Advance of that location has been adjusted, then the Concessionaire shall arrange for an extension of the relevant Mobilization Advance Guarantee at least 30 days

prior to such expiration. If the Concessionaire fails to procure such extension or replacement, the KMC shall be entitled to drawdown the total amount available under such Mobilization Advance Guarantee and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Mobilization Advance Guarantee.

- (d) The KMC shall be entitled to utilize such retained amount in the same manner as it would utilize the Mobilization Advance Guarantee. Upon receipt of an extension or replacement Mobilization Advance Guarantee or on adjustment of the entire Mobilization Advance, the KMC shall return the unutilized cash security amount to the Concessionaire.

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

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

5.22 Additional Performance Security

- (a) In the event of the Selected Bidder having submitted Additional Performance Security in accordance with the Clause 16.5 of the RFP document, then such Additional Performance Security shall be in force till the end of Construction period if the Bid Project Cost is found to be unbalanced or frontloaded bid and till the end of the Concession Period if O&M Charges are found to be unreasonable. Notwithstanding to anything contained herein, the Additional Performance Security shall be liable to be forfeited either fully or partially by the KMC as it deems fit for the reasons mentioned in Clause 16.1 of the Concession agreement. The Additional Performance Security for the unbalanced or frontloaded Bid Project cost shall be returned 30 days after COD, and the Additional Performance Security for O & M Charges shall be returned at the end of Concession Period.
- (b) Change in Ownership in accordance with Clause 12 of the Concession Agreement shall be subject to the fulfillment of the requirements of Additional Performance Security as per the clause 5.22(a) above, by the incoming Consortium Partner/Single Entity.

6 PROJECT ENGINEER

- 6.1** NMCG shall appoint a third-party engineering firm with requisite technical expertise, knowledge

and experience in the design, engineering and construction/renovation of STPs as the engineer for the Project (the **Project Engineer**). The Project Engineer shall assist the KMC in supervising the construction/renovation, operation and maintenance of the Facilities and shall support the KMC to monitor compliance with the Interim Availability during the relevant Construction Period and with the KPIs during the O&M period. The detailed scope of work of the Project Engineer is set out in Schedule 6.

- 6.2** All fees, costs, charges and expenses payable to the Project Engineer shall be borne by NMCG.
- 6.3** The Concessionaire may request NMCG to replace the Project Engineer if the Concessionaire believes that the Project Engineer is not performing its duties in accordance with this Agreement or is otherwise impeding the performance of the Concessionaire's obligations under this Agreement.

NMCG may replace the Project Engineer in any of the following circumstances:

- (i) if it has reason to believe that the Project Engineer has not discharged its duties in accordance with this Article 6 and/or Schedule 6; or
 - (ii) has received a formal complaint from the Concessionaire. In such a case NMCG will make necessary investigations and it is established that the Project Engineer has not discharged its duties in accordance with this Article 6 or Schedule 6; or
 - (iii) if the Project Engineer submits its resignation.
- 6.4** In appointing any replacement of the Project Engineer, NMCG shall comply with this Article 6 and Schedule 6.
- 6.5** The Project Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure:
- (a) the timely completion of construction of the Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3 on or before the Scheduled Tolly's Nallah STP 1 Construction Completion Date, Scheduled Tolly's Nallah STP 2 Construction Completion Date and Scheduled Tolly's Nallah STP 3 Construction Completion Date, respectively;
 - (b) the timely completion of construction/renovation of the Tolly's Nallah Associated Infrastructure 1, Tolly's Nallah Associated Infrastructure 2, Garden Reach STP on or before Scheduled Tolly's Nallah Associated Infrastructure 1 Construction Completion Date, Scheduled Tolly's Nallah Associated Infrastructure 2 Construction Completion Date, Scheduled Garden Reach Construction Completion Date, respectively;
 - (c) compliance with the Guaranteed Interim Availability during Tolly's Nallah Construction Period and Garden Reach Construction Period
 - (d) compliance with the KPIs during the O&M Period for all facilities.
- 6.6** During the relevant Construction Period, the Project Engineer shall inspect the Facilities at least

once a month and prepare an inspection report, setting out the progress of the construction of the Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Technical Specifications and Designs and Drawings and the Guaranteed Interim Availability. The Project Engineer shall send the report to the KMC and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer.

- 6.7** During the relevant O&M Period, the Project Engineer shall inspect the Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs (including specifically, the Influent Standards and the Discharge Standards). The Project Engineer shall send the report to the KMC and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer. The Project Engineer shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period at each Inlet Point and Outlet Point to determine the standard of the Sewage, the STP By-Products and the Treated Effluent.
- 6.8** Except as specifically provided in this Agreement, the Project Engineer shall have no KMC, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 6.9** The Project Engineer shall at all times during the Term have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany the Project Engineer during its inspection of the Facilities.
- 6.10** The Project Engineer shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction/renovation or O&M of the Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction/renovation works or O&M services is being undertaken. Neither any comments/suggestions provided by the Project Engineer nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction/renovation works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, Construction Plans, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.
- 6.11** The Concessionaire agrees that notwithstanding any review by the Project Engineer of any or all of the construction/renovation works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Facilities.

7 CONSTRUCTION PERIOD

7.1 Commencement and Duration

- (a) The period for construction of the
- (i) Tolly's Nallah STP 1 shall commence on and from the Effective Date, and shall continue until Tolly's Nallah STP 1 Construction Completion Date (the **Tolly's Nallah STP 1 Construction Period**).
 - (ii) Tolly's Nallah STP 2 shall commence on and from the Effective Date, and shall continue until Tolly's Nallah STP 2 Construction Completion Date (the **Tolly's Nallah STP 2 Construction Period**).
 - (iii) Tolly's Nallah STP 3 shall commence on and from the Effective Date, and shall continue until Tolly's Nallah STP 3 Construction Completion Date (the **Tolly's Nallah STP 3 Construction Period**).

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

- (i) soil or geophysical investigation or testing at the Site; and
- (ii) appointment of Subcontractors for the construction/renovation works for the Facilities, with the prior approval of the KMC.

- (b) The period for renovation of the
- (i) Tolly's Nallah Associated Infrastructure 1 shall commence on and from the Effective Date, and shall continue until Tolly's Nallah Associated Infrastructure 1 Construction Completion Date (the **Tolly's Nallah Associated Infrastructure 1 Construction Period**).
 - (ii) Tolly's Nallah Associated Infrastructure 2 shall commence on and from the Effective Date, and shall continue until Tolly's Nallah Associated Infrastructure 2 Construction Completion Date (the **Tolly's Nallah Associated Infrastructure 2 Construction Period**).
 - (iii) Garden Reach STP shall commence on and from the Effective Date, and shall continue until each Garden Reach Construction Completion Date (the **Garden Reach Construction Period**).

Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Effective Date, be entitled to inspect the site and commence appointment of Subcontractors for the renovation works for the Tolly's Nallah Associated Infrastructure 1, Tolly's Nallah Associated Infrastructure 2 and Garden Reach STP with the prior approval of the KMC.

7.2 Designs and Drawings

(a) Phase I Designs and Drawings

(i) *Basic Engineering Designs*

- A. The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. If the Concessionaire proposes to set up the Power Plant, the Concessionaire shall also submit the Basic Engineering Designs for the Power Plant. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction/renovation delays, disputes and cost overruns and to ensure smooth construction/renovation of the relevant Facilities. The Facilities should be designed in a manner such that the Concessionaire can obtain a consent to operate from the West Bengal Pollution Control Board for the operation of the Facilities. The Existing Facilities, wherever applicable, should be constructed and renovated such that the Existing Facilities can be operated in accordance with Design Standards, Applicable Laws and the Applicable Permits obtained for the Existing Facilities. The Basic Engineering Designs should also specify the Proposed Technology/Engineering for Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3.
- B. Within 30 days from the Appointed Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft Basic Engineering Designs to the KMC for its review and approval.
- C. The KMC shall forward the Basic Engineering Designs to the Project Engineer and the Indian Institute of Technology (IIT) or other such reputed institutions for their review and comments.
- D. The KMC shall provide comments if any, on the draft Basic Engineering Designs (including any comments from IIT/other reputed institute and the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft Basic Engineering Designs within 20 days from the date of receipt of the draft Basic Engineering Designs. The KMC may require the Concessionaire to amend or modify the draft Basic Engineering Designs if the KMC, IIT/other reputed institute or the Project Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from the KMC, then the Concessionaire shall

modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, the KMC's/IIT's/ other reputed institute's/the Project Engineer's comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to the KMC for its approval within 10 days of receipt of comments. The process set out in this Article 7.2(a)(i)(D) shall continue until the Basic Engineering Designs are certified by IIT/other reputed institute and are approved by the KMC in accordance with this Article 7.2(a)(i)(D).

(ii) *Screening Report*

- A. The Concessionaire shall prepare the Screening Report in accordance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF and as per the format set out in Schedule 9.
- B. Within 30 days from the Appointed Date for Tolly's Nallah Facilities, Garden Reach Facilities and within 30 days from relevant Handover Date for Keorapukur Facilities and Kudghat PS, the Concessionaire shall submit 4 hard copies and 1 soft copy of the draft Screening Report on a compact disc to the KMC for its review and approval.
- C. The KMC shall forward the draft Screening Report to the Bank for its review and comments.
- D. The KMC shall provide comments if any, on the draft Screening Report (including any comments from the Bank) to the Concessionaire or notify the Concessionaire of its approval of the draft Screening Report within 20 days from the date of receipt of the draft Screening Report. The KMC may require the Concessionaire to amend or modify the draft Screening Report if the KMC or the Bank identifies any deficiencies, inaccuracies or shortcomings in the draft Screening Report. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Screening Report from the KMC, then the Concessionaire shall modify the draft Screening Report to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, the KMC's/Bank's comments on the draft Screening Report and submit the revised Screening Report to the KMC for its approval within 10 days of receipt of comments. The process set out in this Article 7.2(a)(ii)(D) shall continue until the Screening Report is approved by the KMC in accordance with this Article 7.2(a)(ii)(D).

- (iii) Within 30 days from the approval of the Basic Engineering Designs, the Concessionaire shall prepare the balance Phase I Designs and Drawings based on the

approved Basic Engineering Designs and submit 4 hard copies and 1 soft copy on a compact disc of the balance Phase I Designs and Drawings to the KMC for its review and approval. The process set out in Article 7.2(a)(i)(C) and Article 7.2(a)(i)(D) will apply for approval of the balance Phase I Designs and Drawings.

(b) Phase II Designs and Drawings

- (i) At least 2 months prior to the commencement of work for the second Payment Milestone for each of the Tolly's Nallah Facilities and Garden Reach Facilities, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the Phase II Designs and Drawings for the works corresponding to the second Payment Milestone for the relevant Locations. The process set out in Article 7.2(a)(i)(C) and Article 7.2(a)(i)(D) will apply for approval of the Phase II Designs and Drawings for the works corresponding to the second Payment Milestone.
 - (ii) The process set out in Article 7.2(a)(i)(C) and Article 7.2(a)(i)(D) above shall apply to the submission and approval of the Phase II Designs and Drawings for the work corresponding to the third Payment Milestone and the fourth Payment Milestone for the relevant Locations.
- (c) The Concessionaire shall construct the said Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of the KMC. The Concessionaire shall not commence construction/renovation of any part of the said Facilities prior to approval of the Designs and Drawings in accordance with this Article 7.2. If the Concessionaire undertakes any construction/renovation work for the Tolly's Nallah Facilities and Garden Reach Facilities, prior to the approval of the Designs and Drawings, it shall do so at its own risk and the KMC shall have the right to reject any such construction/renovation work that does not comply with the approved Designs and Drawings.
- (d) Notwithstanding any approval of the Designs and Drawings by the KMC, the Concessionaire shall bear all risks, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Article 3.5 and Article 7.11(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Article 7.2.

7.3 Construction Plan

- (a) Within 30 days from the Appointed Date, the Concessionaire shall prepare and submit to the KMC a detailed Construction Plan for each location i.e. Tolly's Nallah Facilities and Garden Reach Facilities. The Construction Plan shall set out:
- (i) Tolly's Nallah Construction Plan would include plan for completing the construction of Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3 by Scheduled Tolly's Nallah STP 1 Construction Completion Date, Scheduled Tolly's Nallah STP 2 Construction Completion Date and Scheduled Tolly's Nallah STP 3 Construction Completion Date, respectively and detailed plan for completing the construction and renovation of the Tolly's Nallah Associated Infrastructure 1 and Tolly's Nallah Associated Infrastructure 2 by the Scheduled Tolly's Nallah Associated Infrastructure 1 Construction Completion Date, Scheduled Tolly's Nallah Associated Infrastructure 2 Construction Completion Date, respectively;
 - (ii) Garden Reach Construction Plan that would include plan for completing the renovation of Garden Reach STP on or before by Scheduled Garden Reach Construction Completion Date. Garden Reach Construction Plan should ensure that the Garden Reach STP is capable to handle and treat in a day Sewage up to half of capacity (i.e. 28 MLD) at all times during Garden Reach Construction Period from the Effective Date and meet the Guaranteed Interim Availability, in accordance with Article 8.12 (vi).
 - (iii) Each plan will detail out specific activities and extent of construction/renovation work to be performed by the Concessionaire to achieve each of the 8 Payment Milestones for Tolly's Nallah Facilities and achieve each of the 4 Payment Milestones for Garden Reach Facilities, and
 - (iv) Each plan will detail the order in which the Concessionaire proposes to execute the construction/renovation of the Facilities.
- (b) The KMC shall review and provide comments, if any, on each of the draft Construction Plans to the Concessionaire or notify the Concessionaire of its approval of each of the draft Construction Plans within 30 days from the date of receipt of each of the draft Construction Plans from the Concessionaire. The KMC may require the Concessionaire to amend or modify any of the draft Construction Plan(s) if the KMC identifies any deficiencies or shortcomings in any of the draft Construction Plans. If the Concessionaire receives any comments, suggestions or instructions to modify any of the relevant draft Construction Plan from the KMC, then the Concessionaire shall incorporate the suggestions made by the KMC and modify the relevant draft Construction Plan to address any such comments, shortcomings or deficiencies identified by the KMC. Thereafter, the Concessionaire shall submit the revised

Construction Plan to the KMC for its approval. The process set out in this Article 7.3(b) shall continue until the relevant Construction Plan is approved by the KMC in accordance with this Article 7.3(b).

- (c) The Concessionaire shall construct the Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of the KMC. The Concessionaire shall not commence construction/renovation of any part of the said Facilities prior to approval of the Construction Plan in accordance with this Article 7.3.
- (d) Notwithstanding any approval of the Construction Plan by the KMC, the Concessionaire shall, subject to Article 7.11(b), be solely liable for completing the construction/renovation of the Facilities, by the relevant Scheduled Construction Completion Date.
- (e) The Concessionaire shall submit a consolidated Construction Plan for the Tolly's Nallah Facilities and the Garden Reach Facilities.

7.4 ESHS Documents

- (a) Within 90 days from the Appointed Date for Tolly's Nallah Facilities and Garden Reach Facilities and 45 days from relevant Handover Date for Keorapukur Facilities and Kudghat PS, as applicable, the Concessionaire shall prepare and submit 4 hard copies and 1 soft copy on a compact disc of the ESHS Documents for each Location to the KMC.
- (b) The ESHS Documents shall collectively set out the health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project developed in accordance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF, this Agreement (including, specifically, Schedule 9), Applicable Laws, Applicable Permits, and Good Industry Practices.
- (c) The ESHS Documents shall comprise the following:
 - (i) *Safeguard Documents*

As part of the Safeguard Documents, the Concessionaire shall be required to:

- A. submit an update of the environment and social impact assessment report (ESIA), which has been prepared by the KMC and shall be provided to the

Concessionaire along with the RFP; and

B. prepare the environmental management plan (EMP)

(ii) *Safety Documents*

As part of the Security Documents, the Concessionaire shall be required to prepare the following:

A. environment, social, health and safety management plan (ESHSMP);

B. environmental, social, health and safety management strategies and implementation plan (ESHS-MSIP) – The ESHS-MSIP shall be prepared on the basis of the requirements set out in Schedule 9. The ESHS-MSIP shall include the following, for the purposes of managing the key ESHS risks in relation to the Project:

(I) traffic management plan to ensure safety of local communities from construction traffic;

(II) water resource protection plan to prevent contamination of drinking water;

(III) boundary marking and protection strategy for mobilization and construction to prevent offsite adverse impacts; and

(IV) strategy for obtaining Concessionaire Applicable Permits prior to the start of relevant works [such as opening a quarry or borrow pit].

C. Code of conduct – The code of conduct shall be prepared on the basis of the requirements set out in Schedule 9. The Code of Conduct shall apply to the Concessionaire's employees and subcontractors and shall set out the ESHS obligations of the Concessionaire under the Agreement relating to risks associated with labor influx, spread of communicable diseases, sexual harassment, gender based violence, illicit behaviour and crime, and maintaining a safe environment etc. The Code of Conduct shall also set out the manner in which the Code of Conduct will be implemented, including how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Concessionaire proposes to deal with any breaches.

(iii) In the ESHS, the Concessionaire shall also be required to provide details of the core team of 3 people for implementation of the Concessionaire's ESHS obligations, comprising: (A) health expert and safety specialist; (B) an environmental specialist; and (C) social specialist, who meet the minimum qualification requirements specified in Schedule 9.

(iv) Within 30 days from the appointed date, the Concessionaire shall prepare and submit 4 hard copies and 1 soft copy of Labour Influx and Workers Camp Management Plan to [Executing

Agency] that addresses specific activities that will be undertaken to minimize the impact on the local community, including elements such as worker codes of conduct, training programs on HIV/AIDS, etc. A Workers' Camp Management Plan addresses specific aspects of the establishment and operation of workers' camps

This Labor Influx and Workers' Camp Management Plan will include:

- (i) mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community members, specifically women;
 - (ii) informing workers about national laws that make sexual harassment and gender-based violence a punishable offence which is prosecuted;
 - (iii) introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination), manual scavenging, engagement with local residents, child labor, nondiscrimination, harassment of coworkers including women and those belonging to SC and STs and other minority social groups,
 - (iv) contractors adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.
 - (v) training programs on HIV/AIDS and other communicable diseases,
 - (vi) workers' Camp Management Plan addressing specific aspects of the establishment and operation of workers' camps provided the ULB/ Executing Agency is unable to cater to the demand for affordable housing for this additional workforce in terms of rentals, hostels, apartments etc. ; and
 - (vii) compliant handling Mechanism at the project level
- (d) The KMC shall forward a copy of the draft ESHS Documents to the Bank for its review and comments.
- (e) The KMC shall provide comments, if any, on the draft ESHS Documents (including any comments from the Bank) to the Concessionaire or notify the Concessionaire of its approval of the draft ESHS Documents within 30 days from the date of receipt of the draft ESHS Documents from the Concessionaire. The KMC may require the Concessionaire to amend or modify the draft ESHS Documents if the KMC or the Bank identifies any deficiencies or shortcomings in the draft ESHS Documents. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESHS Documents from the KMC, then the Concessionaire shall modify the draft ESHS Documents to address any such comments, shortcomings or deficiencies identified by the KMC. Thereafter, the Concessionaire shall submit the revised ESHS Documents to the KMC for its approval. The process set out in this Article 7.4(e) shall continue until the ESHS Documents are approved by the KMC in accordance with this Article 7.4(e).
- (f) The Concessionaire shall ensure that its Subcontractors comply with and conform in all aspects to the ESHS Documents, approved in accordance with this Article 7.4, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the ESHS Documents shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify the KMC and NMCG against

all costs, expenses, penalties and liabilities incurred/suffered by the KMC and NMCG due to the Concessionaire's or any Subcontractor's failure to comply with the ESHS Documents in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved ESHS Documents without the prior written approval of the KMC

- (g) Neither any approval of the ESHS Documents by the KMC, nor any failure to review and provide comments on the ESHS Documents shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risks, responsibility and liability for the accuracy and adequacy of the final ESHS Documents in ensuring compliance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF, this Agreement (including specifically, Schedule 9), Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the ESHS Documents and complying with the requirements of this Article 7.4.

7.5 Subcontracting

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the Construction Period with the prior written consent of the KMC.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to the KMC for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Article 7.5(b) above, the KMC shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by the KMC shall be subject to the following conditions:
 - i. the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the Construction Period;
 - ii. the Subcontract is on terms consistent with this Agreement;
 - iii. the Subcontract contains provisions that provide, at the KMC's option, for the

subcontract to be novated or assigned to the KMC or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle the KMC or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of the KMC shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and

- iv. the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.

- (e) If the KMC does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by the KMC.

- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to the KMC for its records.

- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of the KMC and the process set out in this Article 7.5 shall apply in such case.

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

- (i) The Bank has right to access of information and audit sub-contractor files with regards to the Concession Agreement.

7.6 Concessionaire's Construction Obligations

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

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

- (a) complete the work corresponding to each Payment Milestone by the Scheduled Payment Milestone, Completion Date and complete the construction/renovation of the relevant Facilities by the relevant Scheduled Construction Completion Date, in a manner that:
- (i) is in compliance with the Technical Specifications, the Designs and Drawings, the relevant Construction Plan, the **ESHS Documents**, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) the Facilities are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;
 - (iii) the Facilities are free from all defects in design, materials, and workmanship;
 - (iv) the Facilities are safe, reliable and fit for purpose;
 - (v) Each of the Kolkata STPs shall be capable of treating Sewage up to its respective Design Capacity; and
 - (vi) Treatment of sewage at Kolkata STPs continues in accordance with the existing performance standards for such STPs and in a manner such that these STPs meet the Guaranteed Interim Availability.
- (b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction/renovation of the Facilities, and make reasonable endeavour to assist the KMC in obtaining the Applicable Permits from the relevant Government Authorities;
- (c) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction/renovation of the Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Facilities, and liaise with the KMC's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, the Concessionaire may replace the Concessionaire's Representative with prior written notice to the KMC and NMCG;
- (d) provide all necessary assistance to the Project Engineer and the KMC in undertaking inspection of the Facilities, and in performing its other obligations and duties under this Agreement;
- (e) provide all necessary assistance to the Bank to inspect the Site and/or all accounts, records, and other documents relating to the submission of proposals and contract performance of the Concessionaire, as well as its Subcontractors, agents, personnel, consultants, service

providers or suppliers relating to the Project and have them audited by auditors appointed by the Bank;

- (f) ensure that none of its employees, consultants, service providers, suppliers, or sub-contractors, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Article 23.18;
- (g) reasonably consider and act upon the comments/suggestions made by the Project Engineer and the KMC during any meetings with the Concessionaire;
- (h) rectify any defects and/or deficiencies in the Facilities, including any defects and/or deficiencies identified by the Project Engineer or the KMC;
- (i) take all necessary measures to maintain the safety and security of personnel, material and property at the Site and the Adjoining Properties, in accordance with the approved ESHS Documents and all Applicable Laws;
- (j) ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits;
- (k) submit monthly reports to the Project Engineer (with a copy to the KMC), no later than 10 days after the end of each month, which should set out the following:
 - (i) extent of progress of construction/renovation activities performed by the Concessionaire for each of Tolly's Nallah Facilities and Garden Reach Facilities, as applicable;
 - (ii) comparison of actual progress against the planned progress of construction/renovation works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
 - (iii) details of any accident or hazardous incident at the Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
 - (iv) status of rectification of defects and/or deficiencies discovered by the Project Engineer or the KMC;

- (l) ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, cess payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the Building and Other Construction Workers Welfare Cess Act, 1996. The Concessionaire shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless the KMC and NMCG from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the KMC or NMCG due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislations);
- (m) arrange for all equipment, machinery, tools and other resources required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources.
- (n) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site;
- (o) maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Tolly's Nallah Facilities and Garden Reach Facilities, including all invoices, receipts, challans, vouchers, quotations and other records and documents with respect to the said Facilities in accordance with Applicable Laws;
- (p) obtain and maintain adequate insurances as per this Agreement; and
- (q) prepare and keep up-to-date, "as-built" records of the execution of the construction /renovation work for the relevant Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the relevant Site and be made available to the Project Engineer and the KMC for review and verification. The Concessionaire shall provide 4 hard copies and 1 soft copy on a compact disc, of the complete set of "as-built" drawings for the Facilities to the KMC as a condition precedent to the issuance of the Construction Completion Certificate.
- (r) For the relevant Facilities, the Concessionaire shall not be ordinarily entitled to additional Land beyond the quoted Land in the Financial Proposal for the Construction of the Project. However, under unavoidable circumstances and in the interest of the Project, the

KMC based on availability, may consider to allocate additional land for the construction/renovation of the Project upon the request of the Concessionaire and such allocation shall be subject to the payment of one hundred and fifty percentage of the Land Rate, for each additional acres of Land and part thereof. If the additional land requirement changes position of the Selected Bidder vis a vis the Second Preferred Bidder, then the Concessionaire shall pay to the KMC, a sum equivalent to (a) one hundred and fifty percentage of the Land Rate for each additional acres of Land and part there of; OR (b) the difference between Bid Price of Second Preferred Bidder and the revised Bid Price of the Selected Bidder/Concessionaire; whichever is higher.

7.7 Power Plant

- (a) The Concessionaire may, at its sole option and discretion, construct a biogas Power Plant at Tolly's Nallah Site and/or Garden Reach Site to utilise the bio gas generated from the treatment of the Sewage at the relevant STPs to produce clean energy. The Concessionaire may, at its sole option and discretion, also construct a rooftop solar Power Plant at any or all of the Facilities to produce clean energy. The Concessionaire shall utilise the energy produced by the Power Plant to operate the relevant Facility and sell any excess energy to third party consumers during the Term, in accordance with all Applicable Laws.
- (b) If the Concessionaire chooses to construct a Power Plant at the relevant Site, then it shall undertake such construction in accordance with all Applicable Laws and after obtaining all necessary approvals and consents to construct the Power Plant at the Site.
- (c) The Concessionaire shall not be entitled to any additional land, Construction Payments, or an extension of the Scheduled Construction Completion Date for construction of the Power Plant.
- (d) The Concessionaire shall not be entitled to any additional O&M Payments for operating the Power Plant.
- (e) In case the Concessionaire sets up a biogas Power Plant, the KMC and NMCG shall not be liable to the Concessionaire in any manner whatsoever if the quality or quantity of Sewage delivered to any of the Facilities is not adequate or appropriate to produce sufficient biogas to operate the Power Plant.
- (f) The ownership, rights and title to the Power Plant constructed by the Concessionaire shall vest with the KMC during the entire Term and thereafter.

7.8 KMC's rights and obligations

During the Construction Period, the KMC shall:

- (a) comply with all its obligations under Applicable Laws (including, specifically the CMWSA Act) and the KMC Applicable Permits;

- (b) make reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) maintain the Supporting Infrastructure to enable the delivery of Sewage at the STPs and disposal of the Treated Effluent from the STPs during the Trial Operations;
- (d) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction/renovation/O&M for the Facilities, appoint a Person with sufficient skill and expertise to act as the KMC's Representative. The KMC's Representative shall liaise with the Concessionaire's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, the KMC may replace the KMC's Representative with prior written notice to the Concessionaire and NMCG;
- (e) cause the Project Engineer to carry out timely inspection of the Facilities, and perform its other obligations and duties under this Agreement;
- (f) upon progressive completion of construction/renovation works for the Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, as certified by the Project Engineer, issue the Milestone Completion Certificates and the Construction Completion Certificate to the Concessionaire; and
- (g) ensure that the Concessionaire enjoys peaceful access to the Site and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.

7.9 NMCG's rights and obligations

During the Construction Period, NMCG shall:

- (a) comply with all its obligations under the Applicable Laws (including specifically, the Ganga 2016 Order);
- (b) make the Construction Payments, on satisfactory completion of the relevant Payment Milestone in accordance with Article 9.3;

- (c) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction for the Facilities, appoint a Person with sufficient skill and expertise to act as the NMCG's Representative. NMCG's Representative shall liaise with the Concessionaire's Representative, the KMC's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, NMCG may replace the NMCG Representative with prior written notice to the KMC and the Concessionaire; and
- (d) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

7.10 Utilities

- (a) The Concessionaire shall use/obtain/install/maintain at its cost, all utilities necessary to undertake the construction/renovation of the Kolkata STPs, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- (b) The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Article 7.10(a) and Article 7.10(b) above.
- (c) The KMC shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction/renovation of any of the Facilities.

7.11 Construction Timelines

- a. The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction/renovation for (i) Tolly Nallah STP 1 by Scheduled Tolly Nallah STP 1 Construction Completion Date; (ii) Tolly Nallah STP 2 by Scheduled Tolly Nallah STP 2 Construction Completion Date; (iii) Tolly Nallah STP 3 by Scheduled Tolly Nallah STP 3 Construction Completion Date; (iv) Existing Tolly Nallah Infrastructure 1 by Scheduled Existing Tolly Nallah Infrastructure 1 Construction Completion Date; (v) Existing Tolly Nallah Infrastructure 2 by Scheduled Existing Tolly Nallah Infrastructure 2 Construction Completion Date; and (vi) Garden Reach STP by Scheduled Garden Reach Construction Completion Date.
- b. Subject to Article 7.11(c) below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled Payment Milestone Completion Date or the relevant Scheduled Tolly Nallah Construction Completion Date or Scheduled Garden Reach Construction Completion Date, as the case may be, if the completion of construction/renovation of any location's facilities is delayed due to any of the following

reasons (each such event, a **Delay Event**):

- i. occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
- ii. a Qualifying Change in Law;
- iii. undue delay by the relevant Government authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
- iv. undue delay by the relevant Government authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
- v. any delay attributable to unforeseen site conditions in accordance with Article 4.4;
- vi. delay by the KMC in approval of the Phase II Designs and Drawings in accordance with Article 7.2;
- vii. delay by the KMC in approval of the O&M Manual in accordance with Article 7.2
- viii. delay by the KMC in issuance of a Milestone Completion Certificate in accordance with Article 7.13(a);
- ix. any variation proposed by the KMC in the Technical Specifications or the Designs and Drawings in accordance with Article 20; or
- x. delay caused in complying with any instructions of the KMC or the Project Engineer, which instructions are not attributable to any default of the Concessionaire.

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

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

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

consequence of any of the Delay Events shall be settled in a final and binding manner in accordance with Article 21 (*Dispute Resolution*).

7.12 Delay Liquidated Damages and Bonus

(a) Subject to Article 7.11(b), if the Concessionaire fails to (a) complete the work corresponding to any Payment Milestone by the relevant Scheduled Payment Milestone Completion Date or (b) fails to either achieve the Tolly's Nallah Construction Completion and Garden Reach Construction Completion on or before Tolly's Nallah Construction Completion Date or Scheduled Garden Reach Construction Completion Date, respectively, then the KMC shall be entitled to Delay Liquidated Damages for each day of delay beyond the Scheduled Payment Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date, at the rate of 0.1% of the relevant Location's Performance Security in case of a delay in achieving a Payment Milestone or completing Facility(ies) in a Location by the relevant Scheduled Construction Completion Date) up to 6 months from the relevant Scheduled Payment Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date (collectively, **Delay Liquidated Damages**).

The Delay Liquidated Damages will be payable until the work for the relevant Payment Milestone is completed or, as the case may be, the construction/renovation of the Facilities in a Location is completed, as certified by the KMC in accordance with Article 7.13.

If the Concessionaire completes the construction/renovation of the Tolly's Nallah Facilities or Garden Reach Facilities by Scheduled Tolly's Nallah Construction Completion Date or Scheduled Garden Reach Construction Completion Date, as the case may be, the aggregate Delay Liquidated Damages recovered by the KMC under this Article 7.12(a) for a delay in achieving any Tolly's Nallah Payment Milestone or Garden Reach Payment Milestone, as the case maybe, shall be refunded by the KMC to the Concessionaire, without any interest. In case of the Concessionaire not completing construction/renovation of all the Facilities in a Location by the Scheduled Construction Completion Date, the KMC shall not be entitled to any partial refund of the Delay Liquidated Damages recovered by the KMC for any of the Facility(ies) of that Location, that might have been completed by the Scheduled Construction Completion Date.

- (b) The KMC shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any Payment Milestone, and if such amounts are insufficient, the KMC shall have a right to invoke the Performance Securities to the extent of the Delay Liquidated Damages.
- (c) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by the KMC as a result of the delay in the completion of the Facilities, and not as penalty.

- (d) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle the KMC from claiming any Delay Liquidated Damages then the KMC will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Payment Milestone by the Scheduled Payment Milestone Completion Date, or for the delay in completing the construction/renovation of the relevant Facilities by the Scheduled Construction Completion Date.
- (e) If the Concessionaire fails to complete the works for a Payment Milestone within 6 months of the Scheduled Payment Milestone Completion Date or if the Concessionaire fails to complete the construction/renovation of the Tolly's Nallah Facilities within 6 months of relevant Scheduled Tolly's Nallah Construction Completion Date and/or if the concessionaire fails to complete the construction/renovation of the Garden Reach Facilities within 6 months of Scheduled Garden Reach Construction Completion Date, other than on account of any Delay Event (**Grace Period**), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Article 16.1.
- (f) The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction/renovation of the relevant Facilities in Article 7.1, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavours to avoid or reduce further delay in completing the Facilities.
- (g) Bonus on early completion

If the Tolly's Nallah Construction Completion Date occurs before Scheduled Tolly's Nallah Construction Completion Date and/or Garden Reach Construction Completion Date occurs before Scheduled Garden Reach Construction Completion Date, the Concessionaire shall be entitled to a bonus equal to 0.05% of the relevant Location's Performance Security for each day by which the Tolly's Nallah Construction Completion Date or Garden Reach Construction Completion Date precedes the Scheduled Tolly's Nallah Construction Completion Date and/or Scheduled Garden Reach Construction Completion Date, as the case may be.

7.13 Completion of Construction

- (a) Completion of Payment Milestones

- (i) Upon completion of the works corresponding to each Payment Milestone for any of the Locations, as specified in the relevant Construction Plan, the Concessionaire shall issue a notice to the KMC, with a copy to the Project Engineer and NMCG, requiring the KMC to inspect (or cause the Project Engineer to inspect) the completed works covered by the relevant Payment Milestone. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Payment Milestone have been completed in accordance with the requirements of Article 7.6.
- (ii) If the KMC is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Article 7.6, the KMC shall issue a Milestone Completion Certificate to the Concessionaire for such completed Payment Milestone for the said Location's Facilities, with a copy to NMCG, within 7 Days from the date of inspection of the works covered by such Payment Milestone.
- (iii) If the KMC is of the view that the works for the relevant Payment Milestone do not satisfy the requirements of Article 7.6, then the KMC shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Article 7.6. Upon receipt of such comments, suggestions or instructions from the KMC, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to the KMC. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until the KMC is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Article 7.6 and issues a Milestone Completion Certificate in accordance with this Article 7.13(a).
- (iv) If the KMC fails to:
 - I. inspect the completed portion of the works covered by the relevant Payment Milestone for any Location, within 14 days from the date of receipt of a notice from the Concessionaire under Article 7.13(a)(i) above;
 - II. provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Payment Milestone, within 7 Days from the date of inspection of such completed portion of the works; or
 - III. issue the Milestone Completion Certificate, within 7 Days from the date of inspection of the completed portion of the works covered by the relevant Payment Milestone,

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

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

(b) Testing and Commissioning

- (i) Upon completion of construction/renovation of all the (i) Tolly's Nallah Associated Infrastructure 1 (ii) Tolly's Nallah Associated Infrastructure 2 (iii) Tolly's Nallah STP 1 (iv) Tolly's Nallah STP 2 (v) Tolly's Nallah STP 3 and/or (vi) Garden Reach STP, in accordance with the requirements set out in this Agreement, the Concessionaire shall issue a notice to the KMC, with a copy to NMCG, requiring it to be present at the Site on the date specified in such notice to undertake a final inspection of that completed Facilities and conduct any tests required to ensure that the Location complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.
- (i) Within 5 days from the date of receipt of a notice under Article 7.13(b)(i) above, the KMC may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that such date shall be no later than 7 days from the date specified in the notice received from the Concessionaire under Article 7.13(b)(i) above.
- (ii) The Concessionaire shall, on the date specified in the notice issued under Article 7.13(b)(i) or on such other date as may be agreed with the KMC, carry out the tests in accordance with the instructions and under the supervision of the KMC, to demonstrate that the Location's Facilities comply with the requirements of Article 7.6.
- (iii) If the KMC is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in any of the relevant

Facility in a Location, identified by the KMC or revealed through the tests and the Location shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that the KMC is satisfied that the Location's Facilities have been completed in accordance with Article 7.6 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Location and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Location.

- (iv) If the KMC is satisfied with the results of the tests and inspection of the
- I.** Tolly's Nallah Associated Infrastructure 2, then KMC shall issue the Milestone Completion Certificate in respect of the fourth Tolly's Nallah Payment Milestone to the Concessionaire;
 - II.** Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3 and Tolly's Nallah Associated Infrastructure 1, then KMC shall issue the Milestone Completion Certificate in respect of the last Tolly's Nallah Payment Milestone to the Concessionaire;
 - III.** Garden Reach STP, then KMC shall issue the Milestone Completion Certificate in respect of the last Garden Reach Payment Milestone to the Concessionaire,

with a copy to NMCG, within 7 days from the date of inspection and testing of the completed Facility. The issue of the Milestone Completion Certificate for the fourth or last Location Payment Milestone, as applicable, shall certify that the Location's relevant facilities has been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Facility is safe and fit for purpose.

- (v) If the KMC fails to:
- I.** (A) inspect or witness the testing of the Facility on the date specified in the notice issued under Clause 7.13(b)(i) or such other date as may be agreed with the Concessionaire;
 - II.** notify the Concessionaire of any defects or deficiencies in the Facility(ies) of that location within 7 days from the date of inspection and testing of the Location; or
 - III.** issue the Milestone Completion Certificate for the fourth or last Payment Milestone within 7 days from the date of inspection and testing of the Location,

then, such delay shall be treated as a Delay Event, which will entitle the

Concessionaire to a day for day extension in the Scheduled Payment Milestone Completion Date and the Scheduled Construction Completion Date.

(c) Issue of Construction Completion Certificate

- (i) (A) Within 7 days from the date of issuance of the Milestone Completion Certificate for the last Payment Milestone for Tolly's Nallah Facilities, the KMC shall issue the Tolly's Nallah STP 1 Construction Completion Certificate, Tolly's Nallah STP 2 Construction Completion Certificate, Tolly's Nallah STP 3 Construction Completion Certificate, Tolly's Nallah Associated Infrastructure 1 Construction Completion Certificate for Tolly's Nallah Facilities to the Concessionaire, with a copy to NMCG, subject to the conditions in Article 7.13(c)(i)(A) to Article 7.13(c)(i)(F) having been fulfilled by the Concessionaire. Upon issuance of all the above Certificates, the Concessionaire is deemed to have been issued Tolly's Nallah Construction Completion Certificate. (B) Within 7 days from the date of issuance of the Milestone Completion Certificate for the fourth Payment Milestone for Tolly's Nallah Facilities, the KMC shall issue the Tolly's Nallah Associated Infrastructure 2 Construction Completion Certificate to the Concessionaire, subject to the following conditions in Article 7.13(c)(i)(A) to Article 7.13(c)(i)(F) having been fulfilled by the Concessionaire. (C) Within 7 days from the date of issuance of the Milestone Completion Certificate for the fourth Payment Milestone for Garden Reach Facilities, the KMC shall issue the Garden Reach Construction Completion Certificate to the Concessionaire, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:
- A. the submission of 4 hard copies and 1 soft copy on a compact disc of complete sets of the "as-built" drawings of the relevant facilities of that location, as applicable;
 - B. the Concessionaire having obtained all Applicable Permits necessary for commencement of the O&M services (including specifically, the consent to operate from the West Bengal Pollution Control Board for the operation of the Facilities of that Location);
 - C. the Concessionaire having obtained adequate insurance for the O&M Period in accordance with Article 11.2, as applicable;
 - D. the Concessionaire having engaged sufficient number of adequately skilled O&M personnel to perform the services during the O&M Period; and
 - E. the O&M Manual having been approved by the KMC; and
 - F. the Concessionaire having cleared the Site and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site.

- (ii) If the KMC fails to issue either of the Construction Completion Certificates to the Concessionaire within 7 days from the date of satisfaction of the conditions set out in Article 7.13(c)(i)(A) to (F) above and fails to notify the Concessionaire of any reasons for the failure to issue the Construction Completion Certificate for the relevant Location, then, the Construction Completion Certificate for the relevant Location shall be deemed to have been issued to the Concessionaire upon the expiry of the 7 days period.

- (iii) The date of the issuance or deemed issuance of the (i) Tolly's Nallah Construction Completion Certificate shall be the Construction Completion Date for the Tolly's Nallah Facility; (ii) Garden Reach Construction Completion Certificate shall be the Construction Completion Date for the Garden Reach Facility.

7.14 Trial Operations

- (a) Subject to Article 7.14(c) below, within 1 day of the issuance or deemed issuance of the (i) Tolly's Nallah Construction Completion Certificate and Garden Reach Construction Completion Certificate to the Concessionaire, the Concessionaire shall commence the Trial Operations of the relevant facilities amongst Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3, Tolly's Nallah Associated Infrastructure 1 and Garden Reach STP in accordance with the Trial Operation Procedures to determine whether the Location meets the **KPIs** and/or Technical Specifications on a continuous basis and is fit and ready to be placed into commercial operations for treatment and disposal of Sewage in accordance with this Agreement (ii) Tolly's Nallah Associated Infrastructure 2 Construction Completion Certificate, the Concessionaire shall commence the Trial Operations of the facilities in accordance with the Trial Operation Procedures to determine whether the Location meet the technical specifications and is fit and ready to be placed into commercial operations for treatment and disposal of Sewage in accordance with this Agreement .

- (b) The KMC shall ensure that adequate quantity of Sewage is delivered to the Facilities of the relevant location during the Trial Operations to enable the Concessionaire to demonstrate that the Facility meets the Technical Specifications and/or the KPIs.

- (c) If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the Sewage delivered to the relevant Facility, then the Concessionaire shall promptly notify the KMC. If in the opinion of the KMC, the quantity or quality of Sewage is not adequate to undertake Trial Operations of the relevant Facilities, then the KMC shall extend the time period for the Trial Operations. In such a case, the respective Scheduled COD will also be extended on a day-for-day basis, provided that the respective Scheduled COD shall not be extended beyond the date which is 6 months from the respective Construction Completion Date.

- (d) During the Trial Operations, the KMC shall or shall cause the Project Engineer to monitor the performance of the Facilities of the relevant Location on a regular basis and shall have the right to test the compliance of the incoming Sewage with the Influent Standards and test the compliance of the STP By-Products and the Treated Effluent with the Discharge Standards every 7 days to ensure that the Facility meets the Technical Specifications.
- (e) If the KMC, or, as the case may be, the Project Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the Trial Operations Procedure; or (ii) there are any defects or deficiencies in the Facility, the KMC shall instruct the Concessionaire to follow the Trial Operation Procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs and/or Technical Specifications, as applicable.

It is clarified that no Availability Liquidated Damages or Performance Liquidated Damages are payable by the Concessionaire for any facilities of a Location during the Trial Operations period for a failure to achieve the KPIs, if applicable. However, for the Trial Operations to be successfully concluded, the Concessionaire must demonstrate that the Facilities of that particular Location consistently and continuously meets the KPIs, as applicable, during the last 20 days of the 3 months Trial Operations period, as may be extended in accordance with Article 7.14(c) above. If the relevant Location fails to achieve the KPIs, as applicable, on a continuous basis during the last 20 days of the initial 3 months Trial Operations period (as extended in accordance with Article 7.14(c)), then the Trial Operations period shall be extended by another 20 days. Subject to Article 7.14(i), the Trial Operations shall continue until the Concessionaire can demonstrate that the relevant Facility consistently achieves the KPIs, as applicable, for 20 consecutive days.

- (f) If the Concessionaire has been able to consistently achieve the KPIs, as applicable, for 20 consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to the KMC requiring the KMC to undertake a final inspection of the Location. The KMC shall have the right to undertake such final inspection within 5 days of a notice being issued by the Concessionaire.
- (g) If, upon final inspection, the KMC is satisfied that the location's Facilities meet the KPIs and/or technical specifications for the relevant facilities, and are capable of safe and reliable operations, then, the KMC shall issue the Trial Operations Completion Certificate for the relevant Location to the Concessionaire within 7 days of the KMC undertaking a final inspection of the Location pursuant to Article 7.14(e) above.
- (h) If, upon final inspection, the KMC believes that any facility of the relevant Location does not comply with the KPIs and/or Technical Specifications, other than due to: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) the quality or

characteristics of the Sewage being beyond the Influent Standards, then the KMC shall reject the Facility and terminate this Agreement. Upon termination of this Agreement, in accordance with this Article 7.14(g), the consequences set out in Article 16 shall follow.

- (i) If the KMC : (i) does not undertake a final inspection of the Facilities in the relevant Location within 5 days of receipt of a notice from the Concessionaire under Article 7.14(e); or (ii) fails to notify the Concessionaire of any defects in the Facilities in the relevant Location within 7 days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within 7 days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for such Location and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the 5 days period (in case of (i)) and upon the expiry of the 7 day period (in case of (ii) and (iii)).
- (j) If the Trial Operations for a Location are not successfully completed and/or the Concessionaire fails to issue a notice to the KMC under Article 7.14(e) above on or prior to the Scheduled COD for the relevant Location, as may be extended in accordance with Article 7.14(c), for any Location, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.
- (k) Notwithstanding anything contained in Article 7.14(h), if the Concessionaire fails to successfully complete the Trial Operations for the Facilities in the relevant Location on or prior to the Location's Scheduled COD, as may be extended in accordance with Article 7.14(c), due to the: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) quality or characteristics of the Sewage being beyond the Influent Standards, for any Facility, then such failure will be treated as an KMC Event of Default, and the consequences set out at Article 16 shall follow.
- (l) The Concessionaire will not be entitled to any O&M Payments or any other payment for conducting the Trial Operations for the relevant Location, which shall be carried out solely at the cost and risk of the Concessionaire.

7.15 Commercial Operations Date

- (a) Within 7 days from the date of issuance or deemed issuance of the Trial Operations Completion Certificates for Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3, Tolly's Nallah Associated Infrastructure 1, Tolly's Nallah Associated Infrastructure 2 and the Garden Reach Facilities, the KMC shall issue the Tolly's Nallah STP 1 COD Certificate, Tolly's Nallah STP 2 COD Certificate, Tolly's Nallah STP 3 COD Certificate and Tolly's Nallah Associated Infrastructure 1 COD Certificate, Tolly's Nallah Associated

Infrastructure 2 COD Certificate and Garden Reach COD Certificate, as the case may be, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:

- (i) the Concessionaire having submitted to the KMC the Scheduled Maintenance Programme for the relevant Location's Facilities for the first year post COD; and
 - (ii) the O&M Manual for the relevant Location having been approved by the KMC;
 - (iii) the Concessionaire having submitted the relevant Location's O&M Security to the KMC, if applicable
 - (iv) the Concessionaire having paid any Interim Availability Liquidated Damages, if applicable.
- (b) If the KMC fails to issue the COD Certificate for the relevant Location to the Concessionaire within 7 days from the date of satisfaction of the conditions set out in Article 7.15 (a) above and fails to notify the Concessionaire of reasons, if any, for the failure to issue the relevant Location COD Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 7-day period.
- (c) The date on which the relevant COD Certificate is issued or deemed to have been issued to the Concessionaire shall be the Commercial Operations Date of the Tolly's Nallah Facilities and Garden Reach Facilities. It is clarified that the Tolly's Nallah COD shall be equal to Tolly's Nallah STP 1 COD or Tolly's Nallah STP 2 COD or Tolly's Nallah STP 3 COD, whichever is later.
- (d) The Concessionaire would be required to operate and maintain all the Facilities as soon as relevant COD is achieved. The Concessionaire would, however, be liable to receive O&M payments for both Garden Reach Facilities and Tolly's Nallah Facilities only from the Tolly's Nallah COD.

8 OPERATIONS AND MAINTENANCE PERIOD

8.1 Commencement and Duration

- a. The operation and maintenance of the
 - i. Tolly's Nallah STP 1 shall commence on and from Tolly's Nallah STP 1 COD until Expiry Date
 - ii. Tolly's Nallah STP 2 shall commence on and from Tolly's Nallah STP 2 COD until Expiry Date

- iii. Tolly's Nallah STP 3 shall commence on and from Tolly's Nallah STP 3 COD until Expiry Date
 - iv. Tolly's Nallah Associated Infrastructure 1 shall commence on and from Tolly's Nallah Associated Infrastructure 1 COD until Expiry Date
 - v. Tolly's Nallah Associated Infrastructure 2 shall commence on and from Tolly's Nallah Associated Infrastructure 2 COD until Expiry Date
 - vi. Garden Reach Facilities shall commence on and from Effective Date until Expiry Date
 - vii. Keorapukur Facilities shall commence on and from Keorapukur Handover Date until Expiry Date
 - viii. Kudghat PS shall commence on and from Kudghat Handover Date until Expiry Date
- b. The Expiry Date of contract will be 15 years from the Tolly's Nallah COD.
 - c. It is clarified, that for the purpose of O&M Payments, 'O&M period' for Tolly's Nallah Facilities and Garden Reach Facilities shall only commence on and from Tolly's Nallah COD and will continue till the Expiry Date unless terminated earlier in accordance with Article 16. Any costs incurred during operations and maintenance of Facilities during the Location Construction Period in the relevant Interim Period, shall be borne by the Concessionaire. O&M Payments for Keorapukur Facilities will begin from Keorapukur Handover Date and O&M Payments for Kudghat PS will begin from Kudghat Handover Date.

8.2 O&M Manual

- (a) The Concessionaire shall prepare a detailed O&M Manual for each of the locations based on the Proposed/Existing Technology and in accordance with the Technical Specifications, ESHS Documents, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of each Facility of each Location) and maintenance procedures. In case of any errors or deficiencies in the Technical Specifications, the O&M Manual shall take into account, address or rectify such errors or deficiencies. The Language for the O & M Manual shall be English.
- (b) For Tolly's Nallah STP 1, Tolly's Nallah STP 2, Tolly's Nallah STP 3, Tolly's Nallah Associated Infrastructure 1 and Tolly's Nallah Associated Infrastructure 2, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O&M Manual to the KMC at least 30 days prior to the Scheduled Construction Completion Dates, as applicable, for its review and approval.
- (c) For Garden Reach Facilities, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O & M Manual to the KMC 30 days before the Effective Date, as the case may be.

- (d) For Keorapukur Facilities and Kudghat PS, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O & M Manual to the KMC 30 days before the relevant Handover Date.
- (e) The KMC shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M Manual within 20 days from the date of receipt of the draft O&M Manual from the Concessionaire. The KMC may require the Concessionaire to amend or modify the draft O&M Manual if the KMC identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from the KMC, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by the KMC and/or address, in writing, the KMC's comments on the draft O&M Manual and submit the revised O&M Manual to the KMC for its approval. The process set out in this Article 8.2(e) shall continue until the O&M Manual is approved by the KMC in accordance with this Article 8.2(e).
- (f) The Concessionaire shall revise the O&M Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Article 8.2(e) will apply as to the approval of the revised manual.
- (g) The Concessionaire shall undertake the O&M of the Facilities strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the approved O&M Manual without the prior written approval of the KMC. The Concessionaire shall not commence operation of the Facilities prior to approval of the O&M Manual in accordance with this Article 8.2.
- (h) Notwithstanding any approval of the O&M Manual by the KMC, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of this Article 8.2.
- (i) The Concessionaire shall submit a consolidated O&M Manual for all the Facilities.

8.3 Subcontracting

- a. The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the O&M Period, with the prior written consent of the KMC.

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

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

8.4 Concessionaire's rights and obligations

- (a) The Concessionaire shall operate and maintain the Facilities in a manner that:
- i. is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;
 - ii. results in each of the Facilities achieving their respective KPIs;
 - iii. ensures that each Kolkata STP is capable of treating Sewage up to its Design Capacity on a daily basis during the O&M Period; In the Garden Reach Construction Period, Concessionaire shall ensure that the Garden Reach STP is capable to handle and treat in a day Sewage up to half of capacity (i.e. 28 MLD).
 - iv. Ensures efficient treatment of Sewage and handling and disposal of STP By-Products and the Treated Effluent;
 - v. is safe and reliable, subject to normal wear and tear of the Facilities;
 - vi. is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Facilities;
 - vii. maintains the safety and security of personnel, material and property at the Site, in accordance with the approved ESHS Documents, Applicable Laws and Applicable Permits; and
 - viii. ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits;
- (b) The Concessionaire shall provide adequate power backup at the Site (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Facilities during the O&M Period.
- (c) The Concessionaire shall provide all necessary assistance to the Project Engineer and the KMC in undertaking inspection and monitoring of the operation and maintenance of the Facilities.

- (d) The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Project Engineer and the KMC during any meetings of the Concessionaire with its Subcontractors.
- (e) The Concessionaire shall provide the KMC and the Project Engineer with reasonable access to the Site during office hours to monitor and inspect the Facilities.
- (f) The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site.
- (g) The Concessionaire shall develop and implement a safety and surveillance programme for the Facilities and for handling and disposal of the STP By-Products and the Treated Effluent, and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site.
- (h) The Concessionaire shall ensure that none of its employees, consultants, service providers, suppliers, or Subcontractors, including any O&M contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Article 23.18

8.5 KMC's rights and obligations

During the O&M Period, the KMC shall:

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

8.6 NMCG's rights and obligations

During the O&M Period, NMCG shall:

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

8.7 Utilities

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

8.8 Monitoring and Reporting

- (a) Online Monitoring and Meters
 - (i) At each STP and Pumping Station (new or existing) of all Locations, the Concessionaire shall install and maintain an online monitoring system, in

accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and/or characteristics of the incoming Sewage and the Treated Effluent, as applicable.

- (ii). The online monitoring devices should be capable of measuring and analysing
 - A. the flow rate and characteristics of the Sewage at the Inlet Point and of the Treated Effluent at the Outlet Point for STP
 - B. the sump level of the pumping station and the flow rate of the Sewage at the Outlet Point of the pumping station

Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.

- (iii) As part of the online monitoring system, the Concessionaire shall also install flow measurement meters in accordance with Applicable Laws and Technical Specifications, at the Inlet Point, the Outlet Point and at any other point set out in the Technical Specifications or required as per Applicable Laws, to measure the flow of sewage over the weir and the volume and concentration of Sewage delivered to the Facilities, and the Treated Effluent discharged from the Facilities.
- (iv) The Concessionaire shall record and transmit all data collected from the online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming Sewage and the Treated Effluent. The Concessionaire shall furnish a summary report for Facilities at each Location to the KMC (with a copy to the Project Engineer) on a daily basis, which shall indicate the periods during which: (A) the volume of the Sewage received at the relevant STP(s) and the volume of the Treated Effluent discharged from the relevant STP during each hour of the relevant day; (B) the periods during which the volume of Sewage received at the relevant STP exceeded its Design Capacity; (C) the quality of the incoming Sewage was beyond the Influent Standards; and (D) the quality of the Treated Effluent was beyond the Discharge Standards (E) hourly sump level for each pumping station (SPS); (F) the hourly volume of Sewage discharged at each SPS.
- (v) The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Board's website.
- (vi) The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire O&M Period.
- (vii) At each Location's facilities, the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.

- (viii) If the Concessionaire sets up a Power Plant, then the Concessionaire shall install meters at the Power Plant to measure the total number of energy units (in kWh) generated from the Power Plant in each month of the O&M Period.
- (ix) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by the KMC and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

(b) Records and Reporting Requirements

(i) The Concessionaire shall maintain:

- A. records of the volume and characteristics of the Sewage received at, and the STP By-Products and the Treated Effluent discharged from each Kolkata STPs;
- B. records of the sump levels and volume of the Sewage discharged from the relevant location's pumping stations; and
- C. books of accounts recording all payments received from NMCG and other revenues derived/collected by it from the Locations or resulting from its use,

separately for each Tolly's Nallah Facilities, Garden Reach Facilities and Keorapukur Facilities. For Kudghat PS, the concessionaire shall maintain records of the sump levels and volume of the sewage discharged from the pumping station.

(ii) The Concessionaire shall provide to the KMC 2 copies of its audited financial statements along with a report from its statutory auditors, within 90 days of the close of each Financial Year.

(iii) For each location, the Concessionaire shall deliver to the KMC, with a copy to the Project Engineer, the following during the O&M Period within the specified timelines:

- (A) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Facilities, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 hours after the occurrence of such event or circumstance;

- (B) reports on any critical breakdowns or failures in the Facilities, within 12 hours of such occurrence;
 - (C) reports on accidents or other incidents in relation to the O&M personnel or any third party, along with statements on actions taken to minimise recurrence, within 2 days of such occurrence;
 - (D) daily reports with the data collected from the monitoring and metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Article 8.10 on the characteristics and volume of Sewage treated at the Facilities, the STP By-Products and the Treated Effluent discharged from the Facilities, at the end of each day (i.e., on or before 1500 hours every day);
 - (E) monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale, as the case may be, of the STP By-Products and the Treated Effluent, and details of any Emergency during the relevant month), on or before the 7th day of the following month. The monthly progress report must be certified by the Project Engineer before it is submitted to the KMC;
 - (F) copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws or Applicable Permits, within 2 days of making such submissions to the relevant Government authority; and
 - (G) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.
- (c) It is clarified that the reports set out in this Article 8.8 will be separately prepared and furnished for each Location's Facilities.
- (d) It is expressly agreed between the Parties that the Bank shall be permitted to inspect the Site and/or all accounts, records, and other documents relating to contract performance of the Concessionaire, as well as its Subcontractors, agents, personnel, consultants, service providers or suppliers, including O&M contractors for the Project and have them audited

by auditors appointed by the Bank.

8.9 Design Capacity Utilization

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

8.10 Testing

- (a) The Sewage and the Treated Effluent will be tested at the Inlet Point and the Outlet Point at all STPs, respectively in accordance with this Article 8.10 and the Technical Specifications.
- (b) The Concessionaire shall test the characteristics of the incoming Sewage at the Inlet Point to determine if the incoming Sewage meets the Influent Standards. The Concessionaire will be required to carry out such tests at the Inlet Point at the intervals specified in the Technical Specifications or at such other time interval as may be instructed by the KMC.
- (c) The Concessionaire shall test the characteristic of the Treated Effluent at the Outlet Point to determine if the Treated Effluent meets the Discharge Standards. The Concessionaire will be required to carry out such tests at the Outlet Point at the intervals specified in the Technical Specifications or such other time interval as may be instructed by the KMC.
- (d) The Concessionaire shall test the characteristics of the Digested Sludge after digestion of the raw Sewage at the STPs at all Locations to assess the volatile suspended solids (VSS) value of the Digested Sludge, in accordance with the Technical Specifications.

- (e) The Concessionaire shall maintain proper records of the tests conducted at the Inlet Point, the Outlet Point or at any other point at the STPs (for the Digested Sludge) and the test results shall be verified by the Project Engineer. Separately, the Project Engineer shall also have the right to take random samples of the incoming Sewage, the Digested Sludge and the Treated Effluent at any time during the O&M Period to test compliance with the Influent Standards and the Discharge Standards.
- (f) For each location and its facilities, the Concessionaire shall prepare separate daily reports compiling the test reports for each day, which shall be submitted to the KMC, after being duly certified by the Project Engineer.

8.11 Maintenance and Repair of the Facilities

- (a) As and when the O&M for a facility starts, the Concessionaire shall undertake the maintenance of the relevant Facilities and repair any damage to the Facilities either by itself, or through an approved Subcontractor, such that the Facilities shall be:
 - (i) in good working condition (subject to only Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
 - (ii) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers; and
 - (iii) capable of meeting the relevant KPIs.
- (b) For the first year of operations and maintenance, the Concessionaire shall submit its scheduled maintenance programme for the Facilities at all Locations, specifying the Scheduled Maintenance periods for each facility at each location and the impact of such Scheduled Maintenance periods on the Availability of each facility (**Scheduled Maintenance Programme**) to the KMC. For the first year of the O&M period, this submission needs to be made for (i) Tolly's Nallah STP 1 atleast 30 days before the Scheduled Tolly's Nallah STP 1 COD (ii) Tolly's Nallah STP 2 atleast 30 days before the Scheduled Tolly's Nallah STP 2 COD (iii) Tolly's Nallah STP 3 atleast 30 days before the Scheduled Tolly's Nallah STP 3 COD (iv) Tolly's Nallah Associated Infrastructure 1 atleast 30 days before the Scheduled Tolly's Nallah Associated Infrastructure 1 COD (v) Tolly's Nallah Associated Infrastructure 2 atleast 30 days before the Scheduled Tolly's Nallah Associated Infrastructure 2 COD (vi) Garden Reach Facilities atleast 30 days prior to the Effective Date and (vii) Keorapukur Facilities and Kudghat PS atleast 30 days prior to the relevant Handover Date. The scheduled maintenance programme for all the Location shall be submitted on an yearly basis starting from the first year of operations

and maintenance. For every subsequent year thereafter, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the (i) COD of Tolly's Nallah STP 1 until the end of the calendar year in which it occurs for Tolly's Nallah STP 1 (ii) COD of Tolly's Nallah STP 2 until the end of the calendar year in which it occurs for Tolly's Nallah STP 2 (iii) COD of Tolly's Nallah STP 3 until the end of the calendar year in which it occurs for Tolly's Nallah STP 3 (iv) COD of Tolly's Nallah Associated Infrastructure 1 until the end of the calendar year in which it occurs for Tolly's Nallah Associated Infrastructure 1 (v) COD of Tolly's Nallah Associated Infrastructure 2 until the end of the calendar year in which it occurs for Tolly's Nallah Associated Infrastructure 2 (vi) COD of Garden Reach Facilities until the end of the calendar year in which it occurs for Garden Reach Facilities (vii) Handover of Keorapukur Facilities until the end of the calendar year in which it occurs for Keorapukur Facilities and (viii) Handover of Kudghat PS until the end of the calendar year in which it occurs for Kudghat PS. It is clarified that the Concessionaire shall submit a consolidated Scheduled Maintenance Programme for all the Facilities, wherever applicable.

- (c) Within 15 days of receipt of the Scheduled Maintenance Programme for each of the relevant Location, the KMC shall notify the Concessionaire of its approval of such schedule.

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

- (d) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Article 8.11, the KMC may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:

- (i) the KMC has given the Concessionaire at least 30 days' prior written notice of such re-scheduling;
- (ii) the KMC shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;

- (iii) the KMC shall not require that a single Scheduled Maintenance period be split into two or more periods; and
 - (iv) the KMC shall not require that a Scheduled Maintenance be brought forward any earlier than 15 days from the date of such notice without the consent of the Concessionaire.
- (e) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Article 8.11, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 days' prior written notice to the KMC. The KMC shall respond to such request within 10 days and shall not unreasonably withhold its permission for such re-scheduling.
- (f) Within 5 days of any re-scheduling of a Scheduled Maintenance in accordance with Article 8.11(d) or Article 8.11(e) above, the Concessionaire shall provide to the KMC, the amended Scheduled Maintenance Programme, which shall then be the "**Scheduled Maintenance Programme**".
- (g) During the O&M Period at each Location, the Concessionaire shall, at its own cost, replace any component or part of the Facilities that is damaged or worn out or in the Concessionaire's judgement becomes no longer practicable to repair as a result of normal wear and tear.
- (h) If at any time during the O&M period, a Facility is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the Facility to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- (i) If at any time during the O&M period, a Total Casualty occurs, which affects only 1 Facility but not all the Facilities, then this Agreement shall be amended to exclude the Facility affected by a Total Casualty from the Scope of Work. This Agreement and all rights and obligations of the Parties under this Agreement shall continue in full force and effect with respect to the other unaffected Facilities. Upon exclusion of the affected Facility from the scope of this Agreement, the Concessionaire shall:
- (A) hand over to the KMC the relevant part of the Site and the affected Facility on an "as is where is" basis; and

(B) remove from the relevant part of the Site all employees, workmen, assets, equipment and materials, if any.

Upon the exclusion of any affected Facility from the scope of this Agreement on account of a Total Casualty, the Concessionaire may proportionately reduce the amount of the relevant O&M Security and, to the extent applicable, the relevant Performance Security, provided or to be provided to the KMC. Further, upon partial termination of this Agreement due to a Total Casualty, the O&M Payments and to the extent applicable, the Construction Payments, or as the case may be, proportionately reduced to reflect the reduction in the scope of work of the Concessionaire.

8.12 Key Performance Indicators

(a) Availability

- (i) The Concessionaire shall ensure that the Availability of each Facility, as given in Schedule 10, on every day during the O&M Period shall be 100% (the Guaranteed Availability). Provided that during the period of a Scheduled Maintenance that is undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with Article 8.11 for the relevant Facility, the Concessionaire shall ensure that the Guaranteed Availability of such Facility is at least 95%.

The 'Availability' (“**Availability**”) of each Facility will be determined as a ratio of the number of hours in a day during which such Facility was available to convey, accept and treat the Sewage up to its Design Capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.

- (ii) In computing the Availability of each Facility, the Concessionaire agrees that the Facility will be deemed to be Available at all times, other than during the period of:
- A. an Unscheduled Outage affecting such Facility;
 - B. a Power Outage affecting such Facility;
 - C. suspension of the O&M services for such Facility, for reasons attributable to the Concessionaire (in accordance with Article 15.1 and 15.2); or
 - D. an Emergency affecting such Facility, attributable to the Concessionaire,

during which the Facility will be deemed to be not Available.

- (iii) Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.
 - (iv) If the Availability for a Facility on any given day is less than the Guaranteed Availability, the KMC shall issue a notice to the Concessionaire requiring the Concessionaire to cure the default causing the reduction in Availability in 3 days. Any failure to cure the default and achieve the Guaranteed Availability within 3 days of receipt of the notice from the KMC shall constitute a Concessionaire Event of Default.
 - (v) Availability Liquidated Damages
 - i. Without prejudice to Article 8.12(a)(iv), if the Availability of any Facility on any given day is less than the Guaranteed Availability, then the Concessionaire shall pay Liquidated Damages set out in Schedule-7 (the Availability Liquidated Damages).
 - ii. The aggregate Availability Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Availability Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of the KMC, either be adjusted against the O&M Payments for the subsequent quarter or recovered from the O&M Securities.
 - (vi) Guaranteed Interim Availability
 - i. For Tolly's Nallah Associated Infrastructure 2 and Garden Reach Facilities, the Concessionaire shall ensure that the following assets are 100% available to convey, pump, accept and/or treat Sewage (together, the **Guaranteed Interim Availability**) during mentioned time period
 - A. Tolly's Nallah Associated Infrastructure 2, from Tolly's Nallah Associated Infrastructure 2 COD to Tolly's Nallah COD
 - B. For Garden Reach Facilities, from Effective Date to COD
- AND,**
- for Tolly's Nallah STP 1, Tolly's Nallah STP 2 and Tolly's Nallah STP 3, Tolly's Nallah Associated Infrastructure 1, whichever the case may be, the Concessionaire shall ensure 100% availability to convey, pump, accept and/or treat Sewage during mentioned time-period.

- C. Tolly's Nallah STP 1, from Tolly's Nallah STP 1 COD to Tolly's Nallah COD (applicable if Tolly's Nallah STP 1 COD is achieved before Tolly's Nallah COD)
- D. Tolly's Nallah STP 2, from Tolly's Nallah STP 2 COD to Tolly's Nallah COD (applicable if Tolly's Nallah STP 2 COD is achieved before Tolly's Nallah COD)
- E. Tolly's Nallah STP 3, from Tolly's Nallah STP 3 COD to Tolly's Nallah COD (applicable if Tolly's Nallah STP 3 COD is achieved before Tolly's Nallah COD)
- F. Tolly's Nallah Associated Infrastructure 1, from Tolly's Nallah Associated Infrastructure 1 COD to Tolly's Nallah COD (if Tolly's Nallah Associated Infrastructure 1 COD is achieved before Tolly's Nallah COD),

whichever the case may be.

- ii. In computing the Interim Availability, the Concessionaire agrees that the relevant Facilities will be deemed to be Available at all times, other than during the period of:
 - A. an Unscheduled Outage affecting such STP;
 - B. a Power Outage affecting such STP;
 - C. an Emergency affecting such STP, attributable to the Concessionaire,
 during which the STP will be deemed to be not Available.
- iii. Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the STP affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.
- iv. If the Concessionaire fails to achieve the Guaranteed Interim Availability for the any of the Locations, then the Concessionaire shall pay the interim availability liquidated damages as set out in Schedule 7 (**Interim Availability Liquidated Damages**), prior to issuance of the relevant COD Certificate. It is clarified that if more than one of the STPs mentioned above fail to achieve the Guaranteed Interim Availability during the Construction Period, then the Concessionaire shall be liable to pay the Interim Availability Liquidated Damages separately for each such STP.
- v. The aggregate Guaranteed Interim Availability Liquidated Damages payable by the Concessionaire in any quarter of the Construction Period will be deducted from the Construction Payments due to the Concessionaire for such quarter. If the Guaranteed Interim Availability Liquidated Damages for a quarter exceed the Construction Payments for such quarter, then the excess amounts shall, at the discretion of the KMC, either be adjusted against the Construction Payments for the subsequent quarter or recovered from the Performance Securities.

(b) Influent Standards and Discharge Standards

- i. The Concessionaire is required to receive, treat, and dispose all Sewage delivered to Kolkata STPs. If, however the Sewage is beyond the Influent Standards as set out in Schedule 10 (KPIs), then the Concessionaire shall be required to treat such Sewage but will not be liable for any Performance Liquidated Damages if the Treated Effluent and/or the Digested Sludge fails to meet the Discharge Standards.
- ii. Subject to Article 8.12(b)(i) above, the Concessionaire shall ensure that the Treated Effluent and Digested Sludge comply with the Discharge Standards set out in the Technical Specifications.
- iii. Subject to Article 8.12(b)(iv) below, for each Facility, if the Treated Effluent or the Digested Sludge does not comply with the Discharge Standards, then the process set out below shall follow:
 - A. In the first instance of non-compliance of the Treated Effluent or the Digested Sludge with the Discharge Standards (First Breach), the KMC shall issue a notice to the Concessionaire on the first day of such non-compliance (First Breach Notice) requiring the Concessionaire to cure the First Breach within 20 days from the date of the First Breach Notice. If the First Breach is cured within 2 days of the First Breach Notice, then the Concessionaire shall not be liable to pay any Performance Liquidated Damages . If, however, the First Breach continues beyond 2 days of the First Breach Notice, then, the Concessionaire shall be liable to pay the Performance Liquidated Damages specified in Schedule 7, from the 3rd day of the First Breach.
 - B. If: (I) the First Breach continues for 20 days from the date of the First Breach Notice; or (II) another instance of non-compliance with the Discharge Standards occurs within 6 months of the First Breach, then such breach shall constitute the Second Breach. Upon occurrence of the Second Breach, the KMC shall issue a notice to the Concessionaire on the first day of the Second Breach (Second Breach Notice) requiring the Concessionaire to cure the Second Breach within 20 days from the date of the Second Breach Notice. If the Second Breach continues beyond 2 days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the amount of the Performance Liquidated Damages specified in Schedule 7, from the 1st day of the Second Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified in Schedule 7, for the first 2 days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the 3rd day of a continuing Second Breach.

- C. If: (I) the Second Breach continues for 20 days from the date of the Second Breach Notice; or (II) another instance of non-compliance with the Discharge Standards occurs within 6 months of the Second Breach, then such breach shall constitute the Third Breach. Upon occurrence of the Third Breach, the KMC shall issue a notice to the Concessionaire on the first day of the Third Breach (Third Breach Notice) requiring the Concessionaire to cure the Third Breach within 20 days from the date of the Third Breach Notice. If the Third Breach continues beyond 2 days of the Third Breach Notice, then: (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages specified in Schedule 7, from the 1st day of the Third Breach; and (Y) the Capex Annuity for the relevant quarter(s) will be reduced by an amount equal to the Capex Annuity for the relevant quarter/90 for each day that the Third Breach continues beyond the 1st day of the Third Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay twice the Performance Liquidated Damages specified in Schedule 7, for the first 2 days of a continuing breach from the date of the Third Breach Notice and thrice the specified Performance Liquidated Damages from the 3rd day of the Third Breach, in addition to the reduction in the Capex Annuity.
- D. If: (I) the Third Breach is not cured within 20 days from the Third Breach Notice; or (II) a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall apply.
- E. The Parties acknowledge that the Performance Liquidated Damages (including any escalation contemplated in this Article 8.12(b)(iii)) are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused by the Concessionaire's continuing failure to comply with the Discharge Standards, and not as penalty. The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to comply with the Discharge Standards and/or Applicable Law.
- iv. If the Treated Effluent and/or the Digested Sludge does not meet the Discharge Standards on account of: (A) the characteristics of the Sewage being beyond the permissible Influent Standards; or (B) the volume of the Sewage being more than the Design Capacity of the relevant STP, then, the Concessionaire shall not be liable to pay any Performance Liquidated Damages for a failure to meet the Discharge Standards.

- v. The Performance Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments for the relevant location due to the Concessionaire for such quarter. If the Performance Liquidated Damages for a quarter exceed the O&M Payments for such Facility for such quarter, then the excess amounts shall, at the discretion of the KMC, either be adjusted against the O&M Payments for the relevant location for the subsequent quarter or recovered from the relevant O&M Securities.
- (c) Within 7 days from the end of each month, the Concessionaire shall be required to provide the monthly progress report for each Facility (prepared in accordance with Article 8.8(b)(iii)(E) above) on compliance of such Facility with the relevant KPIs, which should indicate the periods during which such Facility did not meet the Guaranteed Availability or the Treated Effluent and/or the Digested Sludge did not meet the Discharge Standards and the reasons for such failure. The Project Engineer shall be required to certify each such monthly report before it is provided to the KMC. Such certified report on compliance with KPIs shall be referred to as the **KPI Adherence Report**, and shall form the basis for O&M Payments being made to the Concessionaire during the O&M Period.

8.13 Disposal of STP By-Products and the Treated Effluent

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

(a) Waste Disposal Site

- (i) Within 30 days from the Effective Date, the KMC shall inform the Concessionaire of each Waste Disposal Site at which the Concessionaire shall be required to dispose the STP By-Products, resulting from the treatment of the Sewage at each of the Kolkata STPs, and any other waste materials resulting from the construction/renovation of the relevant Facility during the Construction Period (including silt).
- (ii) The KMC may shift any Waste Disposal Site from time to time during the O&M Period provided that, the Waste Disposal Sites will always be within a radius of 10 km from the boundary of the relevant Site and any shifting of a Waste Disposal Site will be with at least 30 days' prior written notice to the Concessionaire.
- (iii) If, at any time during the O&M Period, the KMC shifts a Waste Disposal Site to a location beyond a radius of 10 km from the boundary of the relevant Site, then, the KMC shall compensate the Concessionaire for any additional transportation costs incurred by the Concessionaire, in transporting the STP By-Products, to such Waste Disposal Site.

- (iv) Any approval for disposal of the STP By-Products at the Waste Disposal Sites will be obtained by the KMC at its cost. Further, all costs and charges in connection with the setting up and maintaining the Waste Disposal Sites (including any tipping fee for the disposal of the STP By-Products) will be borne by the KMC. The Concessionaire shall only be responsible for transporting the STP By-Products to the Waste Disposal Sites and bearing the costs for transportation and unloading of the STP By-Products at the Waste Disposal Sites.

(b) Disposal of Residual Grit and Screenings

- (i) The Concessionaire shall, at its cost and expense, be required to transfer the Residual Grit and the Screenings to the relevant Waste Disposal Site and shall make adequate transportation arrangements for this purpose.
- (ii) The Concessionaire shall ensure that the Residual Grit and the Screenings are neither disposed at any place on or about the Site, other than the Waste Disposal Sites, nor discharged into the river Ganga. The disposal of the Residual Grit and the Screenings at the Waste Disposal Sites must be strictly in accordance with all Applicable Laws. The Concessionaire shall indemnify the KMC against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Article 8.13(b) and all Applicable Laws in disposal of the Residual Grit and the Screenings.

(c) Disposal of Digested Sludge

- (i) As part of each Facility, the Concessionaire shall be required to set up a sludge handling facility at the relevant Site, where the Concessionaire can dry the Digested Sludge during the O&M Period.
- (ii) The Concessionaire shall, at its cost and expense, provide for a storage facility within the Site to temporarily store the dried Digested Sludge until such Digested Sludge is sold or disposed in accordance with this Agreement.
- (iii) The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to sell the Digested Sludge, at such price and to such Persons as it may deem fit or dispose the Digested Sludge at the Waste Disposal Sites. Provided that if the Concessionaire sells the Digested Sludge to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with the KMC.

- (iv) The Concessionaire shall maintain proper records of sale of any Digested Sludge generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to the KMC for its review.
- (v) The Concessionaire shall ensure that the Digested Sludge is neither disposed at any place on or about the Site, except the Waste Disposal Sites, nor discharged into the river Ganga. The Concessionaire shall indemnify the KMC against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Article 8.13(c) and all Applicable Laws in disposal of the Digested Sludge.

(d) Disposal of Treated Effluent

- (i) The Concessionaire is required to transfer the Treated Effluent through the Supporting Infrastructure to any discharge point(s) indicated by the KMC.
- (ii) The Concessionaire is permitted to divert, transfer or sell the Treated Effluent generated only from the Garden Reach STP to any third party Provided that if the Concessionaire sells the Treated Effluent to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with the KMC
- (iii) The Concessionaire shall maintain proper records of sale of any Treated Effluent generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to the KMC for its review.

(e) Rights and interest in the STP By-Products and the Treated Effluent

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

8.14 Remedial Measures

If after the relevant COD, the Concessionaire ceases to operate any of the Facilities of the Tolly's Nallah Facilities and/or Garden Reach Facilities or if after the relevant Handover Date, the Concessionaire ceases to operate Keorapukur Facilities or Kudghat PS for a period of 48 consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Article 15.1 or Article 15.2, which is not attributable to the Concessionaire, or a Force Majeure Event, without the prior written consent of the KMC, then the KMC shall be entitled to step-in and undertake O&M of such Facility until the Concessionaire demonstrates to the satisfaction of the KMC that it can and will resume normal operation and maintenance of the relevant Facility. The exercise of the KMC's rights under this Article 8.14 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Charges for the duration that the KMC steps-in to operate and maintain the relevant Facility.

8.15 O&M Personnel

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

9 PAYMENT AND INVOICING

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

9.2 The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the Construction Payments and the O&M Payments. Except for any adjustment in accordance with Article 8.13(a) and Article 13.2, or any permitted Variation, the Construction Payments and the O&M Payments are the total consideration payable to the Concessionaire for undertaking the Project.

9.3 Construction Payments

(a) NMCG shall deposit an amount equivalent to the first 2 Payment Milestones for all Locations in the Escrow Account in accordance with Article 9.5 and the Escrow Agreement, prior to the Effective Date. From the Effective Date and during the relevant Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next 2 Payment Milestones for all Locations.

(b) 10% of the Location Bid Project Cost for the relevant locations shall be given to the Concessionaire as a Mobilization Advance in accordance with Article 9.3(d), which will be adjusted against the Construction Payments to be paid by NMCG to the Concessionaire in instalments, in accordance with Article 9.3(e). The Construction Payments will be paid to the Concessionaire upon completion of the work corresponding to the Payment Milestones and certification of completion of such Payment Milestones by the KMC in accordance with Article 7.13.

(c) Adjustment in Construction Payments

(i) The Location Construction Payments shall be adjusted during the Location Construction Period, to reflect the variation in the Construction Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.

(ii) All Invoices to be submitted by the Concessionaire to the KMC for any installment of the relevant Construction Payments shall be the product of the relevant percentage of the Bid Project Cost and the Price Index Multiple applicable on the date of the Invoice.

(d) Mobilization Advance

- (i) 10 % of the Tolly's Nallah Bid Project Cost and 10 % of the Garden Reach Bid Project Cost shall be payable to the Concessionaire as the Tolly's Nallah Mobilization Advance and Garden Reach Mobilization Advance, within 30 days from the Effective Date, subject to the Concessionaire having submitted a Mobilization Advance Guarantee in accordance with Article 5.21.
- (ii) The Mobilization Advance shall be deducted in equal instalments from the 4 or 8 instalments of the Construction Payments to be made to the Concessionaire upon progressive completion of the Payment Milestones.
- (iii) However, the Concessionaire is liable to pay a simple interest at the rate of 8% on the Mobilization Advance, if the Payment Milestones are not achieved by the Concessionaire in accordance with the agreed Construction Plan and for the reasons attributed to the Concessionaire. The interest shall be payable for the period between the actual Payment Milestone and agreed Payment Milestone. The interest amount shall be deducted along with the Mobilization Advance from the Construction Payments.

(e) Milestone Construction Payments

- (i) Subject to this Article 9.3(e), for Tolly's Nallah Facilities, the Construction Payments will be paid by NMCG to the Concessionaire in the following 8 equal installments ("**Payment Milestones**") (after adjusting the Mobilization Advance (and the interest payable if any as per Article 9.3(d)(v) on the Mobilization Advance):
 - (A) 1st installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 3 months from the Effective Date or issuance of the first Milestone Completion Certificate for Tolly's Nallah first Payment Milestone, whichever is earlier
 - (B) 2nd installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 6 months from the Effective Date or issuance of the 2nd Milestone Completion Certificate for Tolly's Nallah's 2nd Payment Milestone, whichever is earlier;
 - (C) 3rd installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the

relevant Invoice, upon the expiry of 9 months from the Effective Date or issuance of the 3rd Milestone Completion Certificate for Tolly's Nallah's 3rd Payment Milestone, whichever is earlier;

- (D) 4th installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 12 months from the Effective Date or issuance of the 4th Milestone Completion Certificate for Tolly's Nallah's 4th Payment Milestone, whichever is earlier;
- (E) 5th installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 15 months from the Effective Date or issuance of the 5th Milestone Completion Certificate for Tolly's Nallah's 5th Payment Milestone, whichever is earlier;
- (F) 6th installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 17 months from the Effective Date or issuance of the 6th Milestone Completion Certificate for Tolly's Nallah's 6th Payment Milestone, whichever is earlier;
- (G) 7th installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 19 months from the Effective Date or issuance of the 7th Milestone Completion Certificate for Tolly's Nallah's 7th Payment Milestone, whichever is earlier;
- (H) 8th installment of 5% of the relevant Tolly's Nallah Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 21 months from the Effective Date or issuance of the 8th Milestone Completion Certificate for Tolly's Nallah's 8th Payment Milestone, whichever is earlier.

(ii) Subject to this Article 9.3(e), for Garden Reach Facilities, the Construction Payments will be paid by NMCG to the Concessionaire in the following 4 equal installments ("**Payment Milestones**") (after adjusting the Mobilization Advance (and the interest payable if any as per Article 9.3(d)(v) on the Mobilization Advance):

- (I) 1st installment of 10% of the relevant Garden Reach Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, upon the expiry of 3 months from the Effective Date or issuance of the first Milestone Completion Certificate for Garden Reach's first Payment Milestone;
- (J) 2nd installment of 10% of the relevant Garden Reach Bid Project Cost,

as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, the expiry of 6 months from the Effective Date or issuance of the 2nd Milestone Completion Certificate for Garden Reach's 2nd Payment Milestone ;

(K) 3rd installment of 10% of the relevant Garden Reach Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, the expiry of 9 months from the Effective Date or issuance of the 3rd Milestone Completion Certificate for Garden Reach's 3rd Payment Milestone;

(L) 4th installment of 10% of the relevant Garden Reach Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice, the expiry of 12 months from the Effective Date or issuance of the 4th Milestone Completion Certificate for Garden Reach's 4th Payment Milestone.

(iii) For Tolly's Nallah Facilities and Garden Reach Facilities, within 7 days of issuance of the Milestone Completion Certificate for a Payment Milestone, the Concessionaire shall submit an Invoice to the KMC for the amount of the relevant Location Construction Payment linked to such Payment Milestone along with KPI Adherence Report (with details on Interim Availability metrics for calculating Guaranteed Interim Availability Liquidated Damages, if any) for each month of the relevant quarter, duly certified by the Project Engineer; Any Invoice raised by the Concessionaire for the relevant Location Construction Payments shall be accompanied by a copy of the relevant Location Milestone Completion Certificate issued by the KMC.

(iv) Within 10 days of receipt of an Invoice from the Concessionaire pursuant to Article 9.3(e)(iii) above, the KMC shall verify and certify the amounts due and payable to the Concessionaire, and either:

A. approve the Invoice and issue a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws); or

B. issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the KMC.

The Concessionaire shall submit a revised Invoice to the KMC after rectifying the errors or discrepancies identified by the KMC and this process will be repeated until the KMC approves the Invoice and issues a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for release of the amount specified in the Invoice.

- (v) Any dispute between the Parties in relation to a disputed Invoice shall be settled in accordance with Article 21 (*Dispute Resolution*).
- (vi) A certificate issued by the KMC in accordance with Article 9.3(e)(iv) shall be referred to as a **Payment Certificate**.
- (vii) If, within 10 days from the date of receipt of an Invoice, the KMC does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the KMC, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the KMC and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.
- (viii) Immediately upon receipt of a Payment Certificate from the KMC in accordance with Article 9.3(e)(iv) or upon receipt of instructions from the Concessionaire in accordance with Article 9.3(e)(vii), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (ix) Notwithstanding anything to the contrary in this Agreement, the KMC shall have no obligation to issue a Payment Certificate unless:
 - A. the Performance Securities remain valid and in effect;
 - B. the insurances to be obtained by the Concessionaire in accordance with Article 11.2 are valid and in effect;
 - C. the Concessionaire Applicable Permits for construction/renovation of the Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;

D. the Concessionaire has complied with the **ESHS Documents** in undertaking the construction/renovation of the Facilities; and

E. there is no subsisting Concessionaire Event of Default.

The Concessionaire shall be paid the Construction Payments in Rupees. However, if, in the Financial Proposal, the Selected Bidder specified any percentage of the Bid Project Cost which it would want to receive in a foreign currency during the Construction Period, then the Construction Payments corresponding to such percentage of the Bid Project Cost shall be paid to the Concessionaire in the relevant foreign currency. For the purpose of payment in a foreign currency, the exchange rate shall be as quoted by the Concessionaire in the Bid Price Sheet. It is clarified that the aggregate Construction Payments due to the Concessionaire shall not exceed 40% of the Bid Project Cost, as quoted by the Selected Bidder in Rupees and adjusted for inflation as per Article 9.3(c), on account of a percentage of the Bid Project Cost being paid to the Concessionaire in foreign currencies.

9.4 O&M Payments

- (a) During the O&M Period, NMCG shall be required to make the O&M Payments in Rupees to the Concessionaire, (i) for Tolly's Nallah Facilities and Garden Reach Facilities comprising the Capex Annuity, the interest on the reducing balance of 60% of the Completion Cost, the O&M Charges and the Power Charges (ii) for Keorapukur facilities and Kudghat PS, O&M Payment shall only include O&M Charges and the Power Charges, in accordance with this Article 9.4.

(b) Calculation of Completion Cost

- (i) The Completion Cost for Tolly's Nallah Facilities will be the aggregate of (A) – (H) below:
- A. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Escrow Nallah's first Payment Milestone;
 - B. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the

Invoice for the Tolly's Nallah's second Payment Milestone;

- C. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's third Payment Milestone; and
- D. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's fourth Payment Milestone.
- E. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's fifth Payment Milestone.
- F. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's sixth Payment Milestone.
- G. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's seventh Payment Milestone.
- H. 12.5% of the Tolly's Nallah Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Tolly's Nallah's eighth Payment Milestone.

(ii) The Completion Cost for Garden Reach Facilities will be the aggregate of (A) – (D) below:

- A. 25% of the Garden Reach Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Garden Reach's first Payment Milestone;
- B. 25% of the Garden Reach Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Garden Reach's second Payment Milestone;
- C. 25% of the Garden Reach Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Garden Reach's third Payment Milestone; and

- D. 25% of the Garden Reach Bid Project Cost adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the Garden Reach's fourth Payment Milestone.
- (iii) 60% of the Completion Cost for the relevant Facility will be paid in quarterly installments during the relevant O&M Period as Capex Annuity.
- (c) On and from the Tolly's Nallah COD and Garden Reach COD, NMCG shall, during the O&M Period, deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the relevant Location Capex Annuity (along with interest), relevant Location O&M Charges and the relevant Location estimated Power Charges for the next 2 years for each relevant facility. On and from the relevant Handover Date, for Keorapukur Facilities and Kudghat PS, NMCG shall, during the O&M Period, deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with O&M Charges and estimated Power Charges for the next 2 years.
- (d) Adjustment in O&M Charges
- (i) The O&M Charges shall be adjusted during the O&M Period to reflect the variation in the O&M Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
- (ii) All Invoices to be submitted by the Concessionaire to the KMC for the quarterly O&M Charges shall be the product of the applicable O&M Charges for the relevant quarter and the Price Index Multiple applicable on the date of the Invoice.
- (e) Capex Annuity
- (i) The Capex Annuity shall be payable in 60 equal quarterly instalments during the O&M Period for Tolly's Nallah Facilities and Garden Reach Facilities.
- (ii) Interest shall be payable on the reducing balance of 60% of the Completion Cost for each of the relevant Facilities, at the rate of the SBI MCLR plus 3% per annum. Such interest shall be due and payable quarterly along with each instalment of the Capex Annuity. The Parties agree that such interest shall be calculated on the basis of the number of days for which the relevant rate of the SBI MCLR was applicable during the period of calculation.

By way of illustration, assuming that the balance Completion Cost to be paid to the Concessionaire on the date of payment of the 1st Capex Annuity instalment is INR 50,00,00,000 (Rupees fifty crores), the applicable SBI MCLR for the first 50 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the date of

*payment of the 2nd Capex Annuity, the interest would be calculated as $((50*11\%*50)/365)+((50*10.5\%*40)/365)$. For the avoidance of doubt, the interest shall be calculated on simple interest basis and the interest shall not be compounded for the purpose of payment.*

(f) O&M Charges

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

(g) Power Charges

- (i) The Power Charges for each location's Facilities shall initially be borne by the Concessionaire, which shall be reimbursed by NMCG to the Concessionaire, subject to a cap of the Power Charges based on the Location's Guaranteed Energy Consumption. For Tolly's Nallah Facilities, only the DWF Guaranteed Energy Consumption limit will be applicable for the months of January, February, March, April, May, June, November and December. During this period, the Concessionaire will not be reimbursed for any SWF pumping. The reimbursement for SWF pumping will be made only in the months of July, August, September and October.
- (ii) The Power Charges for any given quarter of the O&M Period will be calculated as follows:

A. For the units of energy consumed from the grid (as evidenced by a copy of the bill issued by the distribution licensee), the Power Charges will be calculated by multiplying the number of units consumed in such quarter (subject to the Guaranteed Energy Consumption for the energy consumed by the relevant Facility) with the Power Unit Rate.

If the Concessionaire procures power from outside West Bengal, then, the Power Unit Rate will be the prevalent power unit rate in West Bengal or the tariff at which the Concessionaire procures power from outside West Bengal , whichever is lower.

B. If there is any interruption in the supply of power from the grid,

and the Concessionaire uses backup power supply from the DG Sets for the O&M, then,

- (I) the Concessionaire's Representative and the KMC shall jointly take readings from the meters installed at the DG Sets to determine the number of units of energy consumed from the DG Sets for O&M of the relevant Facility;
 - (II) the number of units of energy consumed from the DG Sets (determined as per (I) above) shall be adjusted such that the aggregate of the total number of units consumed from the grid and the total number of units consumed from the DG Sets shall not exceed the Guaranteed Energy Consumption for the relevant Location (**Adjusted DG Set Units**);
 - (III) the quantity of diesel consumed to generate the Adjusted DG Set Units in the relevant quarter shall be calculated by the KMC based on the rated specific fuel consumption of the DG Sets specified by the manufacturers of the DG Sets; and
 - (IV) the Power Charges for the Adjusted DG Set Units will be calculated by multiplying the quantity of diesel consumed (determined as per (III) above) with the Fuel Price.
- C. For each Location, the Concessionaire shall be liable to pay Liquidated Damages to the KMC for any units of energy consumed beyond the Guaranteed Energy Consumption (whether from the grid or from the DG Sets) for such Location (**Power Consumption Liquidated Damages**), which will be calculated as follows:

- (I) For excess power consumption up to 5% of the Guaranteed Energy Consumption of the relevant Location:

Power Consumption Liquidated Damages : (Number of power units consumed in the relevant quarter – Guaranteed Energy Consumption for such quarter) * [Power Unit Rate] * 0.25

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

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

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

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

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

- (h) The O&M Payments shall be paid by NMCG to the Concessionaire on a quarterly basis. For each Facility, the Concessionaire shall submit an Invoice to the KMC for each quarter on or before the 7th day of the first month of the following quarter, which should set out:
- (i) the Capex Annuity due to the Concessionaire in such quarter, along with interest in accordance with Article 9.4(e)(ii) above, as applicable;
 - (ii) the O&M Charges due to the Concessionaire in such quarter, and
 - (iii) the Power Charges incurred by the Concessionaire during such quarter for power drawn from the grid or the DG Sets, subject to the cap of the Power Charges based on the Guaranteed Energy Consumption. Any Invoice raised by the Concessionaire for O&M Payments shall be accompanied with a copy of the:

- (A) KPI Adherence Report for each month of the relevant quarter, duly certified by the Project Engineer; and
- (B) copy of the bill(s) issued by the state distribution utility for the Power Charges, and if relevant, copy of the joint meter reading for consumption of power from the DG Sets.

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

- (i) Within 10 days of receipt of an Invoice from the Concessionaire pursuant to Article 9.4(h) above, the KMC shall verify and certify the amounts due and payable to the Concessionaire, and either:
 - (i) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Agreement and/or Applicable Laws (including any statutory dues); or
 - (ii) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by the KMC.

The Concessionaire shall submit a revised Invoice to the KMC after rectifying the errors or discrepancies identified by the KMC and this process will be repeated until the KMC approves the Invoice and issues a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for release of the amount specified in the Invoice.

- (j) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 21 (Dispute Resolution)
- (k) A certificate issued by the KMC in accordance with Article 9.4(i) shall be referred to as a Payment Certificate.
- (l) If, within 10 days from the date of receipt of an Invoice, the KMC does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by the KMC, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to the KMC and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.

- (m) Immediately upon receipt of a Payment Certificate or upon receipt of instructions from the Concessionaire in accordance with Article, the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (n) Notwithstanding anything to the contrary in this Agreement, the KMC shall have no obligation to issue a Payment Certificate unless:
 - i. the O&M Securities remain valid and in effect;
 - ii. the insurances to be obtained by the Concessionaire in accordance with Article 11.2 are valid and in effect;
 - iii. the Concessionaire Applicable Permits for O&M of the Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - iv. the Concessionaire has complied with the **ESHS Documents** in undertaking the O&M of the relevant Facilities; and
 - v. there is no subsisting Concessionaire Event of Default.

9.5 Escrow Account

- (a) Prior to the Effective Date, the Concessionaire, NMCG, the KMC and the Escrow Bank shall enter into the Escrow Agreement and NMCG shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, NMCG's obligation to deposit the Location Construction Payments and the Location O&M Payments in accordance with this agreement with the Escrow Bank and terms of withdrawal of amounts from the Escrow Account.
- (b) Minimum Escrow Balance
 - (i) NMCG shall deposit an amount equivalent to the first 2 Payment Milestones for all Locations prior to the Effective Date. From the Effective Date and during the Construction Period in case of relevant Facilities, NMCG shall ensure that the

Escrow Account is funded with an amount equivalent to the next 2 Payment Milestones until relevant Location COD; and

- (ii) For Tolly's Nallah Facilities, Garden Reach Facilities, on and from the Tolly's Nallah COD, Garden Reach COD, respectively, and until the Expiry Date, NMCG shall deposit the Location O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuity (along with interest), with relevant O&M Charges and estimated relevant Power Charges for the next two years.
- (iii) For Keorapukur Facilities and Kudghat PS, on and from the relevant Handover Date and until the Expiry Date, NMCG shall deposit the relevant O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with relevant O&M Charges and estimated relevant Power Charges for the next two years.

(the **Minimum Escrow Balance**).

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

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

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

9.6 Taxes and Royalties

- (a) The Location Construction Payments and the Location O&M Payments are inclusive of all Taxes.
- (b) The KMC may deduct from the Construction Payments, the O&M Payments and any other amounts due to the Concessionaire, any income tax or withholding tax that is required to be deducted at source.

- (c) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government authority, in respect of any non-payment or short-payment of Taxes.
- (d) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Subcontractor during the Construction Period, and furnish proof of payment of such royalties to the KMC along with the Invoices for the relevant Construction Payments.
- (e) Upon a request from the Concessionaire, NMCG/KMC will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the KMC shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.
- (f) The Concessionaire shall indemnify NMCG and the KMC from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.
- (g) Any Taxes payable in relation to the Site shall be borne by the KMC.

9.7 Default Interest

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

9.8 Right of Set-Off

The Concessionaire shall not be entitled to retain or set off any amount due to NMCG or the KMC by it, but NMCG or the KMC may retain or set off any amount owed to it by the Concessionaire under this Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Agreement. NMCG shall notify the Concessionaire at the time it

exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

10 FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

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

10.2 Security Creation

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

Lenders or any third Persons.

11 INSURANCE AND INDEMNITIES

11.1 Indemnity and Limitation of Liability

- (a) Subject to Article 11.1(b) below, the Concessionaire shall be responsible for, release, hold harmless and indemnify the KMC, NMCG, the KMC Related Parties and the NMCG Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:
- i. death or personal injury of any person;
 - ii. loss of or damage to property;
 - iii. non-compliance with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents);
 - iv. any damage caused to the environment by the Concessionaire (including specifically, due to the Concessionaire's failure to meet the Discharge Standards);
and
 - v. any third party losses or claims;

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

- (b) The Concessionaire shall not be responsible or be obliged to indemnify the KMC or NMCG for any injury, loss, damage, cost and expense caused by the negligence or Willful Misconduct of the KMC, NMCG, the KMC Related Parties or the NMCG Related Parties or by a breach by the KMC or NMCG of their respective obligations under this Agreement.
- (c) The KMC and NMCG shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against them in respect of, resulting from, related to or arising out of any matter for which they

are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof, shall be subject to the indemnification obligations of the Concessionaire.

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

- (d). The KMC shall be responsible for, release, hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or any other liability incurred or suffered by the Concessionaire under Applicable Laws, or pursuant to the law of torts, principles of absolute liability or strict liability or polluter pays principle, as a result of any environmental pollution or health hazard caused by the quality of raw Sewage which is delivered at the Facilities.

(e) Limitation of liability

- (i) Notwithstanding anything to the contrary contained in this Contract, the maximum overall liability of any Party under this Agreement shall not exceed INR 2,20,00,00,000 (Rupees Two Hundred and Twenty Crores).
- (ii) Provided that the limitation of liability set out in Article 11.1(e) above shall not apply to the following:
 - (A) breach of Applicable Law and Applicable Permits;
 - (B) breach of any third party Intellectual Property Rights;

- (C) fraud and Wilful Misconduct;
- (D) gross negligence;
- (E) damages to or loss of third party property;
- (F) damage caused to the environment;
- (G) misrepresentation by the Concessionaire; and
- (H) health hazard, bodily injury or loss of life.

(iii) The Parties agree and acknowledge that the provisions of this Article 11.1(e) in respect of limitation and exclusion of liabilities is an agreed allocation of risk between the Parties, the sufficiency of which the Parties hereby agree and acknowledge.

(f) The provisions of this Article 11.1 shall survive the termination of this Agreement.

11.2 Insurance

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

Insurances during the Construction Period

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

Insurances during the O&M Period

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

- (i) loss, damage or destruction of the Facilities, at replacement value;
 - (ii) comprehensive third party liability insurance including injury to or death of personnel of the KMC or NMCG or others caused by the Project;
 - (iii) the Concessionaire's general liability arising out of the Project;
 - (iv) liability to third parties for goods or property damage;
 - (v) workmen's compensation insurance; and
 - (vi) any other insurance that may be necessary to protect the Facilities, the Concessionaire and its employees, including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.
- (b) The level of insurance to be maintained by the Concessionaire after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of the Lenders' dues, in accordance with the Financing Documents.
- (c) The Concessionaire shall, within 30 days of the Effective Date, provide a notice to the KMC, setting out information in respect of the insurances that it proposes to obtain and maintain. Within 15 days of receipt of such notice, the KMC may require the Concessionaire to obtain and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 21 (*Dispute Resolution*) shall apply.
- (d) The Concessionaire shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 days of obtaining any insurance cover, the Concessionaire shall furnish to the KMC, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in

respect of such insurance.

- (e) Each insurance policy shall contain the following endorsements:
 - i. the KMC shall be additionally insured under all policies maintained by the Concessionaire in relation to the Site and the Project, against loss or damage;
 - ii. the insurers shall waive all rights of subrogation against the KMC and NMCG;
 - iii. the insurance policy may not be cancelled or materially changed by the insurer without giving 45 days' prior written notice to the KMC, except in the case of non-payment, in which case it will be 10 days' prior written notice, to the KMC; and
 - iv. the KMC or NMCG shall not be responsible for payment of any insurance premium.
- (f) Any changes in the insurances which impact the Site or the Project will need the prior written consent of the KMC, which consent shall not be unreasonably withheld.
- (g) The Concessionaire shall apply proceeds from all insurance claims, except life and injury, for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.
- (h) If the Concessionaire fails to procure or maintain any insurance required pursuant to this Article 11.2 which is required to be obtained for the Site or the Project, the KMC shall have the right to procure and maintain such insurance in accordance with the requirements of this Article 11.2 and charge the full cost thereof to the Concessionaire.

12 CHANGE IN OWNERSHIP

12.1 Ownership Information

The Selected Bidder shall inform the KMC that it has caused the Concessionaire to be incorporated as a special purpose company to implement the Project and undertake other obligations of the Concessionaire under and in accordance with this Agreement. The shareholding

pattern of the [Selected Bidder/Members]⁹ in the Concessionaire is as follows:

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

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

12.2 Change in Ownership Restrictions

- (a) In case of a single-party/entity bidding, the Concessionaire shall ensure that the Selected Bidder holds at least 51% of the total Capital and voting rights of the Concessionaire until 3 years after Tolly's Nallah COD or Garden Reach COD or Keorapukur Handover Date, whichever is later, and at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the Tolly's Nallah COD or Garden Reach COD or Keorapukur Handover Date, whichever is later .

After the expiry of 3 years from the Tolly's Nallah COD or Garden Reach COD or Keorapukur Handover Date, whichever is later, the Selected Bidder can exit the Concessionaire, subject to: (i) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (ii) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in the RFP.]¹⁰ and (iii) approval of the KMC, which shall not be unreasonably withheld.

OR

- (b) In case the selected Bidder is a Consortium, the Concessionaire shall ensure that Members

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

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

of the Selected Bidder, being the shareholders of the Concessionaire, comply with the following ownership restrictions:

- i. The Lead Member shall hold not less than 26% of the total Capital and voting rights of the Concessionaire until 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later
- ii. The Member, other than the Lead Member, whose Technical Capacity or Financial Capacity is being assessed solely for construction of S&D Network, as outlined in Clause 4.1 (a)(ii), shall hold at least 10% of the total Capital and Voting rights of the Concessionaire for 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.
- iii. any Member, other than the Lead Member and the Member referred to in Article 12.2(b)(ii) above, whose Technical Capacity or Financial Capacity is being assessed for the purpose of qualification, shall hold at least 26% of the total Capital and voting rights of the Concessionaire for 3 years after the Tolly's Nallah Facilities COD or Garden Reach Facilities COD or Keorapukur Handover Date, whichever is later.

After the expiry of 3 years from the Tolly's Nallah COD or Garden Reach COD or Keorapukur Handover Date, whichever is later, the Lead Member and the Members referred to in Clause 12.2(b)(ii) above can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Concessionaire; or (B) the entity acquiring the shareholding of the Lead Member/any other Member in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (C) the Concessionaire appointing an O&M contractor who complies with the O&M qualification criteria set out in the RFP.]¹¹

- (b) The Concessionaire shall ensure that the change in ownership restrictions set out in Article 12.2(a) are incorporated in the articles of association of the Concessionaire.
- (c) If, any Associate, whose credentials were taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the [Selected Bidder/Member]¹², then, the Concessionaire shall seek the approval of the KMC for such occurrence along with all relevant details. While the KMC shall not unreasonably withhold or delay such approval, the decision of the KMC will be final in this regard. If KMC is of the view that such occurrence is likely to affect the Technical Capacity of the Concessionaire to undertake the Project, then the KMC may treat such occurrence as a Concessionaire Event of Default, in which case the consequences set out in Article 16

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

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

shall follow.

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

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

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

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

13 CHANGE IN LAW

13.1 Change in Law

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

13.2 Consequences of Change in Law

- (a) The Concessionaire shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.

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

- (b) If a Qualifying Change in Law occurs, then the Concessionaire shall notify the KMC and NMCG of such Qualifying Change in Law along with details of:
- i. any necessary change in the Location Construction Plan, the Location O&M Manual or the Technical Specifications on the basis of which construction/renovation works and O&M services are required to be undertaken for the Facilities;
 - ii. any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - iii. any extension of the Scheduled Payment Milestone Completion Date or the Scheduled Construction Completion Date for relevant Location, to account for the delay, if any, resulting from the Qualifying Change in Law; and/or
 - iv. any increase in Costs that will result from the Qualifying Change in Law.
- (c) As soon as practicable and in any event, within 30 days from the receipt of any notice from the Concessionaire under Article 13.2(b) above, the Parties shall agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Concessionaire can mitigate the effect of the Qualifying Change in Law, including:
- i. providing evidence that the Concessionaire has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise any increase in Costs or oblige the Subcontractors to minimise any increase in Costs;
 - ii. providing evidence as to how the Qualifying Change in Law has affected prices of materials used for construction/renovation or O&M of STPs which are similar to the Facilities; and
 - iii. demonstrating to the KMC and NMCG that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of time could not reasonably be expected to be mitigated or recovered by the Concessionaire.

- (d) If the Parties fail to agree on the consequences of the Qualifying Change in Law within 30 days from the receipt of any notice from the Concessionaire under Article 13.2(b) above, the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 21 (*Dispute Resolution*).

- (e) If the Concessionaire has complied with Article 13.2 (c) above and the Parties mutually agree or it is determined in accordance with Article 13.2 (d) above that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:
 - i. the Concessionaire shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to an aggregate amount equivalent to 0.5% of the Total Bid Project Cost (Threshold Limit); and
 - ii. for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,
 - (A) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold Limit; or
 - (B) an appropriate adjustment in the relevant O&M Charges.

- (f) If the Concessionaire has complied with Article 13.2(c) above and the Parties mutually agree or it is determined in accordance with Article 21 (*Dispute Resolution*) that the Concessionaire will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Concessionaire shall be entitled to an extension of time in accordance with Article 7.11(b).

- (g) The quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under this Article 13.2 shall be as agreed by the Parties or as determined in accordance with Article 21 (*Dispute Resolution*), provided always that:
 - i. the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and
 - ii. the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.

- (h) Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall not be entitled to any schedule relief and/or compensation or adjustment in the relevant Bid Project Cost or the relevant O&M Charges due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which is not attributable to a Delay Event.

- (i) If a Fundamental Change in Law occurs, then,
 - i. the affected Party may notify the other Parties of the effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights of the Concessionaire under this Agreement; and

 - ii. any Party may propose amendments to the Concession Agreement, which would make the Concession Agreement compliant with Applicable Laws, while enabling the Parties to achieve their commercial objectives.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement within 30 days of receipt of a notice from the affected Party or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Article 14.

14 FORCE MAJEURE

14.1 Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
 - i. beyond the reasonable control of the Affected Party;

 - ii. such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;

 - iii. which does/do not result from the negligence of such Affected Party or the

failure of such Affected Party to perform its obligations hereunder; and

iv. such that it/they has/have a Material Adverse Effect.

(b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Article 14.1(a):

i. Non-Political Force Majeure Events

- (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
- (B) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
- (C) chemical or radioactive contamination or ionising radiation;
- (D) epidemic, plague or quarantine;
- (E) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; and
- (F) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction/renovation or O&M of the Facilities.

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

- (A) heavy rainfall;
- (B) quantum of the Sewage being more than the Design Capacity;

- (C) characteristics of the Sewage being beyond the Influent Standards;
- (D) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;
- (E) a delay in the performance of any Subcontractor;
- (F) non-performance resulting from normal wear and tear; or
- (G) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

ii. Indirect Political Force Majeure Events

- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoI or the GoWB or occurring in West Bengal;
- (B) invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoI or the GoWB or occurring in West Bengal;
- (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
- (D) any orders issued by the relevant Government authority, which require the Concessionaire to suspend the construction/renovation or O&M of the Facilities provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and
- (E) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such

Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

iii. Direct Political Force Majeure Events

- (A) occurrence of a Fundamental Change in Law in accordance with Article 13.2(i);
 - (B) compulsory acquisition in national interest or expropriation of the Site; and
 - (C) any order, notification or judgement issued or passed by any Government Authority which restricts the Concessionaire from constructing or operating the Facilities as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.
- (c) Without prejudice to the provisions of Articles 14.1(a) or 14.1(b) above,
- i. any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Article 14.1; and
 - ii. any act, event or circumstance which primarily affects any of the KMC Related Parties or the NMCG Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the KMC or NMCG, it would have come within the definition of Force Majeure Event under this Article 14.1.
- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 21, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party

14.2 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 3 days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).
- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Article 14.2.

14.3 Excuse of Performance

- (a) The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations.
- (b) The Parties may mutually agree to extend the period of excuse from performance due to a Force Majeure Event.
- (c) If a Force Majeure Event affects only one Facility, and not the other Facility, then the Affected Party shall only be excused from the performance of its obligations in relation to the affected Facility.
- (d) Provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

14.4 No Liability for Other Losses

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

14.5 Resumption of Performance

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

14.6 Allocation of costs during a Force Majeure Event

- (i) Upon occurrence of a Force Majeure Event (i) at Tolly's Nallah Facilities prior to the Tolly's Nallah COD; or (ii) at Garden Reach Facilities prior to the Garden Reach COD or (iii) Prior to Keorapukur Handover Date or (iv) Prior to Kudghat Handover Date, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.
- (ii) Upon occurrence of a Force Majeure Event (i) at Tolly's Nallah Facilities post the Tolly's Nallah COD; or (ii) at Garden Reach Facilities post the Garden Reach COD, or (iii) Prior to Keorapukur Handover Date and to Kudghat Handover Date, the Concessionaire shall be entitled to continue receiving the Capex Annuity, (along with interest) for Tolly's Nallah Facilities and Garden Reach Facilities and the O&M Charges for Tolly's Nallah Facilities and Garden Reach Facilities during the subsistence of the Force Majeure Event
- (iii) Upon occurrence of a Force Majeure Event (i) at Tolly's Nallah Facilities post the Tolly's Nallah COD; or (ii) at Garden Reach Facilities post the Garden Reach COD, or (iii) Keorapukur Facilities beyond the Keorapukur Handover Date or (iv) Kudghat PS beyond the Kudghat Handover Date, the Concessionaire shall be entitled to continue receiving the Capex Annuity, (along with interest) for Tolly's Nallah Facilities and Garden Reach Facilities and the O&M Charges for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities and Kudghat PS during the subsistence of the Force Majeure Event

14.7 Termination due to Force Majeure Event

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

If a Non-Political Force Majeure Event continues for a period of period of 120 days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Article 14.3, any Party shall, after the expiry of the period of 120-day period or any other mutually extended period, be entitled to forthwith terminate this Agreement

in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Article 14.7:

- i. if any one or more Facility(ies), but not all the Facilities, is/are affected by a Total Casualty, then this Agreement shall be amended to exclude such affected Facility(ies) and the Concessionaire shall not be entitled to terminate this Agreement with regard to the unaffected Facilities on the grounds of a continuing Non-Political Force Majeure Event;
- ii. if any Facility is affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the affected Facility to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event;
- iii. any partial termination under this Clause 14.7(a) must be with the prior approval of the KMC.

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

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

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

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

Subject to Clause 14.7(a), If a Force Majeure affects one or more Facility but not all the Facilities, then, it is clarified that a partial termination of this Agreement with Clause 14.7 (a)(i) to exclude the Facility affected by the Force Majeure Event may be permitted, to exclude the Facility(ies) affected by the Force Majeure Event, with the prior approval of the KMC.

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

15 SUSPENSION

15.1 Suspension by the Concessionaire

(a) Suspension of construction/renovation or O&M of the Facilities

- i. At any time during the Term, the Concessionaire may suspend, whether partially or wholly, the construction/renovation or O&M of any Facility, in case of an Emergency.
- ii. The Concessionaire acknowledges that suspension of the construction/renovation of any Facility during the Construction Period pursuant to Article 15.1(a)(i) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire.
- iii. In case of suspension of the performance of the O&M services of Facilities pursuant to Article 15.1(a)(i) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, but not the O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Article 15.1(a)(i).
- iv. In case of suspension of the performance of the O&M services pursuant to Article 15.1(a)(i) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity, if applicable, along with interest, and the O&M Charges for the period during which it suspends the performance of the O&M services pursuant to Article 15.1(a)(i).
- v. Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than 3 days after such occurrence, notify the KMC of such occurrence.
- vi. If, upon notification, the KMC does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction/renovation or O&M of the Facility, as the case may be. Upon re-commencement of the construction/renovation or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the

occurrence of such an event or circumstance, and such Dispute shall be decided/determined in accordance with Article 21 (*Dispute resolution*), provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

(b) Mitigation, Resumption and Termination

i. The Concessionaire shall make best endeavours to:

(A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 15.1(a)(i) above. Notwithstanding anything to the contrary contained in this Agreement, if the KMC, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the KMC shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and

(B) resume the construction/renovation or O&M services of the Facility within 24 hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 15.1(a)(i) or such longer period as may be approved by the KMC, and notify the KMC of the resumption of the works or services.

ii. Without prejudice to Article 15.1(b)(i):

(A) if suspension of the construction/renovation or O&M of a Facility pursuant to Article 15.1(a)(i) continues for a period of 60 days, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 16.1; and

(B) if suspension of the construction/renovation or O&M of a Facility pursuant to Article 15.1(a)(i) continues for a period of 60 days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 14 shall apply.

15.2 Suspension by the KMC

(a) Suspension of construction, renovation and/or O&M of the Facilities

- (i) At any time during the Term, the KMC may suspend, whether partially or wholly, the construction/renovation or O&M of a Facility, in any of the following events or circumstances:
 - A. upon the occurrence of an Emergency; or
 - B. if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the *ESHS Documents*, the O&M Manual or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).
- (ii) The Concessionaire acknowledges that suspension of the construction/renovation of the Facilities during the Construction Period pursuant to Article 15.2(a)(i) shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire.
- (iii) In case of suspension of the performance of the O&M services pursuant to Article 15.2(a)(i) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, less the Liquidated Damages payable by the Concessionaire for failure to operate the relevant Facility pursuant to Clause 15.2(a)(i). The Concessionaire shall not be entitled to the O&M Charges for the period during which KMC suspends the performance of the O&M services pursuant to Article 15.2(a)(i).
- (iv) In case of suspension of the performance of the O&M services pursuant to Article 15.2(a)(i) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest , and the O&M Charges for the relevant Facilities, for the period during which it suspends the performance of the O&M services pursuant to Article 15.2(a)(i).

(b) Mitigation, Resumption and Termination

- i. The Concessionaire shall make best endeavours to:
 - (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 15.2(a) above. Notwithstanding anything to the contrary contained in this Agreement, if the KMC, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the KMC shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and

(B) resume the construction/renovation or O&M services of the relevant Facility within 24 hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 15.2(a) or such longer period as may be agreed between the Parties, and notify the KMC of the resumption of the works or services.

ii. Without prejudice to Article 15.2(b)(i):

(A) if suspension of the construction/renovation or O&M of the relevant Facility pursuant to Article 15.2(a)(i)(A) and the Emergency is attributable to the Concessionaire, or a suspension pursuant to Article 15.2(a)(i)(B), continues for a period of 60 days then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 16.1; and

(B) if suspension of the construction/renovation or O&M of the relevant Facility pursuant to Article 15.2(a)(i)(A) continues for a period of 60 days, and the Emergency is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 14 shall apply.

16 EVENTS OF DEFAULT

16.1 Concessionaire Events of Default

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

- (a) failure of the Concessionaire to complete the construction/renovation of a Facility by the expiry of the relevant Grace Period;
- (b) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement;

- (c) failure of the Concessionaire to achieve successful completion of Trial Operations of any Location in accordance with Article 7.14;
- (d) failure of the Concessionaire to remedy any reduction in Availability within 3 days of receipt of a notice from the KMC in accordance with Article 8.12(a)(iv);
- (e) for any Facility, failure of the Concessionaire to cure a Third Breach within 20 days from the Third Breach Notice or a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, in accordance with Article 8.12(b)(iii)(D);
- (f) for any Facility, failure of the Concessionaire to achieve the KPIs for 2 consecutive days, 32 times in a continuous 12 month period;
- (g) for any Facility, failure of the Concessionaire to achieve the KPIs for 1 day, 64 times in a continuous 12 month period;
- (h) suspension of the construction/renovation or O&M of a Facility pursuant to Article 15.1(a)(i) (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 days;
- (i) suspension of construction/renovation or O&M of a Facility pursuant to Article 15.2(a)(i)(A) (to the extent the Emergency is attributable to the Concessionaire) or a suspension pursuant to Article 15.2(a)(i)(B), for a continuous period of 60 days;
- (j) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Facilities and such breach, if capable of being remedied, is not remedied within 30 days of issuance of written notice from the KMC specifying such breach and requiring the Concessionaire to remedy the same;
- (k) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
- (l) failure of the Concessionaire to submit and maintain a valid Performance Security in accordance with Article 5.1 or a valid O&M Security in accordance with Article 5.5;

- (m) failure of the Concessionaire to maintain a valid Mobilization Advance Guarantee in accordance with Article 5.21;
- (n) breach by the Concessionaire of its obligations under Article 4 (*Site and Asset Ownership*), 10.2 (*Security Creation*) or 23.12 (*Assignment*);
- (o) breach of the Concessionaire's obligations under Article 12 (*Change in Ownership*);
- (p) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- (q) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA);
- (r) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Article 11.2;
- (s) failure of the Concessionaire or the Subcontractors to comply with the ESHS Documents in accordance with Article 7.4;
- (t) the Concessionaire entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or
- (u) the breach of the Concessionaire's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Escrow Agreement, or termination of the Financing Documents, or the Escrow Agreement (for reasons attributable to the Concessionaire).

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

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a

Concessionaire Event of Default, the KMC may initiate termination by delivering a Notice of Intent to Terminate to the Concessionaire, with a copy to NMCG. The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought.

- (b) If, within 60 days from the date of the Notice of Intent to Terminate, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the KMC or the KMC is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, the KMC shall withdraw the Notice of Intent to Terminate, in writing.
- (c) If, within 60 days from the date of the Notice of Intent to Terminate, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of the KMC or the KMC is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, the KMC shall issue a notice to the Lenders to exercise their substitution rights.
- (d) If, within 60 days from the date of receipt of the Notice of Intent to Terminate pursuant to Article 16.2(c) or such longer period as may be mutually agreed between the KMC and the Lenders, the Lenders have notified their intent to substitute the defaulting Concessionaire, then:
 - (i) the KMC shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Lenders; and
 - (ii) the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.
- (e) If, within 60 days from the date of receipt of the Notice of Intent to Terminate pursuant to Article 16.2(c) or such longer period as may be mutually agreed between the KMC and the Lenders, the Lenders have not notified their intent to substitute the defaulting Concessionaire, then, the KMC shall terminate the Agreement and the consequences set out in Article 17 shall apply.
- (f) Notwithstanding anything contained in this Article 16.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

16.3 KMC 's Events of Default

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

- (a) a breach by the KMC of Article 23.12(b) (*Assignment*);
- (b) a breach by the KMC of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain a Facility and such breach, if capable of being remedied, is not remedied within 30 days of a notice being given by the Concessionaire;
- (c) failure to achieve the Effective Date within 180 days from the Appointed Date for reasons attributable to the KMC;
- (d) failure to achieve successful completion of Trial Operations of facilities of a particular Location due to the reasons set out in Article 7.14(j) by the Scheduled COD;
- (e) a breach by the KMC of its obligations under Article 7.8(g) or Article 8.5(d), in relation to its rights, title and interest in the Site; or
- (f) any representation made or warranties given by the KMC under this Agreement being found to be false or misleading in any material respect.

16.4 NMCG's Events of Default

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

- (a) a failure by NMCG to pay any undisputed amounts due and payable for 90 consecutive days, notwithstanding service of a formal written demand by the Concessionaire;

- (b) a failure by NMCG to maintain the Minimum Escrow Balance for a period of 90 days;
- (c) a breach by NMCG of Article 23.12(b) (*Assignment*); or
- (d) any representation made or warranties given by NMCG under this Agreement being found to be false or misleading in any material respect.

16.5 Notice of Intent to Terminate upon occurrence of a KMC Event of Default or an NMCG Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a KMC Event of Default or an NMCG Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 60 days from the date of the Notice of Intent to Terminate, the KMC or NMCG, as the case may be, rectifies or remedies the KMC Event of Default or the NMCG Event of Default, to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the KMC or NMCG or the KMC Event of Default or the NMCG Event of Default, as the case may be, has ceased to exist, the Concessionaire shall withdraw the Notice of Intent to Terminate.
- (c) If, within 60 days from the date of the Notice of Intent to Terminate, the KMC Event of Default or the NMCG Event of Default has not been remedied or the KMC or NMCG, as the case may be, has not taken steps or proposed to take steps to remedy the KMC Event of Default or the NMCG Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Agreement and the consequences set out in Article 17 shall follow.
- (d) During the subsistence of KMC Event of Default or an NMCG Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.
- (e) If an Event of Default affects one or more Facility but not all the Facilities, then, it is clarified that a partial termination of this Agreement to exclude the Facility affected by the Event of Default shall not be permitted and any termination of this Agreement will be for all the Facilities.

17 CONSEQUENCES OF TERMINATION

17.1 Upon termination or partial termination of this Agreement post the Effective Date but prior to the Construction Completion Date

- a. the Concessionaire shall cease all work in relation to construction and renovation of the Facilities and the Power Plant (if any) or the affected Facilities, as the case may be;
- b. the Concessionaire shall take all necessary steps to safeguard and protect the Facilities and the Power Plant (if any) or the affected Facilities, as the case may be (at whatever stage of completion or operation) and all other equipment, materials and goods on the Site;
- c. the KMC shall require the Project Engineer to assess the Cost of the construction works undertaken by the Concessionaire in relation to the Facilities as on the date of the Notice of Intent to Terminate and based on such assessment, NMCG shall pay the Termination Compensation in accordance with Article 18
- d. in case of termination of this Agreement due to a KMC Event of Default or an NMCG Event of Default, the KMC shall return the Performance Security(ies), the O&M Security(ies) and the Mobilization Advance Guarantee(s), if not already returned to the Concessionaire, within 30 days from the date of the Notice of Intent to Terminate; and
- e. the Concessionaire shall hand over the Site, the Facilities and the Power Plant, if any, to the KMC or its nominee in accordance with the Hand-back Requirements set out in Clause 20.3, to the extent applicable.

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

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

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

17.3 Consequences of termination or partial termination of the Agreement after the COD

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

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

17.4 Consequences of termination due to a Force Majeure Event

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

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

17.5 Accrued Rights and Liabilities

- a. Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of a Party, including its right to claim and recover damages and other rights and remedies which it may have

in law or contract. All accrued rights and obligations of a Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.

- b. Nothing in Article 17 or Article 18 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

18 TERMINATION COMPENSATION

18.1 Termination Compensation for termination of Agreement post Effective Date but prior to Tolly's Nallah Construction Completion Date, Garden Reach Construction Completion Date and before Keorapukur Handover Date an Kudghat Handover Date

- a. For a KMC Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of
 - i. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire for Payment Milestones completed and certified by KMC as on the date of the Notice of Intent to Terminate;
 - ii. Debt Due as on the date of Notice of Intent to Terminate;
 - iii. Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;
LESS
 - iv. any unadjusted Mobilization Advance (and interest, if any);
 - v. any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Article 19.2)
- b. For a Concessionaire's Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of
 - i. Construction payments for Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire for Payment Milestones completed and certified by the KMC as on the date of the Notice of Intent to Terminate;
 - ii. 85% of Debt Due as on the date of Notice of Intent to Terminate;
LESS
 - iii. any unadjusted Mobilization Advance (and interest, if any);
 - iv. any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Article 19.2)

18.2 Termination Compensation when one or more but not all Locations (i.e. Tolly's Nallah Facilities, Garden Reach Facilities) have achieved COD and before Keorapukur Handover Date and before Kudghat Handover Date

- a. For an KMC Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of
- i. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities if not already paid as on the date of the Notice of Intent to Terminate;
 - ii. Debt Due for pre-COD Locations (amongst Tolly's Nallah Facilities, Garden Reach Facilities) as on the date of Notice of Intent to Terminate;
 - iii. Equity infused in the Concessionaire for pre-COD Locations as on the date of Notice of Intent to Terminate (amongst Tolly's Nallah Facilities, Garden Reach Facilities) along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;
 - iv. O&M payments for post COD Locations (amongst Tolly's Nallah Facilities, Garden Reach Facilities) due to concessionaire as on the date of the Notice of Intent to Terminate;
 - v. Capex Annuity payments for post COD Locations (amongst Tolly's Nallah Facilities, Garden Reach Facilities) for the unexpired portion of the O&M period;
- LESS
- vi. any unadjusted Mobilization Advance (and interest, if any);
 - vii. any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Article 19.2)
- b. For a Concessionaire's Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of
- i. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire as on the date of the Notice of Intent to Terminate;
 - ii. 85% of Debt Due for pre-COD Locations (amongst Tolly's Nallah Facilities, Garden Reach Facilities) as on the date of Notice of Intent to Terminate;
 - iii. O&M payments for post COD facilities (amongst Tolly's Nallah Facilities, Garden Reach Facilities) due to concessionaire as on the date of the Notice of Intent to Terminate;

- iv. Capex Annuity payments for post COD facilities (amongst Tolly's Nallah Facilities, Garden Reach Facilities) for the unexpired portion of the O&M period;

LESS

- v. any unadjusted Mobilization Advance (and interest, if any);
- vi. any amounts due and payable by the Concessionaire under this Agreement (including Availability Liquidated Damages and any amount payable under Article 19.2)

18.3 Termination Compensation for termination of Agreement post Tolly's Nallah COD, post Garden Reach COD and after Keorapukur Handover Date and before Kudghat Handover Date

- a. For a KMC Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessaionaire an aggregate of

- i. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire as on the date of the Notice of Intent to Terminate;
- ii. O&M payments for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities due to concessionaire as on the date of the Notice of Intent to Terminate;
- iii. Capex Annuity payments for the unexpired portion of the O&M period;

LESS

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

- b. For a Concessionaire's Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of

- i. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire as on the date of the Notice of Intent to Terminate
- ii. O&M payments for Tolly's Nallah Facilities, Garden Reach Facilities and Keorapukur Facilities due to concessionaire as on the date of the Notice of Intent to Terminate;
- iii. Capex Annuity payments for Tolly's Nallah Facilities, Garden Reach Facilities for the unexpired portion of the O&M period;

LESS

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

18.4 Termination Compensation for termination of Agreement post Tolly's Nallah COD, post Garden Reach COD and after Keorapukur Handover Date and after Kudghat Handover Date

- c. For a KMC Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessaionaire an aggregate of

- v. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire as on the date of the Notice of Intent to Terminate;
- vi. O&M payments for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities and Kudghat PS due to concessionaire as on the date of the Notice of Intent to Terminate;
- vii. Capex Annuity payments for the unexpired portion of the O&M period;

LESS

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

- d. For a Concessionaire's Event of Default, NMCG shall be liable to pay to the Concessionaire an aggregate of

- v. Construction payments of Tolly's Nallah Facilities, Garden Reach Facilities due to concessionaire as on the date of the Notice of Intent to Terminate
- vi. O&M payments for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities and Kudghat PS due to concessionaire as on the date of the Notice of Intent to Terminate;
- vii. Capex Annuity payments for Tolly's Nallah Facilities, Garden Reach Facilities for the unexpired portion of the O&M period;

LESS

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

18.5 Termination Compensation for Termination due to a Force Majeure Event

(a) Indirect Political Force Majeure or Non-Political Force Majeure Event

(i) If the Agreement is terminated due to an Indirect Political Force Majeure Event or a Non-Political Force Majeure Event, prior to the Tolly's Nallah Facilites COD, prior to Garden Reach COD and prior to Keorapukur Handover Date and Kudghat Handover Date, NMCG shall be liable to pay to the Concessionaire:

A. Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the KMC as on the date of the notice of termination under Article 14.7;

B. Debt Due as on the date of notice of termination under Article 14.7;

LESS

C. any insurance proceeds received and retained by the Concessionaire.

(ii) If the Agreement is terminated due to an Indirect Political Force Majeure Event or a Non-Political Force Majeure Event, post COD of at least one Location (amongst Tolly's Nallah Facilites Facilites, Garden Reach Facilities) and prior to COD of at least one other Location (amongst Tolly's Nallah Facilites, Garden Reach Facilities) and prior to Keorapukur Handover Date and Kudghat Handover Date, NMCG shall be liable to pay to the Concessionaire:

A. Construction Payments that remain outstanding on the date of the notice of termination under Article 14.7;

B. O&M Payments of post-COD Locations (amongst Tolly's Nallah Facilites, Garden Reach Facilities) due to the Concessionaire as on the date of the notice of termination under Article 14.7;

C. Debt Due;

LESS

D. any insurance proceeds received and retained by the Concessionaire.

(iii) If the Agreement is terminated due to an Indirect Political Force Majeure Event or

a Non-Political Force Majeure Event, post COD of Tolly's Nallah Facilities COD, post Garden Reach COD and post Keorapukur Handover Date and Kudghat Handover Date, NMCG shall be liable to pay to the Concessionaire:

- A. Construction Payments that remain outstanding on the date of the notice of termination in case of facilities under Article 14.7;
 - B. O&M Payments (for Tolly's Nallah Facilities, Garden Reach Facilities, Keorapukur Facilities and Kudghat PS) due to the Concessionaire as on the date of the notice of termination under Article 14.7;
 - C. Debt Due;
- LESS
- D. any insurance proceeds received and retained by the Concessionaire.

(b) Direct Political Force Majeure

- (i) If the Agreement is terminated due to a Direct Political Force Majeure Event, post COD of at least one Location (amongst Tolly's Nallah Facilities Facilities, Garden Reach Facilities) and prior to COD of at least one other Location (amongst Tolly's Nallah Facilities, Garden Reach Facilities) and prior to Keorapukur Handover Date and Kudghat Handover Date, NMCG shall be liable to pay to the Concessionaire:
 - (A) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the KMC as on the date of the notice of termination under Clause 14.7;
 - (B) O&M Payments due to the Concessionaire (for post-COD facilities) as on the date of the notice of termination under Clause 14.7;
 - (C) Debt Due;
 - (D) Equity infused in the Concessionaire as on the date of the notice of termination under Clause 14.7 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3%;
 - (E) Capex Annuity (for post-COD facilities) for the unexpired portion of the O&M Period

LESS

- (F) any unadjusted Mobilization Advance (and interest if any);
 - (G) any insurance proceeds received and retained by the Concessionaire; and
 - (H) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).
- (ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the post COD of Tolly's Nallah Facilites COD, post Garden Reach COD and post Keorapukur Handover Date and Kudghat Handover Date, NMCG shall be liable to pay to the Concessionaire:
- (A) Construction Payments that remain outstanding on the date of the notice of termination under Clause 14.7;
 - (B) O&M Payments due to the Concessionaire as on the date of the notice of termination under Clause 14.7;
 - (C) Capex Annuity for the unexpired portion of the O&M Period;

LESS

- (D) any insurance proceeds received and retained by the Concessionaire; and
- (E) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.6 In case of a partial termination of this Agreement pursuant to a Total Casualty or other Force Majeure Event, the termination compensation payable by NMCG to the Concessionaire in relation to the affected Facility(ies) shall be as follows:

- a. if the partial termination occurs due to a Total Casualty, Non-Political Force Majeure Event or an Indirect Political Force Majeure Event during the Construction Period of the affected Facility(ies), then NMCG shall be liable to pay to the Concessionaire the amounts set out in Clause 18.4(b)(i) (to the extent relevant to the affected Facility(ies));

- b. if the partial termination occurs due to a Total Casualty, Non-Political Force Majeure Event or an Indirect Political Force Majeure Event during the O&M Period of the affected Facility(ies), then NMCG shall be liable to pay to the Concessionaire the amounts set out in Clause 18.4(b)(iii) (to the extent relevant to the affected Facility(ies)); and
- c. if the partial termination occurs due to a Direct Political Force Majeure Event, then NMCG shall be liable to pay to the Concessionaire the amounts set out in Clause 18.4(c) (to the extent relevant to the affected Facility(ies) and subject to the stage at which the partial termination occurs).

18.7 For the purposes of calculating the Termination Compensation payable to the Concessionaire pursuant to this Clause 18, the Concessionaire shall provide a certificate to the KMC from its Lenders confirming the amount of the Debt Due as on the date of the Notice of Intent to Terminate.

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

18.9 Full and Final Settlement

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

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

18.11 Forfeiture of Additional Performance Security

Upon termination of the Concession Agreement for Concessionaire Event of Default, as per Clause 16.1 of the Concession Agreement, the Additional Performance Security(if any) submitted by the Selected Bidder / Concessionaire shall be forfeited by the KMC.

19 TRANSFER ON TERMINATION

19.1 Transfer of the Site and the Facilities

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Site, the Facilities, and the Power Plant, if any, to the KMC or any other entity nominated by the KMC in accordance with this Article 19. In case of a partial termination of this Agreement pursuant to Article 8.11(i), Article 14.7 or Article 21, the Concessionaire shall hand over the Facility(ies) which have been excluded from the scope of this Agreement and the Site for such excluded Facility(ies) to the KMC or any entity nominated by the KMC, in accordance with this Article 20.

19.2 Inspection of the Site and the Facilities

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

If the KMC is satisfied with the results of the final survey, then the KMC shall notify the Concessionaire within 14 days of carrying out the final survey that the Site, the Facilities and the Power Plant, if any, comply with the Hand-back Conditions. If the KMC is not satisfied with the results of the final survey, then the KMC shall or shall cause the Project Engineer to estimate the cost of restoring the Site, the Facilities and/or the Power Plant, if any, to the Hand-back

Conditions and recover such cost from the Concessionaire.

19.3 Hand-back Requirements

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

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

19.4 The provisions of this Article 19 shall survive the termination of this Agreement. If this Agreement is partially terminated in accordance with Article 14.7(a)(i), the provisions of this Article 19 shall apply only to the extent of the terminated portion of the Project.

20 VARIATION

20.1 Both the KMC and the Concessionaire may, at any time during the Term, propose a Variation to the Scope of Work, Technical Specifications, and/or the Designs and Drawings.

20.2 KMC Proposed Variation

- (a) The KMC may propose a Variation in the Scope of Work, Technical Specifications or the approved Designs and Drawings. Provided that, the KMC shall not propose a Variation, which: (i) is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permit.
- (b) Within 15 days of receipt of a request for Variation from the KMC, the Concessionaire shall submit a proposal to the KMC (with a copy to the Project Engineer) setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, the Scheduled Milestone Completion Date, the Scheduled Construction Completion Date and Scope of Work and additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation. It is clarified that the additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation will be determined on the basis of the KMC's schedule of rates for similar works.
- (c) Notwithstanding anything to the contrary in this Article 20.2, the Concessionaire shall have the right to reject a Variation proposed by the KMC if, in the Concessionaire's view, the proposed variation will result in: (i) the Concessionaire incurring additional Costs, of more than 25% of the Bid Project Cost of the relevant Facility in relation to which the Variation is proposed; (ii) reduction in the Bid Project Cost of the Facility in relation to which the Variation is proposed by more than 25%; or (iii) a delay of more than 120 days in a Scheduled Milestone Completion Date or the Scheduled Construction Completion Date in case of Garden Reach Facilities and Tolly's Nallah Facilities.
- (d) Based on its review of the proposal submitted by the Concessionaire, the KMC may, at its sole discretion: (i) accept the proposal and the corresponding adjustment to the relevant Construction Plan and/or the additional Costs or reduction in the relevant Bid Project Cost for undertaking the Variation; (ii) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the proposal submitted by the Concessionaire and withdraw the proposed Variation, within 15 days from the date of receipt of the Concessionaire's proposal under Article 20.2(b) above.
- (e) To the extent the KMC seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the KMC 's

comments and submit a revised proposal.

- (f) On approval of the proposal or the revised proposal, as the case may be, the KMC shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (g) If the Parties are unable to agree on the implications of a Variation proposed by the KMC, which in KMC's view is necessary or desirable for the Project, the KMC shall have the right to require the Concessionaire to carry out the proposed variation at the cost determined in accordance with the KMC's schedule of rates for similar works. Where KMC's schedule of rates do not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation shall be covered by Project Engineer. Any dispute shall be resolved in accordance with Article 21 (*Dispute Resolution*)
- (h) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the relevant Construction Plan, Scheduled Milestone Completion Date, Scheduled Construction Completion Date and/or payment of additional amounts for relevant Location(s), if any, set out in the Variation Order.

20.3 Concessionaire Proposed Variation

- (a) The Concessionaire may propose a Variation if it considers such Variation necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the relevant Facility(ies);
- (b) To propose a Variation, the Concessionaire shall submit a proposal to the KMC (with a copy to the Project Engineer), with a statement setting out:
 - (i) the need for a Variation;
 - (ii) the additional work required; and
 - (iii) adjustment to the Construction Plan, Scheduled Milestone Completion Date and Scheduled Construction Completion Date of relevant Location;
- (c) Based on its review of the proposal submitted by the Concessionaire, if the KMC is of the view that the proposed Variation is justified, then it will determine the cost of the proposed Variation using the KMC's schedule of rates for similar works and where the KMC's schedule of rates do not provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be covered by the Project Engineer. Thereafter, the KMC shall notify the Concessionaire of the additional cost determined by the KMC for the proposed Variation and any other comments that the KMC may have on the implications of the proposed Variation. To the extent the KMC seeks amendments

and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the KMC's comments.

- (d) On the Concessionaire's acceptance of the costs determined by the KMC for the proposed Variation and any other amendments sought by the KMC to the Concessionaire's proposal, the KMC shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
 - (e) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the relevant Construction Plan and/or additional costs, as set out in the Variation Order.
- 20.4** Notwithstanding anything to the contrary in this Article 20, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the relevant Construction Plan and additional Costs shall be determined in accordance with Article 13.
- 20.5** Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Subcontractor in the performance of the Concessionaire's obligations under this Agreement shall not entitle the Concessionaire to any adjustment in the relevant Construction Plan or any other compensation or relief.
- 20.6** No Variation shall invalidate this Agreement.

21 DISPUTE RESOLUTION

21.1 Amicable Settlement

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

21.2 Dispute Resolution by Arbitration

- (a) If a Dispute is not resolved within 30 days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any Party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 21.2 by issuing a notice to the other Party (**Notice of Arbitration**).
- (b)
 - (i) The Arbitration Panel shall be constituted with three Arbitrators; each Party shall select one Arbitrator, and the third Arbitrator shall be appointed by the two Arbitrators so selected.
 - (ii) The Arbitration Panel may retain the services of financial and technical consultants, if it so deemed appropriate.
 - (iii) The Arbitration Panel shall endeavour to make an award on any Dispute referred to it within a period of ninety (90) Days from the date of its first meeting. However, such period may be extended by mutual agreement of the parties to the dispute or as the Arbitration Panel deems fit.
 - (iv) The costs and expenses of the Arbitration Panel shall be shared equally between the Parties; provided however that the Arbitration Panel shall be entitled to decide on the costs of the arbitration procedure.
- (c)
 - (i) Where the Concessionaire is controlled by shareholder(s) incorporated outside India, arbitration shall be International Commercial Arbitration with proceedings administered by the Singapore International Arbitration Centre (SIAC) in accordance with UNCITRAL Arbitration Rules, the place of arbitration shall be Singapore and the arbitration shall be conducted in English.
 - (ii) Where the Concessionaire is controlled by shareholder(s) incorporated in India, arbitration shall be with conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. For arbitration proceedings under article 21.2.3 (b), the venue of arbitration shall be the place where the Executing Agency's office is located and the arbitration proceedings shall be conducted in English language. The Arbitration Panel shall have the powers to pass such interim orders to the extent permissible under the Arbitration and Conciliation Act, 1996.
- (d) Arbitration may be commenced at any time during the Concession Period. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- (e) The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any

arbitration held pursuant to this Clause 21.2 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Executing Agency agree and undertake to carry out such Award without delay.

- (f) The Concessionaire and the Executing Agency agree that an Award may be enforced against the Concessionaire and/or the Executing Agency, as the case may be, and their respective assets wherever situated.
- (g) 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.

21.3 Survival

The provisions of this Article 21 shall survive the termination of this Agreement.

22 REPRESENTATIONS AND WARRANTIES

22.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

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

22.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to the KMC and NMCG that:

- (a) it is duly organized, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, finance, construct, complete, operate and maintain the Facilities in accordance with this Agreement;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid of the Selected Bidder, and as updated on or before the date of this Agreement is true and accurate in all respects as on the Appointed Date, as applicable;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the GoI or the GoWB which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (i) none of its employees, consultants, service providers, suppliers, or Subcontractors, including any O&M contractor, as of this day, have been engaged in any corrupt,

fraudulent, collusive, coercive or obstructive practice, as defined in Article 23.18; and

- (j) no representation or warranty by it contained in this Agreement or in any other document furnished by it to the KMC, NMCG, the GoI or the GoWB in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty.

22.3 KMC's Representations and Warranties

The KMC represents and warrants to the Concessionaire and NMCG that:

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

- (i) all information provided by it in the RFP and this Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

22.4 NMCG's Representations and Warranties

NMCG represents and warrants to the Concessionaire and the KMC that:

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

22.5 Acknowledgement

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue

or incorrect nor shall it adversely affect or waive any obligation of a Party under this Agreement.

- (c) The KMC, the KMC Related Parties, NMCG and the NMCG Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by the KMC or NMCG to the Concessionaire; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

23 MISCELLANEOUS

23.1 Survival

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

23.2 Entire Agreement

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

23.3 Non-exhaustive Remedies

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

23.4 Notices

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

KMC: Joint Commissioner

Address: KMC Office, SN Banerjee Road, Kolkata

Tel:

Fax: [●]

Email:

NMCG : Attention: Executive Director (Projects)

Address: 1st Floor, Major Dhyanchand National Stadium, India Gate, New Delhi - 110002

Tel: +91(11) 23049442

Fax: +91(11) 23049566

Email: ed.projects@nmcg.nic.in

Concessionaire : Attention: [●]

Address: [●]

Tel: [●]

Fax: [●]

Email: [●]

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

23.5 Governing Law and Jurisdiction

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

23.6 Counterparts

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

23.7 Language

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

23.8 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including the KMC Related Parties, the NMCG Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.

- (b) This Article 23.8 shall not apply to Confidential Information, which:
 - (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
 - (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government authority, or the rules of any applicable stock exchange;
 - (vi) is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;
 - (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;

- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any persons to whom a Party is entitled to disclose Confidential Information under this Article 23.8(b);
- (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- (xii) is disclosed to any Government authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) above shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Article 23.8(a) above.

- (c) A Party making a disclosure of Confidential Information pursuant to Article 23.8(a) shall,
 - (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Associates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Article 23.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or

other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

- (e) The recipient party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

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

23.9 Amendments

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

23.10 Waivers and Consents

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

23.11 Severability

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

v.

23.12 Assignment

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

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

23.13 No Agency or Partnership

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

23.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement, the Substitution Agreement and the Escrow Agreement.

vii.

- (b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement, the Substitution Agreement and the Escrow Agreement.

23.15 Reservation of Rights

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

23.16 Third Parties

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

23.17 Waiver of sovereign immunity

The KMC and NMCG unconditionally and irrevocably:

- (a) agree that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

viii.

- (b) agree 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 KMC and NMCG with respect to its assets; and

ix.

- (c) consent to the enforcement of any judgment or award against them in any such proceedings.

23.18 Fraud and Corruption

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts.¹⁴ In pursuance of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another

¹⁴ In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

- party;¹⁵;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;¹⁶
 - (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;¹⁷
 - (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;¹⁸
 - (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 1.16(e) below.
- (b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - (c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
 - (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank’s

¹⁵ For the purpose of this sub-paragraph, “*another party*” refers to a public official acting in relation to the procurement process or contract execution. In this context, “*public official*” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

¹⁶ For the purpose of this sub-paragraph, “*party*” refers to a public official; the terms “*benefit*” and “*obligation*” relate to the procurement process or contract execution; and the “*act or omission*” is intended to influence the procurement process or contract execution.

¹⁷ For the purpose of this sub-paragraph, “*parties*” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

¹⁸ For the purpose of this sub-paragraph, “*party*” refers to a participant in the procurement process or contract execution.

sanctions procedures,¹⁹ including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated²⁰;

- (e) will require that a clause be included in bidding documents and in contracts financed by a Bank loan, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids and contract performance, and to have them audited by auditors appointed by the Bank.

23.19 Inspection and Audit

The Concessionaire shall permit and shall cause its Subcontractors and subconsultants to permit, the Bank and/or persons appointed by the Bank to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by the Bank if requested by the Bank. The Concessionaire's and its Subcontractors' and subconsultants' attention is drawn to Clause 23.18 which provides, inter alia, that acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 23.18.1 constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Bank's prevailing sanctions procedures).

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

KMC

By: Joint Commissioner, KMC

Name:

¹⁹ A firm or individual may be declared ineligible to be awarded a Bank financed contract upon: (i) completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, and through the application the World Bank Group corporate administrative procurement sanctions procedures for fraud and corruption; and (ii) as a result of temporary suspension or early temporary suspension in connection with an ongoing sanctions proceeding. See footnote 14 and paragraph 8 of Appendix 1 of these Guidelines.

²⁰ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding document) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirements for the particular bid; or (ii) appointed by the Borrower.

Title: Joint Commissioner

NATIONAL MISSION FOR CLEAN GANGA (NMCG)

By:

Name:

Title:

[Insert name of the Concessionaire] (CONCESSIONAIRE)

By:

Name:

Title: