Chennai Metropolitan Water Supply and Sewerage Board

DRAFT CONCESSION AGREEMENT
For

SELECTION OF CONCESSIONAIRE FOR "REHABILITATION AND ENHANCEMENT OF 300 MLD CAPACITY WATER TREATMENT PLANT TO 310 MLD AT PUZHAL INCLUDING COMPREHENSIVE OPERATION AND MAINTENANCE FOR 20 YEARS UNDER HYBRID ANNUITY MODEL (HAM)"

SUPERINTENDING ENGINEER (C&M)

CHENNAI METROPOLITAN WATER SUPPLY & SEWERAGE BOARD

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CONCESSION AGREEMENT

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

BETWEEN

1. Chennai Metropolitan Water Supply & Sewerage Board, established under the Chennai Metropolitan Water Supply & Sewerage Act, 1978 and Chennai Metropolitan Water Supply & Sewerage Act (Second Amendment) 2012, represented by its _____ and having its principal offices at No.1, Pumping Station Road, Chintadripet, Chennai – 600 002 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part

AND

2. _____LIMITED, a company incorporated under the provisions of the Companies Act, 2013 with CIN _____ represented by its _____and having its registered office at _____ (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

1. The Authority had resolved to rehabilitate the existing water treatment facility and enhance its capacity at Puzhal for providing reliable and good quality water supply for North Chennai. The project involves investment in improvements to the existing facility, its , operations and maintenance during construction and subsequent operations and maintenance (O&M) to achieve desired project outcome of providing 310 Million Litres of treated water per day. The project will be implemented using a Concession framework on Public Private Partnership basis to upgrade, operate and maintain the existing water treatment plant on design, build, finance, operate and transfer (the **"DBFOT Annuity" or "Hybrid Annuity"**) basis, in accordance with the terms and conditions to be set forth in this Concession Agreement.

2. The Authority had adopted single stage, two cover bidding process and accordingly invited proposals under its Request for Proposal No._____ dated _____ (the "**Request for Proposal**" or "**RFP**") for selection of bidders for undertaking the Project. Pursuant to the terms of the RFP, bids were received by the Authority on or before [***]. The {Selected Bidder/ Consortium comprising _____ and _____ (collectively the "**Consortium**"_____) with _____ as its lead member (the "**Lead Member**")[1]} was one of the bidders who had submitted its bid for the Project (the "**Bid**").

3. Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [____] dated [_____] (the "**Letter of Award**" or **"LOA**") to the Selected Bidder, *inter alia*, requiring it to incorporate a new private limited company under the Companies Act (*as defined hereinafter*) and execution of this Agreement within 30 (thirty) days of the date of issue thereof.

4. {The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire

[1] This will be suitably modified in case the bidder being a single entity.

as a limited liability company under the Companies Act 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.

5. {By its letter dated_____ the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof.}

6. The Authority has {agreed to the said request of the Selected Bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on Hybrid Annuity basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.
In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

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

"Additional Project Facilities" shall mean the facilities to be constructed by the Concessionaire by rehabilitating and enhancing the Existing Project Facilities and by constructing new infrastructure improvement works and replacements forming part of the water treatment facility, as part of the approved CIP and subject to any addition or deduction that may occur pursuant to Change in Scope approved by the Authority in accordance with this Agreement.

"**Additional Auditors**" shall have the meaning as set forth in Article 27.2.3;

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

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

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

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42%[2] (zero point four two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction

[2] This is arrived at by dividing 100% by the number of months comprising the Concession Period of 20 (twenty) years, rounded off to two decimal places

in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

"Advance Procurement Plan" means the procurement plan to be prepared by the Concessionaire during the Study Period and approved by the Authority as per Article 5.9.1;

"**Affected Party**" shall have the meaning as set forth in Article 28.1;

"**Agreement**" or "**Concession Agreement**" means this Agreement, its Recitals, and the Schedules, the RFP hereto, and any amendments thereto made in accordance with the provisions contained in this Agreement;

"**Annuity Payments**" shall have the meaning as set forth in Article 23.6.2;

"**Annuity Payment Date**" shall have the meaning as set forth in Article 23.6.2;

"**Appendix**" shall have the meaning as set forth in Article 10.3.1;

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

"**Applicable Permits**" means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

"**Appointed Date**" means the date on which Financial Close is achieved and every Condition Precedent is satisfied, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

"**Associate**" or "**Affiliate**" means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 26% (twenty six per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

"**Authority**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Authority Default**" shall have the meaning as set forth in Article 31.2.1;

"**Authority Indemnified Persons**" shall have the meaning set forth in Article 36.1.1;

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

"**Award**" shall have the meaning set forth in Article 40.3.3;

"**Bank**" means a scheduled commercial bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore, but does not include a bank in which any Senior Lender has an interest;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and "Bids" shall mean the bids submitted by any and all prequalified bidders;

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

"**Bid Documents**" shall mean the RFP and any amendments thereto;

"**Bid Project Cost**" shall have the meaning as set forth in Article 23.1;

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

"CIP" means the capital investment plan prepared by the Concessionaire and approved by the Authority as per Article 5.9.6;

"**COD**" or "**Commercial Operation Date**" shall have the meaning as set forth in Article 15.1.1;

"**CPI (IW)"** means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India 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 for the period ending with the preceding quarter;

"Capex Annuity" or "Annuity Payments" shall have the same meaning unless repugnant to the context or meaning;

"**Change in Law**" means the occurrence of any of the following after the Bid Date:
(a) The enactment of any new Indian law;
(b) The repeal, modification or re-enactment of any existing Indian law;
(c) The commencement of any Indian law which has not entered into effect until the Bid Date;
(d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) Any change in the rates of any of the Taxes that have a direct effect on the Project;
"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members, together with {its/their} Associates, in the total Equity to decline below:

(i) Till the achievement of the COD and until the expiry of 3 (three) years there from each Consortium Member whose financial capacity (net worth) or technical capacity was evaluated for the purposes of the RFP shall subscribe and continue to hold not less than 26% (twenty six percent) of the Equity

(ii) The Consortium Members shall together hold at least 51% of the Equity till the expiry of the Concession Period and the Consortium Member whose technical experience in operations and maintenance was considered for qualification during the RFP stage should hold not less than 26% of the Equity subsequent to the minimum lock in period as stated in (i) above;

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

"**Change of Scope Order**" shall have the meaning as set forth in Article 16.2.3;

"**Company**" means the company acting as the Concessionaire under this Agreement;

"Completion Certificate" shall have the meaning as set forth in Article 14.2;

"**Comprehensive Assessment**" shall have the meaning as set forth in Article 5.9.1

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

"**Concessionaire**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

"**Concession Period**" means the period starting on and from the Appointed Date and ending on the Transfer Date;;

"**Concessionaire Default**" **or "Concessionaire Event of Default"** shall have the meaning as set forth in Article 31.1.1;

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

{"**Consortium**" shall have the meaning as set forth in Recital (D) ;}

{"**Consortium Member**" means a company specified in Recital (D) as a member of the Consortium ;}

"**Construction Period**" means the period beginning from the Appointed Date and ending on COD;

"**Construction Period Minimum Escrow Balance**" shall have the meaning as set forth in

Article 25.2.2

"**Construction Period Performance Security**" shall have the meaning as set forth in Clause 9.1.1

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

"Construction Payments" means the payments to be made to the Concessionaire during the Construction Period, upon satisfactory completion of the Payment Milestones, which shall, in aggregate, be equal to the amount mentioned in Article 23.3;

"**Contracted Quantity**" shall mean 210 MLD during the Initial Operation Period and 310 MLD during the Operation Period

"**Contractor**" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

"Concessionaire's Representative" means the Person nominated by the Concessionaire to act on its behalf and liaise with the Authority for the purposes of this Agreement and notified as such in writing to the Authority;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:
(a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
(b) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
(c) Not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

"**DBFOT Annuity**" or "**Hybrid Annuity**" shall have the meaning as set forth in Recital (A);

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

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

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

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

"**Defects Liability Period**" shall have the meaning set forth in Clause 39.1.1

"**Detailed Project Report**" or "**DPR**" means the detailed project report included as part of Project Documents, adopted and amended by the Concessionaire during the Study Period in accordance with Annexure I of Schedule H; and approved by the Authority in accordance with Article 12.2 hereof.

"**Dispute**" shall have the meaning as set forth in Article 40.1.1;

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes as set forth in Article 40;

"**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 32.1;

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

"Design and Drawings" means the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications prepared by the Concessionaire for the construction of Additional Project Facilities, on the basis of the Specifications and Standards, Technical Specifications and which are approved by the Authority in accordance with the provisions of the Agreement.

Effective Date" means the date of execution of this Agreement

"**EPC Contract**" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering

and construction of the Project in accordance with the provisions of this Agreement;

"**EPC Contractor**" means the person with whom the Concessionaire has entered into an EPC Contract;

"**Emergency**" means a condition or situation that is likely to endanger the security of the individuals on or about the Project, or which poses an immediate threat of material damage to any of the Project Assets;

"**Encumbrances**" means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Article 11.1;

"**Energy Charges**" shall mean the cost towards energy consumption for operation of the Project during the Initial Operation Period or during the Operation Period.

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

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

"**Escrow Agreement**" shall have the meaning as set forth in Article 25.1.2;

"**Escrow Bank**" shall have the meaning as set forth in Article 25.1.1;

"**Escrow Default**" shall have the meaning as set forth in Schedule-X;

"**Existing Project Facilities**" means all the existing amenities and facilities as set forth in Annexure II of Schedule A;

"**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the Lender's Representative to the Authority in writing. Such communication from Lender's Representative shall be treated as date on which the Financial Close is achieved;

"**Financial Default**" shall have the meaning as set forth in Schedule-XXX;

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

"**Financial Package**" means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"**Financial Progress**" means the schedule of construction costs to be incurred by the Concessionaire to achieve the Project Milestones in compliance with the Project Completion Schedule, defined in the Financial Package and / or the Financial Model as approved by the Senior Lenders;

"**Financing Agreements**" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Article 5.2.3;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Article 28.1;

"**Force Majeure Costs**" shall have the meaning ascribed to it in Article 28.7.2;

"**GOI**" means the Government of India;

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

"**Government**" means the Government of Tamil Nadu;

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

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

“Incremental Quantity” shall have the meaning as set forth in Article 17.4.5

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 36;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 36;

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

“**Independent Engineer**” shall have the meaning as set forth in Article 21.1;

“**Indirect Political Event**” shall have the meaning as set forth in Article 28.3;

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

“**Inspection Report**” shall have the meaning as set forth in Article 13.2;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and includes all insurances required to be taken out by the Concessionaire under Article 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"Invoice" means an invoice for payment of:
(a) the Construction Payments during the Construction Period; or
(b) the Capex Annuity and /or Annuity Payments, the O&M Payment and the DG Fuel Cost during the Operation Period, submitted by the Concessionaire to the Authority in accordance with provision of the Agreement;

"KPI" or Key Performance Indicators" means the key performance indicators set out in Schedule C, which the Project must achieve during the Operation Period;

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

"**Lead Member**" shall have the meaning set forth in Recital (D);

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

"**Licensed Premises**" shall have the meaning as set forth in Article 10.2.2;

"Maintenance Manual" shall have the meaning as set forth in Article 17.13.1;

"Maintenance Program" shall have the meaning as set forth in Article 17.16.1;

"Maintenance Requirements" shall have the meaning as set forth in Article 17.2;

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

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

"**Non-Political Event**" shall have the meaning as set forth in Article 28.2;

"**NPV**" shall have the meaning as set forth in Article 35.3;

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

"**O&M Contract**" means the operation and maintenance contract, if any, that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

"**O&M Contractor**" means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

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

"O&M Inspection Report" shall have the meaning as set forth in Article 19.1;

"O&M Payments" shall have the meaning as set forth in Articles 23.7.1 and 23.5 as the case may be;

"**Operation Period Minimum Escrow Balance**" shall have the meaning as set forth in Article 25.2.2

"**O&M Plan**" means the operation and maintenance plan prepared and submitted by the Concessionaire and approved by the Authority;
"**O&M Quote**" shall mean the first year cost of O&M of the Project Facilities, as the case may be, quoted by the Successful Bidder in its financial proposal in the Bid;

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

"Operation Period Payments" means, collectively the:
(a) Capex Annuity and/or Annuity Payments including interest; and
(b) O&M Payments

"**Operation Period Performance Security**" shall have the meaning as set forth in Clause 9.1.3

"Online Monitoring System" means the monitoring system to be set up by the Concessionaire as part of the Project for continuous monitoring of the Project;

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

"**Payment Milestone**" shall have the meaning as set forth in Article 23.4;

"**Performance Security**" shall have the meaning as set forth in Article 9.1.4;

"**Period of Defects Liability after Termination**" shall have the meaning set forth in Clause 33.1

"**Physical Progress**" shall mean the actual construction progress of any of the Project Asset compared against the proposed physical progress as part of the DPR, which shall be determined by the Independent Engineer by quantifiable measures, including completed work quantities, milestones achieved, and installed elements. The Independent Engineer shall undertake periodic inspections according to an agreed schedule (as part of the DPR, Implementation Schedule, CIP as applicable), serving as the basis for monitoring, evaluation, and payment purposes.

"**Political Event**" shall have the meaning as set forth in Article 28.4;

"Preservation Costs" shall have the meaning as set forth in Article 13.13.3

"Price Index" shall comprise:
(a) 70% (seventy per cent) of WPI; and
(b) 30% (thirty per cent) of CPI (IW),
Which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

"**Price Index Multiple**" shall have the meaning set forth in 23.2.3;

"**Project**" means the construction, operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project in the Service Area comprising all Project Facilities, and its subsequent development, rehabilitation and augmentation in accordance with this Agreement;

"**Project Agreements**" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services;

"Project Facilities" means collectively the Existing Project Facilities at the water treatment plant, intake facilities, pipelines and such other facilities more fully described in Schedule A under the jurisdiction of the Authority and handed over to the Concessionaire as per the terms of this Agreement and the Additional Project Facilities created by the Concessionaire;

"**Project Completion Schedule**" means the progressive Project Milestones set forth in Schedule-G for completion of the Project on or before the Scheduled Completion Date;

"**Provisional Certificate**" shall have the meaning as set forth in Article 14.3;

"**Punch List**" shall have the meaning ascribed to it in Article 14.3.1;

"**RBI"** means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

"Re.", "Rs." or **"Rupees"** or **"Indian Rupees**" means the lawful currency of the Republic of India;

"**Reference Exchange Rate**" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Chennai by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Chennai by the Indian Bank and Indian Overseas Bank;

"**Reference Index Date**" means, in respect of the specified date or month, as the case may be,

that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

"**Request for Proposals**" or "**RFP**" shall have the meaning as set forth in Recital (B);

"**Right of Way**" means the constructive possession of the Service Area, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

"**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;

"**Scheduled Completion Date**" shall have the meaning as set forth in Article 12.3.1;

"**Scope of the Project**" shall have the meaning as set forth in Article 2.1;

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

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

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

"**State**" means the State of Tamil Nadu and "**State Government**" means the government of that State;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Article 27.2.1;

"**Study Period**" shall have the meaning as set forth in Article 2.1;

"Selected Bidder" means the Bidder selected by the Authority for award of the Project;

"**Subordinated Debt**" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
(a) the principal amount of debt provided by lenders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
(b) all accrued interest on the debt referred to in Sub-Article (a) above but restricted to the lesser of actual interest rate and a rate equal to 2% (two per cent) above the prevailing SBI MCLR in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6

(six) month Secured Overnight Financing Rate (SOFR) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"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**" shall have the meaning as set forth in Article 34.3.1;

"**Suspension**" shall have the meaning as set forth in Article 30.1;

"**Takeover Plan**" shall have the meaning as set forth in Article 5.10;

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

"Technical Specifications and Standards" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D including Technical Specifications and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

"**Termination**" means the expiry or termination of this Agreement and the Concession hereunder;

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

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

"Tests" means the tests set forth in Schedule-I to determine the completion of the Project in accordance with the provisions of this Agreement and approved by the Independent Engineer in accordance with Article 13.3 and shall include the Tests on Completion to be approved by the Independent Engineer in accordance with Article 14.1;

"**Total Project Cost**" means the Bid Project Cost less the Construction Grant specified in Article 23.3;

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

"Transition Coordinator" shall have the meaning as set forth in Article 6.1.2

"**Unit Energy Consumption**" shall have the meaning as set forth in Article 23.8

"**Vesting Certificate**" shall have the meaning as set forth in Article 32.4;

"**Water Shortage Period**" shall have the meaning as set forth in Article 17.6

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

A. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

B. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

C. references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

D. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

E. the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;

F. references to "construction" or "building" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;

G. references to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "develop" shall be construed accordingly;

H. any reference to any period of time shall mean a reference to that according to Indian Standard Time;

I. any reference to day shall mean a reference to a calendar day;
J. Reference to a "business day" shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
K. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
L. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as-may be extended pursuant to this Agreement;
M. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
N. the words importing singular shall include plural and vice versa;
O. References to any gender shall include the other and the neutral gender;
P. "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
Q. "Indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
R. references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
S. References to "Independent Engineer" shall be construed so as to refer to the said Independent Engineer during its period of appointment including such extended period of appointment during the Study Period, Construction Period, Initial Operation Period and subsequently till the end of Defects Liability Period and shall refer to the Authority or such other person appointed by the Authority for the purposes of carrying out the functions of the Independent Engineer after the end of the said period of appointment of Indpendent Engineer;
T. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article (s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
U. any agreement, consent, approval, authorization, notice, communication, information report or any other correspondence required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is routed through _____ (unless the law requires to send such notice, communication, etc, through physical/any other specified mode only) under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

V. the Schedules and Recitals to this Agreement and the Request for Proposals ("**RFP**") forms an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

W. references to Recitals, Articles, Sub-articles, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-articles, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

X. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

Y. Time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 and the Tamil Nadu General Clauses Act, 1891 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, Articles and schedules

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

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein, i.e. the Agreement at (a) above shall prevail over the agreements and

documents at (b)above.

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

1. between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
2. between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
3. between any two Schedules, the Schedule relevant to the issue shall prevail;
4. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
5. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
6. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2 SCOPE OF THE PROJECT

2.1 Project Phases

a) The Study Period (the "**Study Period**") shall mean the period between the Effective Date and the Appointed Date

b) The construction phase shall consist of the Construction Period and the Initial Operation Period; and

c) The operations phase which shall consist of the Operation Period.

2.2 Scope of the Project

Operation and maintenance of the Water Treatment Plant in accordance with the provisions of this Agreement; and performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement

The scope of the Project (the "Scope of the Project") shall mean and include, during the Concession Period::

(a) Design, Finance procurement and construction, operations and maintenance of the Project Facilities as specified in Schedule-C on the Site set forth in Schedule-A and as specified in Schedule-B and in conformity with the Specifications and Standards set forth in Schedule-D

(b) Operate, Maintain and Transfer the Project Facilities in accordance with the provisions of this Agreement

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement

2.3 Activity Chart

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

List of Major Activities:

Activity	**Time Period** (unless extended in terms of this Agreement)
Achievement of Conditions Precedent	150 (One hundred and fifty) days from the Effective Date
Appointment of Independent Engineer	60 days from Effective Date
Completion of Conditions Precedent and Financial Close	Appointed Date

Activity	Time Period (unless extended in terms of this Agreement)
Appointment of Transititon Coordinator by the Authority	15 (fifteen) days from Effective Date
Takeover of Existing Project Facilities by Concessionaire	Appointed Date
Commencement of Construction of Additional Project Facilities	Appointed Date
O&M of Project Facilities during Construction Period	From Appointed Date till completion of Construction Period
Completion of Construction of Additional Project Facilities	730 days from Appointed Date
Commencement of operation of Project Facilities	On and from COD
End of Concession Period	On Transfer Date

List of documents to be submitted:

Document submission	**Timeline for finalisation including procurement of Authority's approval**
DPR including Designs and Drawings	Draft – 60 (sixty) days from Effective Date Final – 7 (seven) days from receipt of comments from Authority
Capital Investment Plan (CIP)	Draft – 60 (sixty) days from Effective Date Final – 7 (seven) days from receipt of comments from Authority
Approval of CIP by the Authority	Within 90 days from Effective Date
O&M Plan	Draft – 60 days from Effective Date Final – 7 days from receipt of comments from Authority
Advance Procurement Plan and Takeover Plan	Draft – 90 days from Effective Date Final – 15 days from receipt of comments from Authority
Implementation Schedule	Along with CIP
Emergency Response Plan	Along with Takeover Plan
Standard Operating Procedures and Policy	Along with CIP
Executed Escrow Agreement	Within 150 days from the Effective Date
Monthly Progress reports	7 days after the close of each month
Good for Construction Drawings	After Appointed Date as per the Implementation Schedule

ARTICLE 3 GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, upgrade, operate and maintain the Project facilities (the "**Concession**") subject to and in accordance with terms hereof, for a period of 20 (twenty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. .

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

a. Access and licence to the Service Area during the Study Period;
b. Right of Way, access and license to the Service Area for the purpose of and to the extent conferred by the provisions of this Agreement;
c. Finance the Project in accordance with terms hereof;
d. Construct the Additional Project Facilities during the Construction Period;
e. Operate, maintain and manage the Existing Project Facilities and Additional Project Facilities during the Concession Period;
f. Perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
g. Save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
h. Neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 22, 28, 40 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the "**Conditions Precedent**")

4.1.2 Upon submission of the Construction Period Performance Security the Concessionaire may, by notice require the Authority to satisfy all of the Conditions Precedent set forth in this Article 4.1.2 within a period of 150 (one hundred and fifty) days from the Effective Date. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

a) procured for the Concessionaire the Right of Way to the Service Area, in accordance with the provisions of Article 10.3.;
b) appoint a nodal officer for facilitating the matters in relation to the execution of this Agreement within 30 (thirty) days from the Effective Date;
c) Deleted
d) within 45 (forty five) days from the Effective Date, provide the following to the Concessionaire:
    (i) list of Existing Project Facilities in the Service Area, both underground and above ground
    (ii) details of the Existing Project Facilities;
    (iii) history of repairs and maintenance of the Existing Project Facilities undertaken over the last 3 (three) years.
e) Appoint the Independent Engineer in accordance with the timelines set forth in Article 2.3
f) review and approve the CIP, Design and Drawings of the Project in accordance with the timelines set forth in Article 2.3;
g) review and approve the Substitution Agreement with the Concessionaire, Lender/s in the agreed form as set out at Schedule-W within 7 (seven) days of submission by the Concessionaire; and
h) execute the Escrow Agreement along with the Concessionaire.

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

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 150 (one hundred and fifty) days from the Effective Date shall be deemed to have been fulfilled when the Concessionaire shall have:

a) provided the Construction Period Performance Security to the Authority in terms of Article 9.1 of this Agreement.;
b) submitted to and procured approval of the Authority, for the Designs and Drawings of the Project;
c) executed and procured execution of the Escrow Agreement within 120 days from the Effective Date;
d) executed and procured execution of the Substitution Agreement;

e) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect within 90 days from the Effective Date;

f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

h) delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-Articles (k), (l) and (m) of Article 7.1 of this Agreement within 90 (Ninety) days from the Effective Date;

i) submit the CIP and the following and procure approval of the Authority in accordance with the timelines specicied in Article 2.3:

(i) the O&M Plan

(ii) the Advance Procurement Plan

(iii) the Implementation Schedule

(iv) the Takeover Plan,

(v) the Emergency Response Plan

(vi) the Standard Operating Procedures and Policy

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligation to fulfil each parties' Conditions Precedent is an independent obligation of the respective Party.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

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

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

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Construction Period Performance Security for each day's delay until the fulfilment of such Conditions Precedent. Provided, however, that the Damages payable hereunder shall be subject to the maximum limit equal to 20% of the Construction Period Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Article 9.2, terminate the Agreement.

Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Article 4.1.2, no Damages shall be due or payable by the Concessionaire under this Article 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Article 4.1.2.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Article 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

4.5 Deemed Termination upon delay

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

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the designing, engineering, procurement, construction, rehabilitation, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall apply for and obtain all Applicable Permits and comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in Article 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

b. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;

c. perform and fulfil its obligations under the Financing Agreements;

d. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

e. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

f. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;

g. procure fulfilment of Key Performance Indicators (KPIs) in accordance with Article 20 of this Agreement;

h. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

i. transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

5.1.5 The Concessionaire shall remedy any or all loss or damage to the Project Facilities

during the Defects Liability Period at the Concessionaire's cost to the extent that such loss or damage shall have arisen out of reasons specified in Article 33 Defects liability period.

5.1.6 The Concessionaire shall remedy any or all loss or damage to the Project Facilities during the Initial Operation Period and the Operation Period as per the provisions of this Agreement, save and except to the extent that such loss or damage shall have arisen on account of any default or neglect of the Authority or on account of a Force Majure Event.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 days from the receipt of such request from the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). Further, it is clarified that in case both the Authority and Lenders' Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the

Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the EPC Contractor and O&M Contractor and execution of the EPC Contract and O&M Contract shall be subject to the following:

a. The prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority; and

b. The prior approval of the Authority to ensure that the proposed replacements possess necessary qualification and credentials as that of the original EPC Contractor and O&M Contractor, as the case may be.

c. The prior approval of the Authority to ensure that O&M Contractor, if any is an entity which is a shareholder of the Concessionaire or its Associate whose technical capacity in relation to O&M was evaluated for the purposes of the RFP. For avoidance of doubt, it is hereby clarified that if the Concessionaire has two shareholder entities A and B as shareholders wherein the technical capacity in relation to O&M was evaluated for the purposes of the RFP, then the O&M Contract shall be entered into between the Concessionaire and A or B or Associate of A or Associate of B or Associate of A and B.

The Authority shall endeavour to convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal along with the draft agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

a. until the expiry of 3 (three) years from the commercial operation of the Project, the shareholders of the Concessionaire shall subscribe and hold equity share capital in the Concessionaire in the following proportion: (a) the Consortium Member whose technical capacity was evaluated for the purposes of the RFP shall hold not less

than 51% (fifty one percent) of the subscribed and paid-up equity of the Concessionaire; (b) the Member whose Financial Capacity had been evaluated shall subscribe and hold not less than 26% (twenty six percent) of the subscribed and paid-up equity of the Concessionaire; and

b. subsequent to the minimum lock in period as stated in Article 5.3.2 (a) and for the remainder of the Concession Period, the shareholders of the Concessionaire shall together hold not less than 51% (fifty one percent) of the Equity of which the Consortium Member whose technical capacity in relation to O&M was evaluated for the purposes of the RFP shall hold at least 26% (twenty six percent) of the Equity.

c. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or

d. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Article 5.3.2:

a. the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re- enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

b. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

c. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors

of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function

5.6 Facilities for differently abled and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the Project.

5.7 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of _____[3]

5.8 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.9 Obligations during Study Period

5.9.1 During the Study Period the Concessionaire shall carry out a comprehensive assessment of assets forming part of the Existing Project Facilities (the "**Comprehensive**

[3] To be decided by the Authority in consultation with the Concessionaire during the Study Period

Assessment"). This shall include but not be limited to assessing the condition and performance of the assets forming part of the Existing Project Facilities. The Comprehensive Assessment shall include, but not be limited to, the following activities. As part of the comprehensive assessment, the Concessionaire shall:

a) Familiarize itself with the current water treatment system together with applicable standards and guidelines

b) Satisfy itself with the nature and scope of work and the prevailing conditions

c) Liaise with the Authority and other government agencies as per Applicable Laws and regulations in order to undertake studies and preparation for activities/ works to be undertaken during the Construction Period.

d) Deleted

e) Deleted.

f) Deleted.

g) Deleted.

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

i) Assessment of Existing Treatment Works: The Concessionaire shall undertake a detailed study of the water treatment system for delivering water conforming to the water quality standards set out in the Key Performance Indicators. The results of these studies shall form the basis of a list of works or activities for optimizing the efficiency of the existing production capacity of the Exiting Project Facilities in the CIP.

j) Deleted.

k) Assessment of service storage: The Concessionaire will undertake a detailed assessment of the structural condition, capacity and hydraulic performance of the treated water reservoir. This will allow the Concessionaire to identify what repairs or rehabilitation is needed and what capacity expansions are required. The Concessionaire shall make efforts to ensure optimum use of the available storage capacity and land area so as to minimize or avoid requirement of additional land requirement.

5.9.2 The Concessionaire shall revise, adopt and procure approval of the Authority for the DPR in accordance with the requirements set out in in this Agreement adhering to the timelines set out in Article 2.3. The DPR shall at a minimum include details of the proposed technology, mass and energy balances, tentative list equipment list, technical feasibility, process flow diagrams, piping/process & instrumentation diagram, detailed cost estimates, milestones for physical progress and other elements necessary for preparing the following

a) Designs and Drawings,

b) Capital Investment Plan,

c) O&M Plan during the Initial Operation Period

d) O&M Plan during the Operation Period,

e) Takeover Plan and

f) Advance Procurement Plan.

5.9.3 The Concessionaire shall prepare and procure approval of the Authority for the Advance Procurement Plan (the "**Advance Procurement Plan**") in accordance with the requirements set out in in this Agreement adhering to the timelines set out in Article 2.3 The Advance Procurement Plan shall contain the pre-transition activities including the details of items to be procured in advance to ensure that the Concessionaire is able to carry out various studies and assessments during the Study Period and monitor the Key Performance Indicators during the Initial Operation Period.

5.9.4 Obtaining relevant Applicable Permits as may be required by the Concessionaire during the the Initial Operation Period, Construction Period and Operation Period.

5.9.5 The Concessionaire shall prepare and procure approval of the Authority for the Capital Investment Plan (the "**CIP**") and the O&M Plan (the "**O&M Plan**") during the Initial Operation Period and the Operations in accordance with the requirements set out in in this Agreement as per the requirements stated in Annexure II of Schedule B to meet the Key Performance Indicators and adhering to the timelines set out in Article 2.3.

5.9.6 The Concessionaire shall prepare and procure approval of the Authority for the Takeover Plan including the Emergency Response Plan for efficient handover of the Existing Takeover Facilities from the Appointed Date (the "**Takeover Plan**") in accordance with the provisions of this Agreement adhering to the timelines set out in Article 2.3

5.9.7 If the Concessionaire is fails to deliver any of the documents set out in clauses 5.9.1 to 5.9.6 above within the timelines set out in Article 2.3 for reasons not attributable to the Authority, the Authority may, at its sole discretion provide additional time to the Concessionaire to complete these obligations subject to payment of Damages in accordance with Article 4.3. If such delays on all the documents cumulatively exceeds 60 (sixty) days, the Authority may terminate this Agreement.

5.10. **Revisions to the O&M Plan during Operation Period**:

The Concessionaire shall update and procure approval of the Authority for the O&M Plan once in every 5 (five) years during the Operation Period or at such other duration as may be mutually agreed between the Parties. A copy of the updated O&M Plan shall be submitted to the Authority and the Independent Engineer.

ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following

A. upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, the Authority may provide a letter of recommendation to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;

B. upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to the Service Area, Existing Facilities and other necessary infrastructure facilities and utilities, as may be required to perform the works during the Initial Operation Period, the Construction Period and the Operation Period, including water and electricity, for the purpose of construction, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

C. procure that the performance of the Project shall not be obstructed by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;

D. Subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project facilities;

E. Deleted;

F. Not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement;

G. Deleted;

H. to ensure adequate availability of raw water within the provisions of the Agreement. It is clarified that while performing its obligations herein, at any time during the Concession Period in case the Authority makes any changes in the source of water or the supply system of raw water from the source to the intake point of the Project, it shall do so in a manner such that such changes do not affect the design of the Project or cast additional obligations on the Concessionaire or in any manner affect the performance of the Concessionaire in achieving the Key Performance Indicators under this Agreement.

I. upon written request from the Concessionaire and subject to the provisions of Article 5.4, the Authority may provide letter of recommendation to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements; and

J. subject to the Concessionaire complying with Applicable Laws, the Authority may provide letter of recommendation to the Concessionaire in procuring approvals;

K. The Authority hereby covenants that, on and from the date hereof and until the Appointed Date:

i. The Authority shall bear all liabilities, including contingent liabilities related to any payable accounts, environmental contamination and other environmental liabilities, arising out of or in connection with the operation of the Existing Project Facilities.

ii. The Authority shall handover / ensure handover of the Existing Project Facilities to the Concessionaire in the Service Area without encumbrance on and from the Appointed Date.

iii. The Authority shall ensure that all contracts between the Authority / other third party agencies and contractors in respect of the Existing Project Facilities shall be terminated as mutually agreed between the Parties on or prior to the Appointed Date.

iv. give prompt written notice to the Concessionaire of:

a) the commencement of any dispute or proceeding between the Authority and/or any person which, if determined adversely to the Authority, as the case may be, could reasonably be expected to have a material adverse effect on the Authority's operations and/or financial condition or the performance by the Authority of its obligations hereunder,

b) the occurrence of any event of default in connection with any agreement of the Authority, or any event which, upon a lapse of time or the giving of notice or both, would become an event of default under any such agreement, and

c) the occurrence of any other event which has or could reasonably be expected to have a material adverse effect on the Authority's operations and/or financial condition, the performance by each Party of its obligations hereunder.

v. The Authority shall designate a senior officer as its transition coordinator (the "**Transition Coordinator**") at the time of the transition and takeover of the Existing Project Facilities by the Concessionaire on the Appointed Date. The Transition Coordinator shall be the point of contact for the Concessionaire. The Authority shall notify the Concessionaire of the identity and contact details for the Transition Coordinator 15 (fifteen) days from to the Effective Date. The Authority will notify the Concessionaire in accordance with this Agreement of any change made to the identity or contact details for the Transition Coordinator.

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. The Authority shall endeavour to convey its decision

on such request of the Concessionaire within 30 days of receipt of the proposal by the Authority.

ARTICLE 7 REPRESENTATION AND WARRANTIES

7.1 Representations and warranties of the Concessionaire.

The Concessionaire represents and warrants to the Authority that:

a. It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

b. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

c. {the Selected Bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

e. it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;

f. The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

j. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its

ability to perform its obligations under this Agreement;

k. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3

l. {the selected bidder/ each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

m. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

n. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

o. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

p. all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

q. All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representation and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

b. It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;

c. It has the financial standing and capacity to perform its obligations under this Agreement;

d. This Agreement constitutes a legal, valid and binding obligation 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 any Government

Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Service Area, Existing Project Facilities, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil, geology, and all information provided by the Authority or obtained, procured or gathered otherwise, and determine to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period and the Initial Operation Period, provide to the Authority no later than 15 (fifteen) days from the Effective date, an unconditional and irrevocable bank guarantee for an amount equal to Rs. 15 crore (Rupees Fifteen crore only), in the form set forth in Schedule-F1 (the "**Construction Period Performance Security**"). The Construction Period Performance Security shall periodically renewed and kept valid for a period of 30 (thirty) days after the expiry of Defects Liability Period. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 15 (fifteen) days from the Effective date, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages during the Construction period, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.3 The Concessionaire shall no later than 30 days prior to the Commercial Operations Date, provide to the Authority, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 6 crore (Rupees Six Crore only), in the form set forth in Schedule F2 (the "**Operation Period Performance Security**"). The Operation Period Performance Security shall be rolled over periodically and shall be renewed 30 (thirty) days prior to its expiry so as to keep it valid and subsisting with full force and effect until issue of Vesting Certificate by Authority and thereafter until expiry of 60 (sixy) days from end of the Period of Defects Liability after Termination.

9.1.4 The Performance Security shall secure the due performance of the Concessionaire's obligations during the Concession Period. The cost of procuring the Performance Security shall be borne solely by the Concessionaire. For avoidance of doubt, the term Performance Security (the "**Performance Security**") shall mean the Construction Period Security or the Operation Period Performance Security as the case may be.

9.1.5 If the Performance Security is not renewed by the expiry of the 11th month of the relevant year of the Concession Period, then the Authority shall be entitled to drawdown the total amount available under the Operation Period Performance Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Operation Period Performance Security.

9.1.6 The Authority shall be entitled to utilize such retained amount in the same manner as it would utilise the Operation Period Performance Security.

9.1.7 Upon receipt of a renewed or replacement Operation Period Performance Security, the authority shall return the unutilized cash security amount for the Operation Period Performance Security to the Concessionaire. The interest earned on any retained amounts or cash security shall be the property of the Authority and the Authority shall not be

required to account to the Concessionaire for any such interest.

9.2 Appropriation of Performance Security

9.2.1. Upon failure of the Concessionaire to meet any of its Conditions Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Construction Period Performance Security in line with the provisions of Article 4.3

Upon occurrence of a Concessionaire Default during the Concession Period, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant Perfomance Security, the amounts due to it for and in respect of such Concessionaire Default.

Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the relevant Performance Security, and in case of appropriation of the entire Construction Period Performance Security or Operation Period Performance Security, provide a fresh relevant Performance Security, as the case may be, within 15 days thereof, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 31.

Provided that upon replenishment of the Construction period Performance Security or Operation period Performance Security or furnishing of a fresh relevant Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default, save and except as provided in Article 4.5 of this Agreement, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 References to Performance Security

References to Construction Period Performance Security or Operation Period Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the relevant Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire.

9.4 Release of Performance Security

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

ARTICLE 10 RIGHT OF WAY

10.1 The Service Area

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

10.2 License, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Service Area for carrying out any surveys, investigations that the Concessionaire may require during the Study Period. It is expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Service Area pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire contained herein, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Service Area which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that Existing Project Facilities are operational at all times during the Construction Period without disruption, except with prior notification to the Authority and the Independent Engineer appointed by the Authority.

10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Service Area by the Concessionaire or its sub-licensees, the license in respect of the Service Area shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the service Area are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Service Area

10.3.1 Pursuant to the notice specified in Article 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Service Area and prepare a memorandum containing an inventory of the Service Area including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Service Area. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Service Area to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Article 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Service Area during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the Service Area as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Article 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include any land, which shall in any manner prevent the Concessionaire from undertaking construction of the Project. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project without which the Completion Certificate or Provisional Certificate may not be granted.

10.3.3 On and after signing the memorandum referred to in Article 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Service Area and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of the service Area included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall, commencing from the 91st (ninety-first) day of the Appointed Date and until such Right of Way is procured or 180 (one hundred and eighty) days from the Appointed Date whichever is earlier, pay to the Concessionaire, penal interest of SBI MCLR plus 2 (two) percent on the value of the delayed Construction Works, and beyond 180 (one hundred and eighty) days from the Appointed Date, pay to the Concessionaire, penal interest of SBI MCLR plus 2 (two) percent on the value of the delayed Construction Works, only if the Concessionaire has mobilized necessary manpower, equipment and construction material required for Construction of the relevant Project Asset(s) that are affected by

delay in procurement of Right of Way by the Authority in accordance with this Article 10.3.4. The penal interest payable by the Authority in terms of this Article shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any other consequential loss or damage to the Concessionaire.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Service Area not being granted to the Concessionaire or any construction on such part of the Service Area remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 180 (one hundred and eighty) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the penal interest specified herein, and upon the Authority ceasing to pay such penal interest after giving 60 (sixty) days' notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Service Area shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Article 12.3.4.

10.3.6 Notwithstanding anything to contrary contained herein, the provisions of Articles 10.3.1, 10.3.2, 10.3.3, 10.3.4, and 10.3.5, shall be limited to the Essential Land and Rehabilitation Assets.

10.4 Service Area to be free from Encumbrances

Subject to the provisions of Article 10.3, the Service Area shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Service Area for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Service Area.

10.5 Protection of Service Area from Encumbrances

During the Concession Period, the Concessionaire shall protect the Service Area from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Service Area or the Existing Project Facilities or the Additional Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6 Special/Temporary Right of Way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Service Area. The Concessionaire shall obtain at its cost such facilities on or outside the Service Area as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

ARTICLE 11 UTILITIES, ASSOCIATED ROADS AND TREES

DELETED

ARTICLE 12 CONSTRUCTION OF ADDITIONAL PROJECT FACILITIES

12.1 Obligations prior to commencement of construction

In addition to its obligation to maintain the Existing Project Facilities during the Construction period, the Concessionaire shall, prior to commencement of Construction Works:

a) Submit to the Authority or its nominee, and the Independent Engineer its detailed design, construction methodology, quality assurance procedures as per the CIP, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;

b) Appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with the CIP, this Agreement, Applicable Laws and Applicable Permits; and

d) Make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.2 Designs and Drawings and DPR

In respect of the Concessionaire's obligations relating to the Designs and Drawings of the Additional Project Facilities as set forth in Schedule-H, the following shall apply:

1. The Concessionaire shall prepare and submit at its cost, charges and expenses, in conformity with the Technical Specifications, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Designs and Drawings to the Independent Engineer for review adhering to the timelines specified in Article 2.3.

2. By submitting the Designs and Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, CIP, Technical Specifications and Standards, Applicable Laws and Good Industry Practice.

3. The Concessionaire shall submit the Good for Construction Drawings in line with the Implementation Plan to the Independent Engineer in accordance with Schedule - XX

4. Within 15 (fifteen) days of the receipt of the Designs and Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Designs and Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and cost.

5. If the aforesaid observations of the Independent Engineer indicate that the Designs

and the Drawings are not in conformity with the Scope of the Project or the Technical Specifications and Standards, the Concessionaire shall revise the Designs and Drawings as the case may be and resubmit to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Designs and Drawings.

6. No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on the Designs and Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

7. The Authority may, at its discretion, in addition to the review of the Designs and Drawings by the Independent Engineer, constitute an expert committee ("Expert Committee") for review and approval of the Designs and Drawings submitted by the Concessionaire. The Concessionaire agrees and undertakes to provide all the information necessary for the review and approval of the Designs and Drawings by the Expert Committee from time to time. No review and/or observation of the Expert Committee and/or its failure to review and/or convey its observations on the Designs and Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Expert Committee or the Authority be liable for the same in any manner.

8. Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of all Designs and as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Additional Project Facilities.

12.3 Construction of Additional Project Facilities

12.3.1 During the Construction Period, the Concessionaire shall undertake construction of the Additional Project Facilities as specified in the CIP and the Scope of the Project. The Concessionaire agrees and undertakes that the Project shall be completed in accordance with the Implementation Schedule provided with the CIP.

12.3.2 During the Construction Period, the Concessionaire shall implement the CIP on behalf of the Authority in accordance to Good Industry Practice. All the works and interventions proposed as part of the CIP shall be in conformity with the relevant industry standards and the Environmental Code of Practice.

12.3.3 The Concessionaire shall implement the Standard Operating Procedures and Policy in accordance with Article 17.10 duly identifying gaps if any for further improvement of service delivery.

12.3.4 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction

Period Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages, if any, paid under this Article 12.3.4 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Article 12.3.4 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.5 In the event that the Project is not completed and COD does not occur within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.4 Maintenance during Construction Period

12.4.1 During the Construction Period, the Concessionaire shall continue to operate and maintain the Project Facilities at its cost adhering to the Key Performance Indicators specific to Initial Operation Period including necessary repair, rehabilitation, and maintenance works simultaneously for this purpose. Provided that the Concessionaire may, at its cost, interrupt the operation of the Existing Project Facilities if such interruption is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption shall be undertaken by the Concessionaire only with the prior written approval of the Authority which approval shall not be unreasonably withheld. It is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project.

12.4.2 In the event of default by the Concessionaire in discharging the obligations specified in Article 12.4.1, the Authority may levy and recover Damages equal to 0.2% (zero point two per cent) of the Performance Security for each day of default hereunder.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests required by Good Industry Practice for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided, however, that the Independent Engineer may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Engineer for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Article 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this

Article 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Article 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Quality control system

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

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

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

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

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

13.5 Deleted

13.6 Inspection and technical audit by the Authority

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

13.7 Inspection of construction records

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

13.8 Samples

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

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

13.9 Examination of work before covering up

13.9.1 In respect of the work which the Independent Engineer is entitled to examine, inspect,

measure and/or test before it is covered up or put out of view or any part of the work is placed thereon, the Concessionaire shall give notice to the Authority and the Independent Engineer whenever any such work is ready and before it is covered up. The Authority and the Independent Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Concessionaire that the Independent Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Concessionaire shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority and the Independent Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Concessionaire receives no response from the Authority or the Independent Engineer within a period of 3 (three) business days from the date on which the Concessionaire's notice hereunder is delivered to the Independent Engineer, the Concessionaire shall be entitled to assume that the Independent Engineer would not undertake the said inspection.

13.10 Rejection

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

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

13.11 Remedial work

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

a) remove from the Service Area and replace any plant or materials which are not in accordance with the provisions of this Agreement;
b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Technical Specification; and
c) execute any work which is urgently required for the safety of the Project Facilities, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Article 28.7 shall apply.

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

any monies due to be paid to the Concessionaire.

13.12 Delays during construction

Without prejudice to the provisions of Article 12.3.4, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

13.13 Suspension of unsafe Construction Works

13.13.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Project Facilities and persons related to the Project. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.

13.13.2 The Concessionaire shall, pursuant to the notice under Article 13.14.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Article 13.14 shall be repeated until the suspension hereunder is revoked.

13.13.3 Subject to the provisions of Article 28, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.13.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer.

13.14 Video recording During Construction Period

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour digital video disc or any substitute thereof, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to

the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

13.15 IT Dashboard for Project Construction Progress

During the Construction Period, the Concessionaire shall develop an internet based software interface comprising a project progress dashboard that can integrate seamlessly with the IT infrastructure of the Authority. The Concessionaire shall update construction progress in to the dashboard on a daily basis, enabling the Authority (and its officers) and the Independent Engineer to undertake virtual review of Project Construction progress in a periodic manner.

ARTICLE 14 COMPLETION CERTIFICATE

14.1 Tests on Completion

14.1.1 No later than 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer, and in the event the Independent Engineer delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.

14.2 Provisional Certificate

14.2.1 Subject to the provisions of Article 14.4.2, the Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority; provided further that the Punch List shall also include the cost of completion for each of the outstanding items.

14.2.2 Deleted.

14.3 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall within 7 (seven) days issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the "**Completion**

Certificate").

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Construction period Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Article 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Article 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Engineer to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Article 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Article, direct the Independent Engineer to issue a Provisional Certificate under Article 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests on Completion

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable

ARTICLE 15 ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The construction of Additional Project Facilities shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the "**COD**"). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Annuity Payments and O&M payments in accordance with the provisions of this Agreement.

15.2 Damages for delay

15.2.1 Subject to the provisions of Article 12.3, if COD does not occur prior to the 31st (thirty first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Construction Period Performance Security for delay of each day until COD is achieved. Upon failure of the Concessionaire to pay the said Damages, the same shall be paid along with interest calculated at the then prevailing SBI MCLR + 2% and shall be deducted from the 1st (first) Annuity Payment.

15.2.2 In case the Damages and the interest thereof are more than the 1st Annuity Payment then the balance Damages along with interest thereof shall be recovered from any further amount due and payable to the Concessionaire excluding O&M Payments but including interest to be paid on reducing balance of the Bid Project Cost remaining to be paid along with the 1st Annuity or from further Annuity Payments. For avoidance of doubt, it is clarified that this extended period shall form part of the Initial Operation Period. The Concessionaire shall continue to discharge its obligations as part of such period in accordance with this Agreement including the relevant Key Performance Indicators. The Authority shall make payments to the Concessionaire for the Operations and Maintenance of the Project Facilities during this period pro-rated subject to Article 23.5.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Article 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary to ensure that the Project is in compliance with the then prevailing Technical Specifications and Standards, Applicable Laws, Applicable Permits, and KPIs, or for providing safer and improved services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope, which decision of the Authority shall be final and binding.

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

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

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

a. the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, and

b. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Article 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring

the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Article 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure. The Authority shall make a proportionate deduction of 10% of the cost identified in the Change of Scope Order, towards retention money which shall be released after a period of 1 (one) year from the completion of works or COD, whichever is later,

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Article 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Bid Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Bid Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Articles 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Article 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of

2% (two per cent) of the bid amount to the Authority[4], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects and/ or maintenance of works carried out by other agencies. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Article 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

16.5.2 The works undertaken in accordance with this Article 16.5 shall conform to the Specifications and Standards, and shall be carried out in a manner that minimizes disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works (including Performance Security) and Tests, shall apply mutatis mutandis to the works carried out under this Article 16.5.

16.6 Reduction in Scope of the Project

16.6.1 In the event of the Concessionaire failing to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority or under the provision of Article 10.3.4 of this Agreement, the Authority shall follow the following process for calculation of total cost of reduced scope:

a. On direction by the Authority, the Independent Engineer to assess the cost of the reduced Scope of the Project, as per the schedule of rates applicable on the Bid Due Date.

b. The cost of the reduced Scope shall be multiplied by the 1.05 to arrive at the estimated cost of reduced Scope.

On or before a Payment Milestone immediately succeeding the date of finalization of such reduction in the Scope of Work, the Bid Project Cost shall be reduced by the Estimated Cost of Reduced Scope and all payments made or to be made to the Concessionaire shall be suitably adjusted and recoveries, if any, shall be made from the payment to be released on that Payment Milestone immediately succeeding the date of finalization of Reduction in Scope.

For the avoidance of doubt, it is agreed that upon the reduction of the Scope of the Project and revision of Bid Project Cost, all references to Bid Project Cost would mean the revised Bid Project Cost and all the payments would be calculated as per the revised Bid Project Cost.

16.6.2 For determining the obligations of the Concessionaire under this Article 16.6, the provisions of Articles 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

16.7 Effect of Change of Scope on the O&M Costs

16.7.1 Pursuant to the provisions if this Article 16, if the Change of Scope leads to a reduction

[4] The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.

or increase in the Bid Project Cost, the O&M Payments as provided in Article 23.7 shall be reduced or increased in proportion to the reduction or increase of the Bid Project Cost.

ARTICLE 17 OPERATION AND MAINTENANCE

17.1 Deleted

17.2 Maintenance During Initial Operation Period

17.2.1 During the Initial Operation Period, the Concessionaire shall maintain, at its cost, the Existing Project Facilities to ensure water treatment in a manner to improve the service delivery parameters as envisaged through the improvement in Key Performance Indicators thresholds for the Initial Operation Period (Schedule C - Key Performance Indicators) and also to ensure that the quality of service and safety are maintained and shall undertake the necessary repair and maintenance works for this purpose as per Good Industry Practice. Provided that the Concessionaire may, interrupt supply of water from the Project Facilities if such interruption is absolutely necessary for the efficient progress of works during the Initial Operation Period. Provided further that such interruption shall be undertaken by the Concessionaire only in accordance with the approved O&M Plan with written notice to the Authority and the Independent Engineer. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Project Facilities and meeting the relevant Key Performance Indicators as per Schedule C.

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

a) The Concessionaire shall obtain/renew and retain all the Applicable Permits required during the Initial Operation Period;

b) The Concessionaire shall continue operation and maintenance of the Existing Project Facilities in compliance with Applicable Law; and

c) The Concessionaire shall provide the Authority and the Independent Engineer with access at all times to the Existing Project Facilities and to obtain all data and reports managed by the Concessionaire.

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

a) Implementation the approved CIP including all necessary activities identified therein and periodic updation of the CIP;

b) Operation and maintenance of the Existing Project Facilities from the Appointed Date by taking over the Existing Project Facilities, commencing all operations and maintenance activities, and systematically implementing the rehabilitation and enhancement of the Water Treatment Plant;

c) Deleted;

d) Providing monthly reports of the service performance and progress in the implementation of the CIP;

e) Deleted.

f) The Concessionaire shall be responsible for continuous provision of treated water. Any disruption of suppy on account of Construction activities shall be scheduled in

discussion with the Authority. The quality of service provided will be in accordance with the Key Performance Indicators in Schedule C.

g) The Concessionaire shall be responsible for planning and implementing the O&M Plan and attending to emergencies as they arise as laid out in the agreed Emergency Response Plan and the Environmental Code of Practice.

h) The Concessionaire shall fulfil the following operational requirements, obligations and commitments during the Initial Operation Period:

i. Maintaining the operation of water treatment and providing the agreed quantum of treated water;

ii. Sampling treated water as at the discharge point where it leaves the Project boundary to ensure that it meets the quality standards stated in Schedule C;

iii. Updating the Standard Operating Procedures in accordance with the experience gained during the Study Period and the Initial Operation Period; and

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

17.2.5 Performance Standards of the Concessionaire during Initial Operation Period

a) The Concessionaire shall demonstrate to the Authority and the Independent Engineer, the achievement of the Key Performance Indicators set out in Schedule C following the methodology specified therein.

b) The Authority shall, through the Independent Engineer, monitor achievement of Key Performance Indicators at periodic intervals as specified in Schedule C in relation to the operation and maintenance of the Existing Project Facilities by the Concessionaire.

17.3 Procurement made during Initial Operation Period

In accordance with the Advance Procurement Plan, the Concessionaire shall procure at its sole cost and expense and maintain in a time bound manner any inventory of material that may be required for operation and maintenance of the Existing Project Facilities during the Initial Operation Period. The cost of the material procured by the Concessionaire as part of Advance Procurement Plan shall be deemed to have been included in the amounts mentioned in Article 23.5.

17.4 Maintenance during Operation Period

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

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

a) Operation and Maintenance of the Project Facilities delivering treated water in line with the Key Performance Indicators, CPHEEO guidelines;

b) Periodically updating the O&M Plan and its implementation;

c) Obtaining and maintaining Applicable Permits that the Concessionaire requires to operate and maintain the Project Facilities for performance of the Concessioanire's obligations under this Agreement;

d) Submitting monthly reports on the operation and maintenance activities;

e) Planning and implementing Operations and Maintenance activities

f) Attending to emergencies as they arise as laid out in the agreed Emergency Response Plan.

g) The Concessionaire shall also be responsible to fulfil the following operational requirements, obligations and commitments during the Operation Period:

(i) Providing treated water in accordance with the requirements of the Schedule C – Key Performance Indicators;

(ii) Sampling treated water to ensure that it meets the required quality standards;

(iii) Update of the Standard Operating Procedures to reflect experience gained during the Operation Period; and

(iv) Deleted.

(v) Maintaining and upgrading the computerized maintenance management system;

(vi) Deleted;

(vii) Deleted.

(viii) Deleted.

(ix) Deleted.

(x) Implement data capture systems to ensure that the various operational and maintenance activities are recorded for analysis and to facilitate improved operations and maintenance performance by the Concessionaire of asset registers to reflect any changes to the Project Facilities during the Operation Period.

17.4.3 During the Operation Period the Concessionaire shall be fully responsible for all costs associated with operations and maintenance including preventive/routine/periodic maintenance activities of the Project Facilities.

17.4.4 Deleted

17.4.5 Performance Standards during the Operation Period

a) The Concessionaire shall demonstrate to the Authority and the Independent Engineer, the achievement of the Key Performance Indicators set out in Schedule C following the methodology specified therein.

b) The Authority shall, through the Independent Engineer, monitor achievement of Key Performance Indicators at periodic intervals as specified in Schedule C in relation to the operation and maintenance of the Project Facilities by the Concessionaire.

c) The Concessionaire shall be subject to penalties based on the deficieincies in achievement of Key Performance Indicators as specified in Schedule C

d) In the event of the Authority requesting the Concessionaire to supply Incremental Quantity (the "**Incremental Quantity**") of treated water on any day and the Concessionaire supplies Incremental Quantity of treated water, the Concessionaire shall be eligble for Additional Remuneration based on the provisions of Article 23.11.

e) In the event of the Concessionaire supplying reduced quantity of treated water despite adequate supply of raw water by the Authority, the same shall be liable for levy of penties as specified in Schedule C.

17.5 General obligations of the Concessionaire

17.5.1 Notwithstanding its specific obligations under the Initial Operation Period and the Operation Period of this Agreement, the Concessionaire shall have the following general obligations:

a) to operate the Project Facilities and provide treated water in accordance with this Agreement, and carry out its obligations with all duty of care, efficiency, and economy, in accordance with generally accepted professional techniques and Good Industry Practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods;

b) to carry out day-to-day management and operation of the water treatment plant;

c) to be responsible for maintaining all Applicable Permits to operate the Project Facilities provide water supply services;

d) to ensure that all materials and workmanship used in the operation and maintenance of the Project Facilities shall be in accordance with relevant standards of Bureau of Indian Standards and in the absence of which to the relevant standards of International Standards Organisation;

e) to maintain all records and data in up to date format on the various information systems;

f) to permit the Independent Engineer to conduct quarterly and annual audits to regularly review the performance of the Concessionaire under the Agreement from Appointed Date till the end of the Concession Period, and shall fully cooperate with the Independent Engineer in the conduct of audit and review exercises and checks as may be required under this Agreement and shall immediately provide all requested information to the Independent Engineer;

g) to permit the Independent Engineer, from the Appointed Date, to review the data, analysis, and design computations which support the Concessionaire's proposals in the CIP, and shall fully cooperate with the Independent Engineer in the conduct of any such review;

h) not to engage, and ensure that its employees do not engage, either directly or indirectly, in any business or professional activities in India which would conflict with the provisions under this Agreement;

i) To make available the information regarding plan maintenance, approved quarterly performance reports.

j) to update the Standard Operating Procedures periodically to reflect latest practices;

17.5.2 Drinking Water Quality Standards

The Concessionaire shall test the water samples at the treated water reservoir and record the water quality. The Concessionaire to ensure that the water supplied from the treatment plant is compliant with the applicable drinking water quality standards as declared from time to time by the Central Public Health & Environmental Engineering Organisation, Ministry of Urban Development, Government of India, Government of Tamil Nadu or such other equivalent or similar authority or department. The Concessionaire shall comply with any requirements in relation to sampling, record keeping or reporting as may be required under Applicable Laws.

17.5.3 Deleted.

17.6 Water Shortage Period

a) Water Shortage Period (the "**Water Shortage Period**") shall mean such period wherein the Authority has failed to supply atleast 95% of the designated quantity of raw water to the treatment plant on any given day due to reasons not attributable to the negligence of the Concessionaire. The Water Shortage Period shall commence from the date of:

i. The Authority notifying the same to the Concessionaire or

ii. The determination by Concessionaire of such shortage of water and certification thereof by the Authority

b) The Water Shortage Period shall cease when the Authority notifies and supplies the designated quantity of Raw Water to the treatment plant.

The Key Performance Indicators to be achieved during the Water Shortage Period shall be shall be as specified in Schedule C.

17.7 Interruptions in water supply during the Initial Operation Period

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

a) the Concessionaire shall be entitled to make interruptions in the supply of treated of water for any repairs, rehabilitation works, renewal works, development of Additional Project Facilities and extension/modification of the Project Facilities.

b) The Concessionaire shall sufficiently in advance notify the Authority / the Independent Engineer of any interruptions of water supply.

17.8 Deleted

17.9 Deleted

17.10 Standard Operating Procedures

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

a) Emergency Response Plan (ERP);

b) Energy optimization program;

c) Health and safety plan;

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

17.11 Deleted

17.12 Deleted

17.13 Maintenance Manual

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

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

17.14 Damages for non achievement of KPIs

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

17.14.2 The Damages set forth in Article 17.14.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a lesser sum as Damages, if in its opinion, the breach has been cured promptly and the

Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.15 Deleted

17.16 Maintenance Program

17.16.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Maintenance Program**") to comply with the Maintenance Requirements, Maintenance Manual and EHS Requirements. Such Maintenance Program shall include:

a. preventive maintenance schedule;

b. arrangements and procedures for carrying out urgent repairs;

c. Criteria to be adopted for deciding maintenance needs;

d. Intervals and procedures for carrying out inspection of all elements of the Project;

e. Intervals at which the Concessionaire shall carry out periodic maintenance;

f. Arrangements and procedures for carrying out safety related measures; and

g. Intervals for major maintenance works and the scope thereof.

17.16.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual, and EHS Requirements.

17.16.3 The Concessionaire may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Articles 17.16.1 and 17.16.2 shall apply mutatis mutandis to such modifications.

17.17 Safety, breakdowns and accidents

17.17.1 The Concessionaire shall ensure safe conditions at the Service Area, and in the event of unforeseen unsafe conditions, it shall follow the relevant operating procedures in accordance with the provisions of this Agreement, Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice.

17.18 De-commissioning due to Emergency

17.18.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.18.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and

closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

17.19 Project Closure

17.19.1 Save and except as provided in Article 17.19, the Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

17.19.2 The provisions of Article 17.20.1 shall not apply to de-commissioning under Article 17.19.1 or to any closure for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak

17.19.3 Upon receiving the permission pursuant to Article 17.19.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.5 % (zero point Five per cent) of the Performance Security, for each day of delay until that part of the Project has been re-opened for use.

17.20 Damages for breach of maintenance obligations

17.20.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency within the timelines agreed as part of the Maintenance Manual, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 2% (two per cent) of the Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.20.2 The Damages set forth in Article 17.20.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.20.3 For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, penalty or deductions in O&M Payment, if any, due and payable under the provisions of Article 20 and Schedule C.

17.21 Authority's Right to take Remedial Measures

17.21.1 If after the COD, the Concessionaire ceases to operate the Project for a period of 48 consecutive hours other than in accordance with the Maintenance Program, without the prior written consent of the Authority, the Authority shall be entitled to step-in and

undertake O&M of the Project until the Concessionaire demonstrates to the satisfaction of the Authority that it can and will resume normal O&M of the Project. The exercise of the Authority's rights under this Article shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Payments for the duration that the Authority steps-in to operate and maintain the Project.

17.21.2 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual, and/or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire.

17.21.3 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs specified in Articles 17.21.1 & 17.21.2 directly from the Escrow Account (or deduct from O&M Payments payable to the Concessionaire) as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Article 17.21.3 and debit the same to O&M Expenses.

17.21.4 In addition to the recovery of costs specified in Article 17.21.3, the Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the Damages to be estimated as 20% of the costs specified in Articles 17.21.1 & 17.21.2 directly from the Escrow Account (or deduct from O&M Payments payable to the Concessionaire) as if such Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Article 17.21.4 and debit the same to O&M Expenses. For the avoidance of doubt, the right of the Authority under this Article 17.21.4 shall be without prejudice to its rights and remedies provided under Article 17.20.

17.22 Overriding powers of the Authority

17.22.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Authority or general public, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.22.2 In the event that the Concessionaire, upon notice under Article 17.22.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Article 17.22.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M

Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 17.20 along with the Damages specified therein.

17.22.3 In the event of a national emergency, civil commotion or any other act specified in Article 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise such overriding powers by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 28. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Article 17.22, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.23 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.24 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall not carry out undertake any such modifications to the Project without prior written approval of the Authority; provided also that the Concessionaire shall notify the Authority and the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the EHS Requirements, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.25 Excuse from performance of obligations

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

i. an event of Force Majeure;

ii. measures taken to ensure the safe use of the Project except when unsafe

conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

iii. compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

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

Provided further that the Concessionaire shall continue to operate all unaffected parts of the Project, provided they can be operated safely.

17.26 Deleted

17.27 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site except with prior written approval of the Authority.

17.28 Deleted

17.29 Unauthorized Use of Project Facilities

During the Operation Period, the Concessionaire shall be responsible for the following:

(a) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project; and

(b) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Project and / or the Project Assets;

ARTICLE 18 ENVIRONMENT, HEALTH, SAFETY

18.1 Safety Requirements

18.1.1 The concessionaire shall submit a Environment, Health and Safety management Plan within 90 (ninety) days from the Effective Date. The plan shall provide the details of the key risks and provide the mitigation measures and emergency response measures.

18.1.2 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safe operation of the Project Facilities. In particular, the Concessionaire shall comply with the safety requirements set forth in Schedule Q (the "**Safety Requirements**").

18.1.3 The Independent Engineer shall carry out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

ARTICLE 19 MONITORING OF OPERATION AND MAINTENANCE

19.1 Inspection and Measurement of Key Performance Indicators

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

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

19.2 Remedial measures

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

19.2.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Article 19.2 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Article 17.20.

19.3 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.3, accidents and unusual occurrences on the Project shall include:

a. Death or injury to any person;

b. Damaged or dislodged fixed equipment;

c. Any damage or obstruction on the Project, which hampers the quality of the services being provided by the Concessionaire;

d. Disablement of any equipment during operation;

e. Communication failure affecting the operation of the Project;

f. Smoke or fire;

g. Such other relevant information as may be required by the Authority or the Independent Engineer.

ARTICLE 20 KEY PERFORMANCE INDICATORS

20.1 Fulfillment of KPIs

20.1.1 The Concessionaire acknowledges, agrees and undertakes that it shall comply with the Key Performance Indicators ("**KPIs**") specified in Schedule C. The KPIs shall serve as measurable targets to assess and monitor the effectiveness of the Concessionaire's efforts in providing treated water.

20.1.2 The Concessionaire shall make reasonable and diligent efforts to achieve and fulfill the specified KPIs within the agreed-upon timeframes including, but not limited to, implementing appropriate strategies, conducting regular monitoring, and taking necessary actions to address any identified gaps or issues affecting the Project.

20.2 Penalty for shortfall in performance

20.2.1 The Concessionaire shall ensure and procure compliance of the Key Performance Indicators specified in this Article 20 and for any shortfall in performance during a month, the Authority shall encash the Performance Security on a monthly basis. The penalty/damages due and payable under this Article 20.2 shall be determined in accordance with Schedule C;.

20.2.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the penalty/ damages specified in Article 20.2.1 directly from the Escrow Account (or deduct from O&M Payments payable to the Concessionaire) as if such costs were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Article 20.2.2 and debit the same to O&M Expenses. Alternatively, the Authority may also claim aforesaid damages by appropriating and encashing the Performance Security submitted by the Concessionaire in terms of Article 9 hereof.

20.3 Termination of Non-fulfillment of KPIs

In the event, the Concessionaire consistently fails to meet the agreed-upon KPIs and the cumulative penalty/ Damages collected in accordance with Article 20.2 exceed 25% of the quarterly O&M Payments continuously for 3 (three) quarters, or the cumulative penalty/ Damages collected in accordance with Article 20.2 exceed 25% of the quarterly O&M Payments for 5 (five) quarters in a 2 (two) year period, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 31 shall follow.

ARTICLE 21 INDEPENDENT ENGINEER

21.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm, with experience in water resources, water supply and wastewater management sector, substantially in accordance with the selection criteria set forth in Schedule-R, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 60 (sixty) days from the date of this Agreement and shall be for a period until the end of Defects Liability Period as per the provisions of Article 39.1.

References to "Independent Engineer" shall be construed so as to refer to the said Independent Engineer during its period of appointment including such extended period of appointment during the Study Period, Construction Period, Initial Operation Period and subsequently till the end of Defects Liability Period and shall refer to the Authority or such other person appointed by the Authority for the purposes of carrying out the functions of the Independent Engineer after the end of the said period of appointment of Indpendent Engineer.

21.2 Duties and functions

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

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

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

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

21.3 Remuneration

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

21.4 Termination of appointment

21.4.1 The Authority, subject to Article 21.4.2, may, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Article 21.1.

21.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a

tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Article 21.1.

21.5 Authorized signatories

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

21.6 Dispute resolution

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

21.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Article 21.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

ARTICLE 22 FINANCIAL CLOSE

22.1 Financial Close

22.1.1 The Concessionaire may at its discretion avail project financing for the Project. In the event the Concessionaire decides to avail financing for the Project it hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the Effective Date. In the event of delay in achieving the Financial Close, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Construction Period Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (one hundred and twenty) days shall be granted only to the extent of Damages so paid. In the event of delay in achieving the Financial Close beyond 210 (two hundred and ten) days from the date of this Agreement, the Concessionaire shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 210 (two hundred and ten) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Article 4.3.

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

22.2 Termination due to failure to achieve Financial Close

22.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 28.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

22.2.2 Upon Termination under Article 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination, release the Bid Security or Construction Period Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Construction Period Performance Security, the Authority shall be entitled to encash there from an amount equal to the Bid Security.

ARTICLE 23 PAYMENT OF BID PROJECT COST

23.1 Bid Project Cost

The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Authority to the Concessionaire, shall be deemed to be Rs……(Rupees…….) (The " **Bid Project Cost** "). The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, cost estimated on account of variation in price index, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account Change of Scope, Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement. The Bid Project Cost shall be exclusive of GST, which shall be paid to the Concessionaire by the Authority at the applicable rates. For the avoidance of doubt, the Bid Project Cost specified herein represents the amount due and payable by the Authority to the Concessionaire.

23.2 Deleted

23.3 Payment of Bid Project Cost

23.3.1 Construction grant of Rs 60,00,00,000 (Rupees Sixty Crore only) inclusive of GST, shall be due and payable to the Concessionaire in 10 (ten) equal instalments of Rs. 6,00,00,000 (Rupees Six Crore only) each during the Construction Period in accordance with the provisions of Article 23.4. For avoidance of doubt, it is clarified that the Construction Grant shall not be modified in the event of changes in GST rates and the provisions of Article 35 shall not apply. The remaining Bid Project Cost shall be computed by deducting the cumulative GST amounts paid across the Payment milestones specified in Article 23.4.

23.3.2 The remaining Bid Project Cost, shall be due and payable in 72 (seventy two) quarterly instalments in accordance with the provisions of Article 23.6.

For the purpose of illustration, if the Bid Project Cost is Rs. 200 crore, the value inclusive of GST assuming the same to be at 18% shall be Rs. 236 (Rupees two hundred and thirty six) crore. After reducing Rs. 60 (sixty) crore, it works out to Rs. 176 (one hundred and seventy six) crore inclusive of GST. Consequently, the remaining Bid Project Cost (exclusive of GST) works out to Rs. 149.15 (Rupees one hundred and forty nine crore and fifteen lakh only).

23.4 Payment during Construction Period

Upon receiving a report from the Independent Engineer certifying the achievement of the below mentioned Payment Milestones, the Authority shall issue a payment advice to the Escrow Bank, within 15 (fifteen) days of receipt of each such report, for release of an instalment equal to Rs. 6,00,00,000 (Rupees Six Crore only) inclusive of GST.

For the purpose of this Article 23.4, the Payment Milestone for release of payment during Construction Period shall be as under:

	Payment Milestone	Physical Progress	Payment Due to the Concessionaire
a.	I (first) Payment Milestone	On achievement of 5% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
b.	II (second) Payment Milestone	On achievement of 10% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
c.	III (third) Payment Milestone	On achievement of 20% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
d.	IV (fourth) Payment Milestone	On achievement of 30% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
e.	V (fifth) Payment Milestone	On achievement of 40% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
f.	VI (sixth) Payment Milestone	On achievement of 50% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
g.	VII (seventh) Payment Milestone	On achievement of 60% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
h.	VIII (eighth) Payment Milestone	On achievement of 70% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
i.	IX (ninth) Payment Milestone	On achievement of 80% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)
j.	X (tenth) Payment Milestone	On achievement of 100% Physical Progress	Rs. 6,00,00,000 (Rupees Six Crore only)

Provided that in case of Change of Scope, the Physical Progress shall be recalculated to account for the changed scope.

23.5 O&M payments during Construction Period

The Concessionaire shall be eligible to receive payments for O&M during construction period for the operation and maintenance of Existing Project Facilities. The payments shall be made in quarterly instalments and shall be based on the amount quoted by the Concessionaire as part of the financial bid. In the event of delay in the completion of the project, not on account of the fault of the Concessionaire, payments for operation and maintenance of Existing Project Facilities shall be made on pro-rata basis for the extended period, adjusted for the Price Index Multiple as applicable. However, where the project completion is delayed on account of the fault of the Concessionaire, the Operation and Maintenance of the Existing Project Facilities shall be undertaken by the Concessionaire for which the payment shall be made on a pro-rata basis without any adjustment for the Price Index Multiple.

23.6 Annuity Payments during Operation Period

23.6.1 The Parties acknowledge and agree that the Authority has paid a portion of the Bid Project Cost as payments during Construction Period pursuant to Article 23.4 of this Agreement. The remaining Bid Project Cost remaining shall be due and payable during the Operation Period in accordance with the provisions of Article 23.6.2.

23.6.2 The Bid Project Cost remaining to be paid in pursuance of the provisions of Article 23.6.1 shall be due and payable in quarterly payments over a period of 18 (eighteen) years commencing from COD, (the "**Annuity Payments**"). The 1st (first) instalment of Annuity Payments shall be due and payable within 15 (fifteen) days of the end of the quarter[5] falling immediately after the COD and the remaining instalments shall be due and payable within 15 (fifteen) days of completion of each of the successive end of the quarter ("the **Annuity Payment Date**"). For the avoidance of doubt, the last Annuity Payment Date would be adjusted to in such a way that it falls at the end of the Operation Period.

Each of the Annuity Payments due and payable during the years following the COD shall be at 1.388% of the Bid Project Cost payable remaining to be paid after taking into account the payments of the amounts mentioned in Article 23.4 and shall be payable at the end of each quarter. Each of the quarterly instalments shall be paid along with interest as specified in Article 23.6.4.

23.6.3 Deleted

23.6.4 Interest shall be due and payable on the reducing balance of Bid Project Cost remaining to be paid at an interest rate equal to the average of the then prevailing SBI MCLR plus 2%. Such interest shall be due and payable every quarter along with each instalment specified in Article 23.6.3. For the avoidance of doubt and by way of illustration, the Parties agree on the following:

(a) The first Annuity of 1.388% of the Bid Project cost remaining to be paid shall be payable, along with he interest at the end of the Quarter[6] falling immediately after the COD. Interest shall be calculated on the Bid Project Cost remaining to be paid, from the COD and until the end of the Quarter falling immediately after the COD.

(b) Thereafter, each Annuity shall be paid at the end of each quarter, along with interest calculated on the Bid Project Cost remaining to be paid, from the end of the previous quarter until the end of next Quarter.

The Parties further agree that interest shall be calculated based on the number of days a particular average of SBI MCLR was applicable during the period of calculation. For the purpose of illustration, assuming that the balance capital cost remaining to be paid is Rs 100 crores on the 1st Annuity Payment Date, the applicable average of SBI MCLR for the first 75 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the 2nd Annuity Payment Date, the interest would be calculated as ((100*10%*75)/365)+ ((100*9.5%*105)/365). For the avoidance of doubt, the Interest would be calculated on simple interest basis and no compounding of the same would be undertaken.

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[5] End of the quarter shall mean the quarterly end of a financial year, namely, the 30th of June, 30th of September, 31st of December and 31st of March

[6] End of the quarter shall mean the quarterly end of a financial year, namely, the 30th of June, 30th of September, 31st of December and 31st of March

23.7 O&M Payment during Operation Period

23.7.1 The Parties acknowledge and agree that all O&M Expenses shall be borne by the Concessionaire and in lieu thereof; an amount of Rs……. (Rupees…….)[7] in the form of quarterly payments shall be due and payable by the Authority (the **"First Quarter O&M Cost"**), in accordance with the provisions of this Article 23.7 (i) (the "**O&M Payments**"). The Parties further acknowledge and agree that any O&M Expenses in excess of the O&M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt it is clarified that the O&M Payments will be subject to any Change in Scope of the Project of the Concessionaire under Article 16 of this Agreement. Further provided that the payments shall be subject to the compliance of the Key Performance Indicators as detailed in Schedule C.

23.7.2 Subject to the Provisions of Article 23.7.1, the O&M Payments due and payable to the Concessionaire shall be paid in quarterly instalments and disbursed by the Authority together with the corresponding instalments of Annuity Payments.

23.7.3 Each instalment of O&M Payment shall be the product of the amount determined in accordance with Article 23.7.1 and the Price Index Multiple on the Reference Index Date preceding the due date of payment thereof.

23.7.4 Subject to the Provisions of Articles 23.7.1 to 23.7.3, the O&M Payments due and payable to the Concessionaire shall be adjusted for reduction in volume of raw water made available for treatment during Water Shortage Period. It is hereby agreed that for the purpose of this Article 23.7, for every 1 (one) percent shortfall in water supplied, the O&M Payment for the Water Shortage Period shall be reduced by 0.33 (zero point three three) percent. For avoidance of doubt, if the supply of raw water is 306 MLD (against 340 MLD), indicating 90 percent of agreed water quantity, the O&M payment shall be reduced by 3.3 (three point three) percent i.e. the Authority shall pay 96.7 (ninety six point seven) percent of the O&M Payment pertaining to the Water Shortage Period.

23.8 Energy Charges

23.8.1 Energy Charges for the treatment of water during the Initial Operation Period shall be paid by the Authority.

23.8.2 Energy Charges for the treatment of water during the operation period shall be paid by the Authority. Energy Efficiency of the system is fixed at 0.3445 kWh/KL (the "Unit Energy Requirement"). The Concessionaire shall ensure that the consumption of electricity is in accordance with the quantities mentioned herein. In the event that the energy consumed is in excess of or falls below the Unit Energy Requirement mentioned herein, the same shall be dealt in accordance with Schedule C

23.8.3 The cost of diesel consumed for operating the diesel generator by the Concessniare during periods of power outage from the energy utility (presently TANGEDCO) shall be reimbursed at actuals based on its usage during the O&M Period. This reimbursement shall be in addition to and shall be paid along with the O&M payments as per the provisions of Article 23.7.1..

[7] The quarterly amount will be calculated based on the 1st year O&M quote of the selected bidder

23.9 Deleted

23.10 Treatment of incomplete works

23.10.1 The Parties acknowledge and agree that in the event COD occurs upon issuance of a Provisional Certificate, the payments made as per this Article 23 shall be made as if all works comprising the Project Facilities have been completed. The works remaining incomplete shall be completed by the Concessionaire in accordance with the provisions of this Agreement and thereupon, the Completion Certificate shall be issued forthwith.

23.10.2 In the event the Authority determines that any incomplete works referred to in Article 23.10.1 are not required to be completed for any reason, it shall modify the Scope of the Project in accordance with the provisions of Article 16 and the payments shall be reduced on account of such reduction of scope as per the provisions of Article 16 and Article 23.

ARTICLE 24 DELETED

ARTICLE 25 ESCROW ACCOUNT

25.1 Escrow Account

25.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-T.

25.1.3 Deleted

25.2 Deposits into Escrow Account

25.2.1 The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

i. All funds constituting the Financial Package;

ii. All revenues from or in respect of the Project, capital receipts or insurance claims; and

iii. All payments made by the Authority, after deduction of any outstanding payments.

25.2.2 Minimum Escrow Balance:

i. The Authority shall deposit an amount equivalent to the following: (i) first two Payment Milestone on the Appointed Date. During the remainder of the Construction Period, the Authority shall ensure that the Escrow Account is funded with an amount equivalent to the next Payment Milestone ; (ii) construction period O&M payments for two quarters, (the "**Construction Period Minimum Escrow Balance**"); and

ii. on and from COD and during the Operation Period, the Authority shall deposit into the Escrow Account, by an agreed date, an amount equivalent to the sum of the following: (a) Annuity Payments for two quarters, and (b) O&M Payments for two quarters, (the "**Operation Period Minimum Escrow Balance**").

If at any time during the Construction Period or the Operation Period, the balance in the Escrow Account falls below the Construction Period Minimum Escrow Balance or the Operation Period Minimum Escrow Balance, as the case may be, the Authority shall promptly, and in any event, no later than 60 days of such occurrence, fund the Escrow Account such that the Construction Period Minimum Escrow Balance or the Operation Period Minimum Escrow Balance (as applicable) is maintained.

Any interest earned on the amounts deposited by Authority in the Escrow Account shall be counted towards the Construction Period Minimum Escrow Balance/ Operation Period Minimum Escrow Balance and the abovementioned deposit into the Escrow Account.

25.3 Withdrawals during Concession Period

25.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable

instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

i. All taxes due and payable by the Concessionaire for and in respect of the Project;

ii. All payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

iii. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

iv. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority/Independent Engineer as due and payable to it;

v. Monthly proportionate provision of Debt Service due in an Accounting Year;

vi. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

vii. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

viii. Any reserve requirements set forth in the Financing Agreements; and

ix. Balance, if any, in accordance with the instructions of the Concessionaire.

Provided that the Authority shall be allowed to withdraw amounts lying in the Escrow account in excess of the amounts due to the Concessionaire for a period of 2 (two) quarters.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 25.3.1, except with the prior written approval of the Authority.

25.4 Withdrawals upon Termination

25.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

i. All taxes due and payable by the Concessionaire for and in respect of the Project;

ii. Percentage of Debt Due less Insurance Cover excluding Subordinated Debt if required to be paid to the concessionaire as per the terms of this Agreement;

iii. Outstanding payments due to the Authority;

iv. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

v. Retention and payments relating to the liability for defects and deficiencies set forth in Article 33;

vi. Outstanding Debt Service including the balance of Debt Due;

vii. Outstanding Subordinated Debt;

viii. Incurred or accrued O&M Expenses;

ix. Any other payments required to be made under this Agreement; and

x. Balance, if any, in accordance with the instructions of the Concessionaire

Provided that no appropriations shall be made under Sub-Article (x) of this Article 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 32.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 25.4.1 have been discharged.

25.5 Payment Security Mechanism

Tamil Nadu Infrastructure Development Fund (TNIDF), operated by Tamil Nadu Infrastructure Development Board (TNIDB), shall act as the backstop guarantee for this project. In case the Authority fails to ensure Minimum Escrow Balance in terms of Article 25.2.2 of this Agreement, then the Escrow account shall be replenished by drawing funds from the TNIDF upon request of the Concessionaire or Authority, subject to the approval of TNIDB.

ARTICLE 26 INSURANCE

26.1 Insurance during Concession Period

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

26.2 Insurance Cover

Without prejudice to the provisions contained in Article 26.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Facilities (including Existing Facilities), at replacement value;

(b) Comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;

(c) The Concessionaire's general liability arising out of the Concession;

(d) Liability to third parties for goods, property damage or public health;

(e) Workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(i) to (v) above.

26.3 Notices to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.4 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance

policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

26.5 Remedy for failure to insure

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

26.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

26.7 Concessionaire's waiver

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

26.8 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Article 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.9 Compliance with conditions of insurance policies

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

ARTICLE 27 ACCOUNTS AND AUDIT

27.1 Audited accounts

27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

27.1.3 On or before the thirtieth day of September each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

27.2 Appointment of auditors

27.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "Panel of Chartered Accountants"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-U. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

27.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

27.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

27.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and

any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

27.4 Set off

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

27.5 Dispute resolution

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

ARTICLE 28 FORCE MAJEURE

28.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

28.2 Non-Political Event

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

a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 28.3;

c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

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; or

f) Any event or circumstances of a nature analogous to any of the foregoing.

28.3 Indirect Political Event

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

i. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

ii. any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or

otherwise not feasible;

iii. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

iv. any civil commotion, boycott or political agitation which prevents collection of revenues by the Concessionaire for an aggregate period exceeding 30 (thirty) days in an Accounting Year;

v. failure of the Authority to permit the Concessionaire to continue its Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

vi. Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

vii. Any Indirect Political Event that causes a Non-Political Event; or

viii. Any event or circumstances of a nature analogous to any of the foregoing.

28.4 Political Event

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

i. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 35 and its effect, in financial terms, exceeds the sum specified in Article 35.1;

ii. Compulsory acquisition in national interest or expropriation of any Project Facilities or rights of the Concessionaire or of the Contractors;

iii. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit;

iv. any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

v. Any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

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

i. The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;

ii. The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

iii. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; an

iv. Any other information relevant to the Affected Party's claim.

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

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Concession

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 4.1 for fulfilment of Conditions Precedent and in Article 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

28.6.2 at any time after the Appointed Date, if any Force Majeure Event occurs:

i. before COD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

ii. After COD, the Concessionaire shall be entitled to receive Annuity Payments plus interest due and payable under this Agreement. Provided any payment to be made under this Article shall be subject to deduction of outstanding dues of the Authority, if any.

28.7 Allocation of costs arising out of Force Majeure

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

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

i. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

ii. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure

Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

iii. Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) day's time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

28.9 Termination Payment for Force Majeure Event

28.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount to be calculated as under:

(i) In case termination occurs prior to COD:

1. Construction Payments due to the Concessionaire for Project Milestones completed and certified by the Authority on the date of the Termination Notice under Article 28;

2. Debt Due as on date of the Termination Notice;

LESS

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

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of termination payment, the milestone achieved would only be considered.

(ii) In case termination occurs post COD:

a) Construction Payments if not paid already as on date of the Termination Notice;

b) the O&M Payments due to the Concessionaire as on the date of the Termination Notice under Article 28;

c) Debt Due as on date of the Termination Notice;

LESS

d) any insurance proceeds received and retained by the Concessionaire

28.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(i) In case Termination occurs prior to COD:

a) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Authority as on the date of the Termination Notice under Article 28;

b) Debt Due as on date of the Termination Notice; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered ; and

c) 110% (one hundred and ten per cent) of the Adjusted Equity;

LESS

d) any insurance proceeds received and retained by the Concessionaire; and

e) any amounts due and payable by the Concessionaire under this Agreement.

(ii) In case termination occur post COD

a) Construction Payments if not paid already as on date of the Termination Notice;

b) the O&M Payments due to the Concessionaire as on the date of the Termination Notice under Article 28;

c) Capex Annuity for the unexpired portion of the Operation 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

28.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Article 31.3.3 as if it were an Authority Default.

28.10 Dispute resolution

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

28.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations

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

(a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 29 COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Article 29.3, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

29.2 Compensation for default by the Authority

Subject to the provisions of Article 29.3, in the event of the Authority being in material breach or default of this Agreement at any time after the Effective Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Annuity Payments, debt repayment obligations or other consequential losses, loss of profit, EPC Contractors claims, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

29.3 Mitigation of costs and damage

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

ARTICLE 30 SUSPENSION OF CONCESSIONAIRE'S RIGHTS

30.1 Suspension upon Concessionaire Default

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

30.2 Authority to act on behalf of Concessionaire

30.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Article 25.3.

30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred- during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Article 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

30.3 Revocation of Suspension

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

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

30.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of

Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Article 30.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 31 as if it is a Concessionaire Default under Article 31.1.

30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 30.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 31 TERMINATION

31.1 Termination for Concessionaire Default

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

a. The Construction Period Performance Security has been encashed and appropriated in accordance with Article 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

b. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

c. the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 180 (one hundred and eighty) days;

d. the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;

e. COD does not occur within the period specified in Article 12.3.3;

f. the Punch List items have not been completed within the period set forth in Article 14.4.1;

g. the Concessionaire has failed to fulfil the Key Performance Indicators (KPIs) that has led to a Concessionaire Event of Default in accordance with Schedule C

h. the Authority has rejected treated water for not meeting the requisite quality standards for more than four days in an Accounting Year.

i. the Concessionaire is in breach of the Maintenance Requirement, Maintenance Manual or the Safety requirements, as the case may be;

j. the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

k. an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

l. upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

m. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

n. the Concessionaire creates any Encumbrance in breach of this Agreement;

o. the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

p. a Change in Ownership has occurred in breach of the provisions of Article 5.3;

q. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

r. an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

s. the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

t. the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

u. a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

    (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

    (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

    (iii) Each of the Project Agreements remains in full force and effect;

v. any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

w. the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

x. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

y. the Concessionaire issues a Termination Notice in violation of this Agreement;

z. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

31.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Article 31.1.3.

31.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:
Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.
Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

31.2 Termination for Authority Default

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

i. The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

ii. The Authority has failed to make payment of 3 (three) consecutive Annuity Payments due to the Concessionaire within the period specified in this Agreement;

iii. Deleted

iv. The Authority repudiates this Agreement or otherwise takes any action that

amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

31.3 Termination Payment

31.3.1 Upon Termination on account of a Concessionaire Default during the **Operation Period**, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 65% (sixty five per cent) of the sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.

31.3.2 Notwithstanding to the provisions of Article 31.3.1, upon Termination on account of a Concessionaire Default during the Construction Period (***prior to COD***), the Authority shall pay to the Concessionaire, by way of Termination Payment, the aggregate of:

a. Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Authority as on the date of the Termination Notice;

b. O&M Payments due to the Concessionaire during the Initial Operation Period for the O&M undertaken till the date of Termination Notice

c. 85% of Debt Due;
LESS

d. any amounts due and payable by the Concessionaire under this Agreement.

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Termination Payment, the milestone achieved would only be considered.

31.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

i. In case the termination occurs ***prior to COD***

a. Construction Payments due to the Concessionaire for Payment Milestones completed and certified by the Authority as on the date of the Termination Notice;

b. O&M Payments due to the Concessionaire during the Initial Operation Period for the O&M undertaken till the date of Termination Notice

c. Debt Due as on the date of Termination Notice less insurance cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;

d. 120% (one hundred and twenty per cent) of the Adjusted Equity;
LESS

e. any amounts due and payable by the Concessionaire under this Agreement.

For the avoidance of doubt, it is clarified that in case of termination happening in between two Payment Milestones, for the purpose of calculation of Debt Due, the milestone achieved would only be considered.

ii. In case the termination occurs on or ***after COD***, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to

a. Construction Payments if not already paid as on the date of the Termination Notice;

b. O&M Payments due to the Concessionaire as on the date of the Termination Notice;

c. Principal Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date;
LESS

d. any amounts due and payable by the Concessionaire under this Agreement.

iii. Along with the payment under Article 31.3.3, the Authority shall:

a. return the Construction Period Performance Security and / or the Operation Period Performance Security as the case may be, forthwith;

31.3.4 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 2% (two per cent) above the prevailing SBI MCLR on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Certain limitations on Termination Payment

31.4.1 Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due in accordance with the provisions of this Agreement. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (Seventy per cent) of the Total Project Cost. For the purpose of illustration, if the Bid Project Cost is Rs. 200 (two hundred) crore and the Construction Grant paid is Rs. 60 (sixty) crore, the Concessionaire had financed the Total Project Cost of Rs. 140 (one hundred and forty) crore with about 80% debt say Rs. 112 (one hundred and twelve) crore. In the event of Terminaton, the amount of Debt due shall be limited to Rs. 98 (ninety eight) crore being 70% of Rs. 140 (one hundred and forty) crore.

31.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date on which the Agreement is terminated.

31.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

i. Be deemed to have taken possession and control of the Project forthwith;

ii. Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

iii. Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;

iv. Require the Concessionaire to comply with the Divestment Requirements set forth in Article 32.1; and

v. succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being -due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

31.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 31.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 32 DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

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

a) Notify to the Authority forthwith the location and particulars of all Project Facilities;

b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

c) cure all Project Facilities, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Facilities shall be handed over on 'as is where is' basis after bringing them to a safe condition;

d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project Facilities and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;

e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facilities, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and.

g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

32.2 Inspection and cure

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

after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32. Provided if the Termination occurs any time after the COD, if the Concessionaire fails to rectify any of the defaults in the maintenance of the Project Facilities, the Authority may rectify such default and adjust the costs incurred thereof, from the Operation Period Performance Guarantee.

32.3 Cooperation and assistance on transfer of Project

32.3.1 The Parties shall cooperate and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay.

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

32.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Article 32.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

32.4 Vesting Certificate

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

32.5 Divestment costs etc.

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

32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

ARTICLE 33 DEFECTS LIABILITY AFTER TERMINATION

33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination (the "**Period of Defects Liability after termination**"), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Article 33.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 33 shall not apply if Termination occurs prior to COD.

33.2 Retention in Escrow Account

33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 33.2.3, a sum equal to 15% (fifteen per cent) of the Annuity Payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 33.1.

33.2.2 Without prejudice to the provisions of Article 33.2.1, the Independent Engineer shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Article 33.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

33.2.3 The Concessionaire may, for the performance of its obligations under this Article 33, provide to the Authority in the form of Account Payee Demand Draft, Banker's Cheque or e - Bank Guarantee from a Bank for a sum equivalent to the amount determined under Article 33.2.1 or 33.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the **"Performance Guarantee**"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the relevant Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 33. Upon furnishing of the relevant Performance Guarantee under this Article 33.2.3, the retention of funds in the Escrow Account in terms of Article 33.2.1 or 33.2.2, as the case may be, shall be dispensed with.

ARTICLE 34 ASSIGNMENT AND CHARGES

34.1 Restrictions on assignment and charges

34.1.1 Subject to Articles 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Article 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

The restraints set forth in Article 34.1 shall not apply to:

i. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

ii. mortgages/pledges/hypothecation of goods/assets other than Project Facilities and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;

iii. assignment of rights, interest and obligations of the Concessionaire to or in favor of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

iv. Liens or encumbrances required by any Applicable Law.

34.3 Substitution Agreement

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

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

34.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer

any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 35 CHANGE IN LAW

35.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 100,00,000/- (Rupees one crore only) or 10% (ten per cent) of the total Annuity Payments in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

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

35.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 25,00,000/- (Rupees twenty five lakh only) or 2% (two per cent) of the total Annuity Payments in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable as but no later than 30 (thirty) days from the date of notice and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

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

35.3 Protection of NPV

Pursuant to the provisions of Articles 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no

Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

35.4 Restriction on cash compensation

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

ARTICLE 36 LIABILITY AND INDEMNITY

36.1 General indemnity

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

36.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage', cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Service Area, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement, and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

36.2 Indemnity by the Concessionaire

36.2.1 Without limiting the generality of Article 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

i. Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

ii. Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

iii. Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

iv. the Concessionaire not implementing the Project as per the Implementation Schedule, resulting in time and cost overruns;

v. Deleted;

vi. default by the Concessionaire under the Financing Agreements;

36.2.2 Without limiting the generality of the provisions of this Article 36, the Concessionaire

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

36.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

36.4 Defense of claims

36.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified

hereunder to the extent so compromised or settled.

36.4.2 If the Indemnifying Party has exercised its rights under Article 36.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

36.4.3 If the Indemnifying Party exercises its rights under Article 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

i. The employment of counsel by such party has been authorized in writing by the Indemnifying Party;

ii. The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;

iii. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

iv. The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

1. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

2. That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement: Provided that if Sub-Articles (b), (c) or (d) of this Article 36.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

36.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

36.6 Survival on Termination

The provisions of this Article 36 shall survive Termination.

ARTICLE 37 RIGHTS AND TITLE OVER THE SERVICE AREA

37.1 Licensee rights

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

37.2 Access rights of the Authority and others

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

37.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

37.3 Property taxes

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

37.4 Restriction on sub-letting

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

ARTICLE 38 DELETED

ARTICLE 39 DEFECTS LIABILITY

39.1 Defects Liability Period

39.1.1 The Concessionaire shall be responsible for all the Defects and deficiencies, except usual wear and tear in the Project Facilities or any part thereof, till the expiry of a period of 1 (one) year commencing from the date of Provisional Certificate (the "**Defects Liability Period**"). Provided that the Defects Liability Period shall in no case be less than 6 (six) months from the date of Completion Certificate for and in respect of works for which Time Extension was granted. Provided further that in the event no Provisional Certificate is issued, the Defects Liability Period shall commence from the date of the Completion Certificate. For the avoidance of doubt, any repairs or restoration on account of usual wear or tear in the Project Facilities or any part thereof shall form a part of the maintenance obligations of the Concessionaire as specified in Article 17. Provided that in the event of termination of this Agreement, either at the completion of the term of the Agreement or anytime prior, the provisions of Article 33 shall apply.

39.2 Remedying Defects

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

39.3 Cost of remedying Defects

For the avoidance of doubt, any repair or rectification undertaken in accordance with the provisions of Article 39.2, including any additional testing, shall be carried out by the Concessionaire at its own risk and cost, to the extent that such rectification or repair is attributable to:

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

39.4 Concessionaire's failure to rectify Defects

In the event that the Concessionaire fails to repair or rectify such Defect or deficiency within the period specified in Article 39.2, the Authority shall be entitled to get the same repaired, rectified or remedied at the Concessionaire's cost so as to make the Project Facilities conform to the Technical Specifications and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Concessionaire, be determined by the Independent Engineer. The cost so determined and an amount equal to twenty percent of the cost as Damages shall be recoverable by the Authority from the Concessionaire and may be deducted by the Authority from any monies due to the Concessionaire or from the Construction Period Performance Guarantee.

39.5 Concessionaire to search cause

39.5.1 The Independent Engineer may instruct the Concessionaire to examine the cause of any

Defect in the Additional Project Facilities or part thereof before the expiry of the Defects Liability Period.

39.5.2 In the event any Defect identified under Article 39.5.1 is attributable to the Concessionaire, the Concessionaire shall rectify such Defect within the period specified by the Independent Engineer, and shall bear the cost of the examination and rectification of such Defect.

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

39.6 Extension of Defects Liability Period

The Defects Liability Period shall be deemed to be extended till the identified Defects under Article 39.2 have been remedied.

39.7 Replacement of assets upon expiry of Defects Liability Period

Upon expiry of the Defects Liability Period, any replacement of the assets in the Project Facilities shall be performed in accordance with the process provided for Construction of Additional Project Facilities.

ARTICLE 40 DISPUTE RESOLUTION

40.1 Dispute Resolution

40.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 40.2.

40.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non privileged records, information and data pertaining to any Dispute.

40.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Principal Secretary of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 40.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 40.3.

40.3 Arbitration

40.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 40.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Article 40.3.2. Such arbitration shall be held in accordance with the Rules of Nani Palkhivala Arbitration Centre, Chennai (the "**Rules**"), or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Chennai, and the language of arbitration proceedings shall be English.

40.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

40.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 40 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

40.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

40.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the parties unconditionally acknowledge and agree that notwithstanding any dispute between them, each party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

40.4 Adjudication by Regulatory Authority, Tribunal or Commission

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be, with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 40.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court of competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 41 DISCLOSURE

41.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, Maintenance Program, the Environment, Healh & Safety plan, the detailed Drawings and any other related documents (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Site and the Concessionaire's Registered Office. The Concessionaire shall prominently display at the Service Area, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

41.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

Notwithstanding the provisions of Articles 41.1 and 41.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 41.1 and 41.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 42 REDRESSAL OF PUBLIC GRIEVANCES

DELETED

ARTICLE 43 MISCELLANEOUS

43.1 Governing law and jurisdiction

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

43.2 Waiver of immunity

Each Party unconditionally and irrevocably:

i. Agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

ii. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

iii. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

iv. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

43.3 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

43.4 Delayed payments

43.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 2% (two per cent) above the prevailing SBI MCLR, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

43.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

43.5 Waiver

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

Agreement:

i. Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

ii. Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

iii. Shall not affect the validity or enforceability of this Agreement in any manner.

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

43.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement

a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

b) The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

43.7 Exclusion of implied warranties etc.

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

43.8 Survival

43.8.1 Termination shall:

i. Not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

ii. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

43.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such

modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

43.10 Severability

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

43.11 No partnership

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

43.12 Third parties

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

43.13 Successors and assigns

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

43.14 Notices

Unless the law requires to follow the specified mode of communication only as prescribed therein, any notice or other communication to be given by one contracting Party to the other Party under or in connection with the matters contemplated by this Agreement shall be routed through _____ under the hand of the authorized representative and shall:

1. in the case of the Concessionaire, be given through _____ and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority.

{Attention:
Designation:
Address:
Fax No:
Email ;}

2. in the case of the Authority, be given through _____ and be addressed to

the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire;

{Attention:
Designation:
Address:
Fax No:
Email :}; and

3. any notice or communication by one contracting Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when given through or made on the _____.

43.15 Language

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

43.16 Counterparts

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