



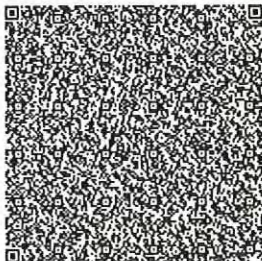
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# INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

## e-Stamp

Certificate No. : IN-DL91091615128988L  
 Certificate Issued Date : 15-Mar-2013 04:08 PM  
 Account Reference : IMPACC (IV)/ di740903/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL74090381814921926329L  
 Purchased by : VEOLIA WATER INDIA PVT LTD  
 Description of Document : Article Others  
 Property Description : NA  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : VEOLIA WATER INDIA PVT LTD  
 Second Party : NA  
 Stamp Duty Paid By : VEOLIA WATER INDIA PVT LTD  
 Stamp Duty Amount(Rs.) : 100  
 (One Hundred only)



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## CONTRACT AGREEMENT NO. 6 (2012-13)

MUKUL BHANDULA  
 Executive Engineer (Project) WTP-IX  
 DJB Govt. of NCT of D  
 Ashok Vihar Over Head Tank N.D.52

SURESH KARKETTA  
 EX. ENGINEER (E&M)  
 WTP NANGLOI, D.J.B.  
 NEW DELHI-110044

Statutory Alert;

1. The authenticity of the Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs).  
 2. The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web site "www.shcilestamp.com"







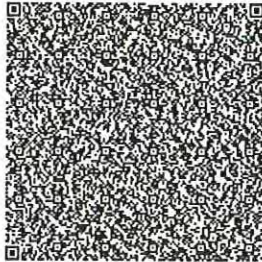
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## INDIA NON JUDICIAL

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#### e-Stamp

Certificate No. : IN-DL91090974818558L  
 Certificate Issued Date : 15-Mar-2013 04:08 PM  
 Account Reference : IMPACC (IV)/ dl740903/ DELHI/ DL-DLH  
 Unique Doc. Reference : SUBIN-DL74090381817151389088L  
 Purchased by : VEOLIA WATER INDIA PVT LTD  
 Description of Document : Article Others  
 Property Description : NA  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : VEOLIA WATER INDIA PVT LTD  
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#### CONTRACT AGREEMENT NO. 6 (2012-13)

**MUKUL BHANDULA**  
 Executive Engineer (Project) W&S-IX  
 DJB Govt. of NCT of  
 Ashok Vihar Over Head Tank W.D.52

**SURESH KARKETTA**  
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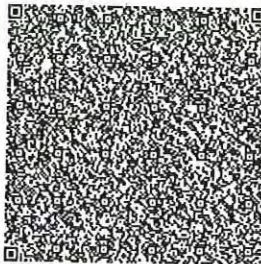
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# INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

### e-Stamp

Certificate No.	: IN-DL91090269493030L
Certificate Issued Date	: 15-Mar-2013 04:07 PM
Account Reference	: IMPACC (IV)/ dl740903/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-DL74090381818736894108L
Purchased by	: VEOLIA WATER INDIA PVT LTD
Description of Document	: Article Others
Property Description	: NA
Consideration Price (Rs.)	: 0 (Zero)
First Party	: VEOLIA WATER INDIA PVT LTD
Second Party	: NA
Stamp Duty Paid By	: VEOLIA WATER INDIA PVT LTD
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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### CONTRACT AGREEMENT NO. 6 (2012-13)

**MUKUL BHANDULA**  
Executive Engineer (Project) Water-IX  
DJB Govt. of NCT of Delhi  
Ashok Vihar Over Head Tank N.D.52

**SURESH KARKETTA**  
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## CONCESSION AGREEMENT

### FOR IMPROVEMENT & REVAMPING OF EXISTING WATER SUPPLY, TRANSMISSION AND DISTRIBUTION NETWORK UNDER THE COMMAND AREA OF NANGLOI WATER TREATMENT PLANT, DELHI

**THIS CONCESSION AGREEMENT** (herein after also referred to as the 'Agreement') is made on this the **28<sup>th</sup> day of March, 2013** at New Delhi

*by & between*

**DELHI JAL BOARD (DJB)**, an authority constituted under the Delhi Water Board Act, 1998, having its Registered Office at Varunalaya Ph-I, Jhandewalan, Karol Bagh, New Delhi-110005, (hereinafter referred to as the "**Authority**" or "**DJB**", which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) and represented herein by its **Executive Engineer, Projects (W-IX), Mr Mukul Bhandula and Executive Engineer (E&M), Nangloi WTP, Mr Suresh Kerketta**, duly authorized in this regard, of the **FIRST PART**;

*and*

**M/s Nangloi Water Services Private Limited**, a new company incorporated by the Selected Bidder under the Companies Act, 1956, having its Registered Office at **F-2 Friends Apartment, I P Extension, Patpargunj, Delhi-110092** (hereinafter referred to as the "**Operator**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) and represented herein through **Mr. Patrick Rousseau, Chairman and Mr Hitesh Arora, Director**, both duly authorized by Power of Attorney dated 26<sup>th</sup> March 2013 of the **SECOND PART**;

MUKUL BHANDULA  
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*and*







The consortium of (i) M/s **Veolia Water India (P) Limited**, a company incorporated under the Companies Act, 1956, having its registered Office at **B-1 Marble Arch, 9 Prithviraj road, New Delhi- 110011** and (ii) M/s **SWACH Environment Private Limited**, a company incorporated under the Companies Act, 1956, having its Registered Office at **Vishwakarma, 86 C, Topsia Road (S), Kolkata - 700046** in their capacity as the Confirming Party to this Agreement (hereinafter referred to as the '**Selected Bidder**' which expression shall, unless the context otherwise requires, include its successors) duly represented through M/s **Veolia Water India (P) Limited**, the Lead Member of the consortium, through its Authorized signatory by Power of Attorney granted to Mr. Babu SVK, Director of the **THIRD PART**.

(Each of the parties of the FIRST and SECOND parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**" and the party of the THIRD part shall hereinafter be referred to as "**Selected Bidder**").

#### WHEREAS

- A. The Delhi Jal Board (the '**Authority**' or "**DJB**") is a statutory body constituted under the Delhi Water Board Act, 1998 from the erstwhile Delhi Water Supply and Sewage Disposal Undertaking. The Authority is responsible for planning, designing and execution and operation of water supply and wastewater management facilities within its jurisdiction in the National Capital Territory of Delhi (NCT).
- B. DJB wishes to enhance service delivery and improved management of water distribution by upgrading Water Supply System and Network Improvement in order to, significantly reducing Non-Revenue Water (NRW), conserving energy, improving water quality and collection efficiency of revenue and extension of water supply in the unserved areas in its jurisdiction.
- C. The Authority, in pursuance of the aforesaid objectives and as a part of its commitment of providing safe drinking water and efficient sewerage services in an equitable and sustainable manner, the Authority has decided to undertake, conducted a competitive bidding process, and invited proposals (the '**Bids**') by its Request for Proposal document dated **17<sup>th</sup> July, 2012**, including all addendums

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EX. ENGINEER (E&M)  
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issued by the Authority (herein the 'RFP') for selection of a Selected Bidder, *inter alia*, for Improvement and Revamping of Existing Water Supply, Transmission and Distribution Network under the Command area of Nangloi Water Treatment Plant, Delhi through Public-Private Partnership (PPP) on a Design, Build, Finance, Operate and Transfer (DBFOT) basis, subject to and on the terms and conditions contained therein.

- D. After evaluating the received Bids, the Authority accepted the proposal submitted by the Selected Bidder and accordingly issued the **Letter of Award (LoA)/Work Order No. 05 (2012-13) issued through Letter No F-249/DJB/EE (Project) W-IX/2012-13/2095 dated 18<sup>th</sup> January, 2013** (the "LOA") to the Selected Bidder for the Project, to the consortium of M/s **Veolia Water India (P) Limited** and M/s **SWACH Environment Private Limited**, with M/s **Veolia Water India (P) Limited** as its lead member, requiring, *inter alia*, the execution of this Concession Agreement for the performance of its obligations under this Concession Agreement.
- E. The Selected Bidder has, in accordance with the Request for Proposal and the LoA, promoted and incorporated the Operator as a company under the provisions of the Companies Act, 1956 as a special purpose vehicle to enter into this Concession Agreement for undertaking, *inter alia*, the design, engineering, financing, procurement, construction, management, operation and maintenance of the Project and to fulfill other obligations of the Operator pursuant to the LOA and has requested the Authority to accept the Operator as the entity which shall undertake and perform the obligations of the Selected Bidder including the obligation to enter into this Concession Agreement for the design, engineering, financing, procurement, construction, operation and maintenance of the Project.
- F. The Selected Bidder/ Operator has made a non-refundable and irrevocable payment of Rs. **7,50,00,000/-** (Rupees **Seven Crores and Fifty Lac** only), plus applicable taxes equivalent to **92,70,000/-** (Rs **Ninety Two lac and Seventy Thousand** only); i.e., both aforesaid amount aggregating to total of Rs **8,42,70,000/-** ((Rupees **Eight Crores and Forty Two Lac and Seventy thousand** only) to the Authority, towards the Project Development Expenses vide RTGS transfer in favour of Delhi Jal Board, in DJB's Account No. 026400201004115 with Corporation Bank.

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DJB Govt. of NCT of Delhi  
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The details along with UTR No. of the RTGS Confirmation are as given below;

S. No	Beneficiary Name	Bank Account Number	Bank Name	IFSC Code	Amount (Rs)	Date	UTR
1	Delhi Jal Board	2640020101004110	Corporation Bank	CORP0000264	14977700	19-03-2013	BNPAH13078097225
2	Delhi Jal Board	2640020101004110	Corporation Bank	CORP0000264	15000000	19-03-2013	BNPAH13078097227
3	Delhi Jal Board	2640020101004110	Corporation Bank	CORP0000264	13000000	19-03-2013	BNPAH13078097228
4	Delhi Jal Board	2640020101004110	Corporation Bank	CORP0000264	41292300	19-03-2013	ICICH13078070308

- G. In response to the Selected Bidder, complying with the afore-stated conditions of the LOA, the Authority has agreed to the said request of the Selected Bidder and has accordingly agreed to enter into this Concession Agreement with the Operator pursuant to the LOA for, inter alia, the design, engineering, financing, procurement, construction, operation and maintenance of the said Project.
- H. It is deemed necessary and expedient to enter into this Concession Agreement being these presents to record the terms, conditions and covenants of the said Agreement between the Parties.

**NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH** as follows:

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DJB Govt. of NCT of Delhi  
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## ARTICLE I

### DEFINITIONS & INTERPRETATIONS

#### 1.1 Definitions

For the purposes of this Concession Agreement, the terms defined in the Recitals to this Concession Agreement and elsewhere in the text of this Concession Agreement, unless otherwise indicated, shall have such meaning throughout this Concession Agreement. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them:

**1.1.1 "Accounting Year"** means the financial year commencing on 1st April in each year and ending on 31st March in the next year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the following 31st March of calendar year/next calendar year (document can be executed in Jan to March in the year). In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date; or the date on which this agreement ceases to be in force, whichever is earlier;

**1.1.2 "Agreement"** means this agreement including schedules and annexure hereto, as of the date hereof as may be amended or supplemented, from time to time, in accordance with the provisions hereto;

**1.1.3 "Agreement Period"** shall have the meaning set forth in Clause 3.1.1;

**1.1.4 "Associate"** means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ 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 50% (fifty 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 by operation of law or contract or otherwise;

**1.1.5 "Applicable Laws"** means any statute, law promulgated or brought into force and effect by GoI or GNCTD including regulations and rules, bye-law, ordinance made thereunder and judgments, decrees, injunctions, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental

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restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, promulgated or brought into force and effect by GoI or GNCTD having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter and shall, without prejudice to the foregoing or any limitation, include CPHEEO Manual for water supply, CPWD specifications/guidelines, MoUD guidelines regarding fixation of benchmarks etc.;

**1.1.6 "Applicable Permits"** means all clearances, licences, permits, authorisations, 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. An indicative list of such permits is set out in Schedule VI;

**1.1.7 "Appointed Date"** shall mean the date on which the Parties hereto have executed this Concession Agreement.

**1.1.8 "Approved Implementation Plan"** shall mean the Implementation plan prepared by the Operator and approved by the Authority, for the phased execution / implementation of the Project, in accordance with the terms of this Agreement.

**1.1.9 "Authority"** shall mean and refer to the Delhi Jal Board, an authority constituted on 6th April, 1998 through Delhi Water Board Act, 1998 having its Registered Office at Varunalaya Ph-I, Jhandewalan, Karol Bagh, New Delhi-110005;

**1.1.10 "Billing Cycle"** shall mean the bi monthly interval as instructed by the Authority at which all Consumers in different zones /sub-zones in the Service Area taken together, are issued bills for a specific period; provided however that in respect of Consumers whose average monthly water consumption exceeds 100 KL in the immediately preceding quarter, the billing cycle shall mean monthly interval as instructed by the Authority.

**1.1.11 "Change in Law"** means occurrence of any of the following events after the execution of this Agreement:

- a) enactment of any new Applicable Law;
- b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Law;
- c) the change in interpretation or application of any Applicable Law;

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- d) the imposition of a requirement for an Applicable Permit (s) (other than for cause) not required on the date of this Agreement;
- e) after the date of grant of any Applicable Permit (s), a change in the terms and conditions attaching to such Applicable Permit (s) (other than for cause) or the attachment of any new terms and conditions to an Applicable Permit (s) (other than for cause); or
- f) any Applicable Permit (s) previously granted ceasing to remain in full force and effect, though there is no fault of or breach by a party (including a failure to renew), or if granted for a limited period, not being renewed on a timely basis on an application therefore having been duly made in good time.
- g) Any change in the rates of any of the Taxes that have a direct effect on the Project

**1.1.12 "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 in the total Equity to decline below 51% (fifty one per cent) thereof at any time until the 2<sup>nd</sup> (second) anniversary of the COD; and any divestment thereafter, as per the terms of this Agreement, shall be subject to the prior approval of the Authority and, at the option of the Authority, be accompanied by a suitable no objection letters from the Lenders, if applicable; provided further that any material variation (as compared to the representations made by the Operator and/or Selected Bidder during the Bidding Process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the Selected Bidder to the total Equity, if it occurs prior to 2<sup>nd</sup> (second) anniversary of the COD, shall constitute Change in Ownership;

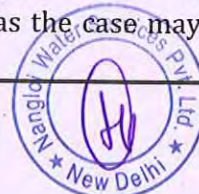
**1.1.13 "Commercial Operation Date" or "COD"** shall have the meaning set forth in Clause 16.5.10;

**1.1.14 "Completion Certificate"** shall have the meaning set forth in Clause 16.3.2;

**1.1.15 "Compliance Date"** shall mean the date which occurs 180 (one hundred and eighty) days from the Appointed Date or an earlier date that the Parties may by mutual consent determine upon which the Conditions Precedent set out in Clause 4 have been fulfilled. For avoidance of doubt, every Condition Precedent shall have been satisfied or waived in terms of this Agreement prior to the Compliance Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be,

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the Compliance Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

**1.1.16 "Compliance Period"** shall mean the period commencing from the Appointed Date and ending on the Compliance Date.

**1.1.17 "Concession"** shall have the meaning set forth in Clause 3.1;

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

**1.1.19 "Construction Requirements"** shall mean the requirements as to construction, rehabilitation and augmentation of the Project Facilities set out in **Schedule-XIV**.

**1.1.20 "Conditions Precedent"** shall have the meaning set forth in Article IV;

**1.1.21 "Consumer(s)"** shall mean the registered domestic and non-domestic user(s) within the Service Area receiving Services by means of operation of Project Facilities;

**1.1.22 "Consumer Payments"** shall have the meaning set forth in Clause 12.1.2;

**1.1.23 "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

not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Operator requires any reasonable action by the Operator that must be approved by the Authority or the Project Management Consultant hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Project Management Consultant to accord their approval;

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

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- a) the principal amount of the debt provided by the 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 1 (one) year prior to the Transfer Date;
- b) accrued interest payable under the Financing Agreement in respect of the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such pre-payment charges have arisen due to Authority Default;

**provided that** if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Operator, 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;

**1.1.25 "Designs and Drawings"** means the conceptual and detailed designs, drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Operator from time to time for approval in accordance with the provisions of this Agreement and shall also include 'as built' drawings of the Project;

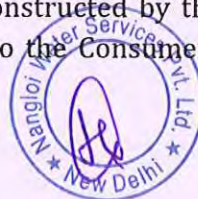
**1.1.26 "Development Period"** means the period beginning from the Compliance Date and ending on the issuance of Completion Certificate by the Authority in terms of the Agreement;

**1.1.27 "Direct Payment"** shall mean payment by the Authority on behalf of the Operator as per Para 13.8 of **Article XIII**.

**1.1.28 "Distribution Network"** means distribution network for the supply of water from the New Facilities and / or Existing Assets to the Consumers including reservoirs, pipelines and booster pumping stations upto Consumer levels and shall include the additional and / or new Distribution Network added and / or constructed by the Operator during the Concession Period for the supply of water to the Consumers from the New Facilities and / or Existing Facilities;

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1.1.29 "DJB Assigned Employees" shall have the meaning set forth in Article VIII;

1.1.30 "Easementary Rights" shall mean all easements, reservations, rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of the Service Area, which are necessary for the conduct of activities of the Operator related to the implementation of the Project; provided that such easements, reservations, rights-of-way, utilities etc. shall be limited to the extent of the rights available with the Authority;

1.1.31 "Encumbrance" means any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Facilities;

1.1.32 "Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Operator for meeting the equity component of the Total Project cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Operator, and any interest-free funds advanced by any shareholder of the Operator for meeting such equity component. For avoidance of doubt, "Equity" shall not include Equity Support;

1.1.33 "Escrow Account" means an account which the Authority shall open and maintain with the Escrow Bank in accordance with Clause 10.1;

1.1.34 "Escrow Agreement" shall have the meaning set forth in Clause 10.1.2;

1.1.35 "Escrow Bank" shall have the meaning set forth in Clause 10.1.1;

1.1.36 "Estimated Project Cost" shall refer to the capital cost of the Project as mentioned in Clause 1.1.4 of the RFP, it being clarified that for the purposes of determination of Grant/ Equity Support, the Estimated Project Cost shall in no case exceed Rupees 484.01 Crores;

1.1.37 "Existing Assets" shall mean the existing facilities at the overhead tanks, pipelines, service mains and such other facilities more fully described in Schedule V-A under

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the jurisdiction of the Authority and handed over to the Operator as per the terms of this Agreement;

**1.1.38 "Financial Bid"** shall mean the financial bid/ proposal submitted by the Selected Bidder and accepted by the Authority, which is annexed hereto as **Appendix VIII of Vol-1 ITB**.

**1.1.39 "Financial Close"** means the fulfillment of all condition precedent to the initial availability of funds under the Financing Agreements;

**1.1.40 "Financing Agreements"** means the agreements executed by the Operator in respect of financial assistance to be provided by the 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;

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

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

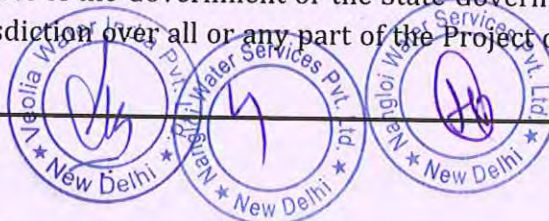
**1.1.43 "GNCTD"** means the Government of the National Capital Territory of Delhi, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the State Government of Delhi;

**1.1.44 "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 Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**1.1.45 "Government Agency" or "Government Instrumentality"** means any department, division or sub-division of the GOI or the GNCTD 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

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performance of all or any of the services or obligations of the Operator under or pursuant to this Agreement;

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

**1.1.47 "Leakage Losses"** shall mean the losses of the Treated Water during distribution to the Consumers in the Service Area;

**1.1.48 "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 Operator under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge, in accordance with the terms of this Agreement, on the assets, rights, title and interests of the Operator;

**1.1.49 "Letter of Award"** means the **Letter of Award (LoA)/Work Order No. 05 (2012-13) issued through Letter No F-249/DJB/EE (Project) W-IX/2012-13/2095 dated 18<sup>th</sup> January, 2013**, issued by the Authority to the Selected Bidder;

**1.1.50 "Mandatory Construction Requirements"** shall collectively mean and refer to the works set forth at Serial No. 1 to 5 under the sub head of Project Completion Schedule of Schedule XIII hereto.

**1.1.51 "Material Adverse Effect"** shall mean, as of any date of determination by the Authority, a material and adverse effect on (i) the financial condition or operation of the Operator and/or the Project; or (ii) the ability of the Operator to perform its obligations under this Agreement and in accordance with its provisions thereof; or (iii) the ability of the Authority enforce any of its remedies and/or to preserve its rights, interests or benefits under this Agreement; or (iii) the legality, validity, binding nature or enforceability of this Agreement;

**1.1.52 "Material Breach"** shall mean, in respect of the Operator, a breach of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect;

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1.1.53 "MLD" means million liters per day;

1.1.54 "Minimum Pressure" shall mean a residual pressure of not less than 17 (seventeen) meters of Treated Water measured at any given location in the Distribution System;

1.1.55 "Net Operator Rate" shall have the meaning set forth in Clause 13.2.1;

1.1.56 "New Facilities" means the Project Facilities that shall be developed, designed, financed, constructed, operated and maintained by the Operator as per the terms of this Agreement at the Service Area;

1.1.57 "O&M" means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement;

1.1.58 "O&M Requirements" shall mean the requirements as to operations and maintenance of the Project Facilities in accordance with **Schedule-XV**;

1.1.59 "Operator" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

1.1.60 "Operator Payment" shall have the meaning set forth in Clause 13.1;

1.1.61 "Operation Period" means the period commencing from COD and ending on the Transfer Date;

1.1.62 "Performance Security" shall mean the irrevocable and unconditional Bank guarantee provided by the Operator from a Scheduled bank to the Authority, substantially in the format as set out in **Schedule-I** of this Agreement as guarantee for the performance of its obligations in respect of the Project and as more particularly described under Clause 9.1 (a) of this Agreement;

1.1.63 "Performance Standards" shall mean the standards of service delivery to be adhered to by the Operator including, *inter alia*, the project completion schedule, and as set out in **Schedule-XIII** of this Agreement;

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**1.1.64 "Person"** unless specifically provided otherwise, shall mean any individual, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit or require;

**1.1.65 "Project"** means the development of the Improvement and Revamping of Existing Water Supply, Transmission and Distribution Network under the Command area of Nangloi Water Treatment Plant, Delhi at the Service Area, subject to the provisions of this Agreement, and includes (i) the development, design, financing and construction of Project Facilities; implementation, completion, commissioning, management, operation and maintenance of the Project Facilities, execution of the Works and all activities incidental thereto, including engineering, testing, commissioning and insurance etc., by the Operator during the Concession Period, including drawing raw water, conveying to WTP, treating and distribution and supplying water to consumers in the Service Area; (ii) works relating to Road Restoration works; (iii) the metering, demanding, charging, billing, distribution of bills, collecting, and depositing of Water Charges by the Operator at rates decided and fixed by the Authority; and (iv) the transfer of the Project/Project Facilities by the Operator to Authority or its nominated agency at the end of the Concession Period by the Transfer Date and includes all works, services and equipment relating to or in respect thereof;

**1.1.66 "Project Assets"** means all tangible and intangible assets relating to the Project including, but not limited to, (a) rights over the Service Area in the form of license, right-of-way or otherwise (to the extent such rights are available with the Authority), (b) Project Facilities; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, Water Charges etc.; (d) the rights of the Operator under the Project Agreements, (e) the Applicable Permits relating to the Project and (f) insurance proceeds;

**1.1.67 "Project Completion"** shall mean the fulfillment of each of the following:

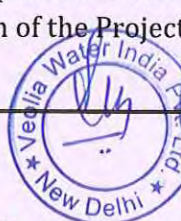
(a) completion of all works in accordance with the Construction Requirements; and

(b) the Completion Certificate has been issued by Authority in accordance with Article 16.

**1.1.68 "Project Completion Schedule"** means the progressive Project Milestones to be prepared on or before the Compliance Date and forming part of Approved Implementation Plan, for completion of the Project.

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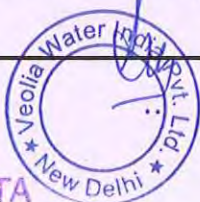


- 1.1.69 "Project Facilities"** shall refer to tangible assets including the Existing Assets, and any other asset comprised therein and / or forming part thereof as on the Appointed Date and shall include new facilities and all assets comprised therein which the Operator may build, provide, refurbish, modify, demolish, alter or procure within the Service Area for provision of, better Services, consistent with Good Industry Practice and in accordance with the terms and conditions of this Agreement, Applicable Laws and Applicable Permits;
- 1.1.70 "Project Management Consultant"** means the Project Management Consultant appointed under/referred to in Clause 7.1;
- 1.1.71 "Project Milestones"** means the project milestones set forth in Project Completion Schedule.
- 1.1.72 "Road Restoration"** shall have the meaning set forth in Clause 17.17.1;
- 1.1.73 "Road Restoration Sub-Contractor"** means the sub-contractor of the Operator (approved by the Authority) for undertaking Road Restoration works and who satisfies the eligibility criteria for road restoration capacity as specified in the RFP.
- 1.1.74 "Road Restoration Sub-Contract Agreement"** means the agreement entered into, in accordance with the terms of this Agreement, between the Operator and the Road Restoration Sub-Contractor in respect of carrying out Road Restoration;<sup>1</sup>
- 1.1.75 "Scheduled Commercial Operation Date" or "Scheduled COD"** shall have the meaning set forth in Clause 16.3.2;
- 1.1.76 "Services"** means, as the context may require, services to be rendered by the Operator for implementation of the Project and to meet the Performance Standards in the Service Area in accordance with the provisions of this Agreement;
- 1.1.77 "Service Area"** shall mean the area comprising of Consumers connected to the existing water supply network under this Project (which is indicatively demarcated in **Schedule-V** hereto) and the new Consumers, which may be added on the

<sup>1</sup> **General Note** – The references/provisions relating to Road Restoration Sub-Contractor and Road Restoration Sub-contract Agreement shall be retained in this Agreement only in case where the Selected Bidder has provided an undertaking to enter into such agreement in terms of the RFP on account of such Bidder's inability to satisfy the Road Restoration Capacity criteria by itself.

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directions of the Authority to the Distribution Network during the Concession Period as per the terms of this Agreement, and shall also include area comprising of Project Facilities;

**1.1.78 "Sub-Contractor"** means the person or persons, as the case may be, with whom the Operator has entered into any of the EPC Contract, the O&M Contract or any other 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 Operator;

**1.1.79 "Substitute Company"** means a company selected by the Lenders and approved by the Authority for substituting the Operator in accordance with the provisions of this Agreement and the Substitution Agreement;

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

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

**1.1.82 "Total Project Cost"** means the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

- (a) the capital cost of the Project, less Equity Support, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon achievement of the Commercial Operation, less Equity Support; and
- (c) a sum equal to the Estimated Project Cost, less Equity Support.

**1.1.83 "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;

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**1.1.84 "Treated Water"** shall mean the potable water, as per 'CPHEEO Standards', supplied by the Operator after requisite treatment for the purpose of being distributed to Consumers in the Service Area; *provided that* the potable water from existing tube wells in the Service Area which is supplied through the Distribution Network shall be considered to be 'Treated Water' till the Scheduled COD;

**1.1.85 "Water Charges"** shall mean the charges/fees payable by the Consumers to the Authority under Applicable Laws and demanded/levied, charged, billed and collected by the Operator on behalf of the Authority pursuant to the terms of this Agreement, as per Water Tariff for supply of Treated Water and as set out by Authority from time to time, including any duties, levies, Taxes, cess or other charges imposed in relation to the Services payable by the Consumers;

**1.1.86 "Water Tariff"** means the rate to be charged and billed by the Operator to Consumers on behalf the Authority, in accordance with the Water Tariff Notification issued by the Authority from time to time in this regard;

**1.1.87 "Water Tariff Notification"** means the notification issued by Authority for collection of Water Charges, as annexed as **Schedule-XVI** and includes subsequent notifications issued from time to time for levy and collection of Water Charges;

**1.1.88 "Works"** mean the works required to be undertaken and performed by the Operator under and in accordance with the provisions of this Agreement relating to design, development of Service Area, construction, completion, testing and commissioning of the Project and Project Facilities (the "**Construction Works**"), and the operation and maintenance, rectifying and remedying of defects of the Project and Project Facilities (the "**O&M Works**"), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project and Project Facilities and any other permanent, temporary or urgent works required under this Agreement.

## **1.2 Interpretations**

**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

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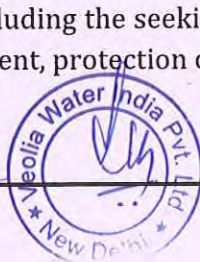




- such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which 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) 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;
  - d) 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;
  - e) references to "construction" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" shall be construed accordingly;
  - f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
  - g) any reference to day shall mean a reference to a calendar day;
  - h) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in New Delhi are generally open for business;
  - i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
  - j) 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;
  - k) the words importing singular shall include plural and vice versa;
  - l) references to any gender shall include the other and the neutral gender;
  - m) "Lakh" means a hundred thousand (100,000) and "Crore" means ten million (10,000,000);
  - n) references to the "winding-up", "dissolution", "insolvency", or "reorganization" 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, reorganization, dissolution, arrangement, protection or relief of debtors.

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- o) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- p) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Management Consultant shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Consultant, as the case may be, in this behalf and not otherwise;
- q) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- r) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- s) 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**").

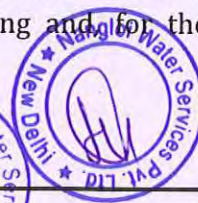
1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Operator to the Authority and/or the Independent Consultant shall be provided free of cost and in two copies, and if the Authority and/or the Independent Consultant is required to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

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

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

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### 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 and errors/discrepancies

1.4.1 This agreement, and all other agreements and documents forming part of 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 shall, in the event of any conflict between them, be in the following order:

- a) this Agreement;
- b) The LOA issued to the Selected Bidder;
- c) Written addenda / clarifications to the RFP;
- d) The RFP;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above and so on.

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

- a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b) between the Clauses of this agreement and the Schedule's, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c) between the written description on the Drawings and the Performance Standards, the latter shall prevail;
- d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- e) between any value written in numerals and that in words, the latter shall prevail.

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## ARTICLE II

### SCOPE & OBJECTIVE OF THE PROJECT

#### 2.1 Scope

**2.1.1** The Project shall be executed by the Operator on the Service Area, which is described in **Schedule-V** of this Agreement. The scope of the Project shall refer to the Improvement and Revamping of Existing Water Supply, Transmission and Distribution Network under the Command area of Nangloi Water Treatment Plant, Delhi which shall include development of Project Facilities, renovation of the Raw Water Feeder Main from Bawana, existing Water Treatment Plant at Nangloi, connecting the entire Service Area with piped network, ensuring migration from intermittent and tanker supply to 24x7 system of water supply within a defined period, and achieve marked improvement in service and operational efficiency by reducing both technical and commercial losses to predefined targets.

**2.1.2** Without prejudice to anything above and as per the terms of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice, the broad scope of the Project shall, *interalia*, include performance and execution by the Operator of:

- (i) development of the Project together with design, engineering, financing, procurement, construction, completion of the Project Facilities as specified in **Schedule-V**, and in conformity with the Performance Standards set forth in **Schedule-XIII**;
- (ii) operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement set forth in **Schedule-XV**; and
- (iii) performance and fulfillment of all other obligations of the Operator 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 Operator under this Agreement, during the entire Agreement Period, including:
  - (a) Rehabilitation of Raw water Feeder Main from Bawana Intake works to Nangloi WTP;
  - (b) Rehabilitation and automation of Nangloi Water Treatment Plant including construction of recycling Treatment unit;
  - (c) Repair, Rehabilitation and Construction of Underground reservoirs (UGRs)/ BPS/ Tube wells;
  - (d) Construction, operation and maintenance of the Najafgarh UGR and Mundka UGR;

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- (e) Installation, replacement, Rehabilitation of Transmission and Distribution system in the Service Area, including installation/replacement/repair of bulk meters wherever required ;
- (f) Works relating to Road Restoration in the Service Area during the Concession Period;
- (g) Supply of Treated Water to consumers in the Service Area on 24x7 basis;
- (h) Replacement of existing service connections and meters for all categories of consumers including replacements of Water Meters to be undertaken as and when required;
- (i) Instrumentation and automation of the entire scheme of Water Supply in the Service Area;
- (j) Operation and Maintenance of Nangloi Water Treatment Plant and Transmission and peripheral mains;
- (k) Operation and Maintenance of UGRs/BPS/Tube wells and distribution network;
- (l) Fixing of system leakages with the aim of reducing Technical Losses from the Water Supply system in the Service Area;
- (m) Taking meter readings/ Billing, and Collection of Water Charges from Consumers in the Service Area and depositing into the designated Project Escrow account;
- (n) Customer Service and Grievance Redressal.
- (o) To set up, maintain and operate, at its own cost and expense all such incidental and necessary facilities and amenities as may be required for the Rehabilitation, Operation and Maintenance of the Project and Project facilities in terms of this Agreement.

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## ARTICLE III GRANT OF CONCESSION

### 3.1 The Concession

**3.1.1** Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Operator the concession set forth herein including the exclusive right, license and authority to develop, operate and maintain the Project (the "**Concession**") for a period of 15 (Fifteen) years commencing from the Appointed Date (the "**Agreement Period**"), and the Operator hereby accepts the Concession and agrees to implement the Project in accordance with the terms and conditions set forth herein and Good Industry Practice.

**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 Operator to:

- (a) To enter upon and use the Service Area during the Agreement Period including all Easementary Rights relating to the Project and access and license to the Project Facilities, including the Existing Assets, so that the Operator, its agents, sub-contractors and any third party it might designate may perform its rights and obligations under this Agreement, including the right to conduct any kind of work in the streets and other public places of the Service Area, in order to have access to the Project Facilities for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) To investigate, study, design, engineer, procure, finance, construct, augment, rehabilitate, operate and maintain the Project Facilities and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement to provide the Services in Service Area;
- (c) finance, engineer, develop construct manage, operate and maintain the Project/Project Facilities and regulate the use thereof by third Persons;
- (d) to supply Treated Water to the Service Area from service reservoirs through Distribution Network, immediately from the Compliance Date, without interruption;
- (e) To read all Consumer meters, bill, charge, demand, bill distribution, collect the Water Charges from the Consumers, connection and re-connection charges including interest thereon, if any, on behalf of Authority and deposit the same in the designated account of the Escrow Account, for the Services effective from the Compliance Date till the Transfer Date;

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- (f) perform and fulfill all of the Operator's obligations under and in accordance with this Agreement;
- (g) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and
- (h) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Project Assets 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 or the Substitution Agreement.

Provided that the rights granted by the Authority to the Operator under the Concession shall be limited to the extent of the rights available with the Authority, and shall be subject to any third party consents to be obtained by the Operator wherever applicable.

  
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DJB Govt. of NCT of Delhi  
Ashok Vihar Over Head Tank N.D.52



  
**SURESH KARKETTA**  
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## ARTICLE IV CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles IV, VI, IX, XXV, XXX and XXXI, 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 Clause 4.1 (the "**Conditions Precedent**").

### 4.1.2 Conditions Precedent for benefit of Operator

The Operator may, upon providing the Performance Security to the Authority in accordance with Article IX, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of **180 (one hundred and eighty) days of the Appointed Date**, and 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 Operator the Easementary Rights to the Service Area in accordance with the provisions of Article VI free from any and all Encumbrances and in accordance with the Applicable Laws;
- (b) procured and handed over to the Operator digitized software which shall be used by the Operator for billing of Water Charges on Consumers;
- (c) issued the Water Tariff Notification and also issued requisite public notices for awareness of the Consumers / public at large regarding engagement of the Operator by the Authority;
- (d) shall furnish a exhaustive list of Consumers, along with the requisite details including period and amount, against which arrears of water charges are outstanding as on the date which is one month prior to the Compliance Date;
- (e) procured all Applicable Permits relating to environmental protection and conservation of the Service Area, if any, and/or procured and granted to the Operator all such Applicable Permits which are under jurisdiction of the Authority to grant;
- (f) appointed/Set-up one or more of its representatives of rank not less than Executive Engineer as Project Coordination Officer/Unit to represent the Authority and for interaction with the Operator within 7 (seven) days of the Appointed Date and who/which shall render the assigned tasks during the

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- term of the Concession. Authority shall convey the particulars of such officer (s)/unit (including any change therein) to the Operator ;
- (g) provide such information, documents and records relating to the Project Facilities that the Authority may have in its possession (including copy of contract of Authority with Water resource department/GNCTD. for drawing of water source, copy of contract of Authority with the DISCOM for supplying power to the water supply system and the tariff details, Details of the existing connections- number and type, consumer wise billing and collections) and which the Operator may reasonably require in the opinion of the Authority, in order to meet the Operator's obligations under this Agreement;
  - (h) issued formal instructions to DJB Assigned Employees to work under the Operator from the Compliance Date and provided all requisite information in respect thereto to the Operator;
  - (i) reviewed and approved the Designs and Drawings and Implementation Plan submitted by Operator within 30 (thirty) days of its submission;
  - (j) ensured arrangements and/or completion of all pre-requisites towards availability of Authority's contribution to the funding requirements of the Estimated Project Cost;
  - (k) shall earmark the land required for construction of Najafgarh UGR; and
  - (l) made accessible to the Operator, at the Operator's cost and expense, the extant software currently deployed for billing of the Consumers for the Services so as to enable creation of a technical database (along with all requisite firewalls and other online security mechanism) for the Project by the Operator with a 24X7 accessibility to the Authority; it being clarified that the Authority shall not be required to provide to the Operator direct access to the Authority's database;

**Provided that** upon request in writing by the Authority, the Operator may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2.

#### 4.1.3 Conditions Precedent for benefit of Authority

The Conditions Precedent required to be satisfied by the Operator. The Operator, within a maximum period of **180 (one hundred and eighty) days of the Appointed Date** , as per terms hereof and to the satisfaction of the Authority, shall have:

- (a) provided Performance Security and the Indemnity Bond to the Authority;
- (b) procured all the Applicable Permits (except those which are specified in Clause 4.1.2 (e)) unconditionally or if subject to conditions, then all such

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- 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, and made available to the Authority a copy of all such Applicable Permits;
- (c) achieved Financial Close for the Project and executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Operator;
- (d) submitted the Implementation Plan and MIS Plan and Design and Drawings and procured approval of the same from the Authority within 180 (one hundred and eighty) days of Appointed Date. The Implementation Plan shall, in compliance of the provisions of this Agreement: (i) contain detailed plan setting out the schedule for closure in a phased manner of all existing tube wells in the Service Area and connection to the Distribution Network, by the Scheduled COD; and (ii) set out in detail the planning for carrying out the project development activities, the construction plan and standards, schedules (including schedule of drawings), procedures, in accordance with the standards, specifications and milestones set forth in this Agreement;
- (e) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model as approved by the Lenders, duly attested by a Director of the Operator, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders;
- (f) delivered to the Authority from {the Selected Bidder/ Consortium Members} confirmation, in original, of the correctness of their representations and warranties set forth in this Agreement;
- (g) NOT USED;
- (h) delivered to the Authority a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the validity and enforceability of the provisions thereof, in a form and substance satisfactory to the Authority;
- (i) submitted a legally binding Road Restoration Sub-Contract Agreement, in a form and manner satisfactory to the Authority, entered into between the Operator and the Road Restoration Sub-Contractor, for undertaking Road Restoration in accordance with this Agreement; provided that Road Restoration Sub-Contractor shall satisfy the eligibility criteria for road restoration capacity specified in terms of the RFP;
- (j) prepared and submitted to the Authority, satisfactory work plan for Road Restoration together with details of the works to be carried out in relation thereto;
- (k) at its cost and expense, shall have developed, installed, tested, commissioned, operated and maintained and integrated (with the extant

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billing software of the Authority) a real-time technical database for the Project with a 24X7 accessibility to the Authority (identified designated officials) along with all requisite firewalls and other online security mechanism;

- (I) Operator shall arrange orientation program at his cost for at least four DJB engineers who will work on project. The orientation program includes site visit and study of at least one project area submitted under each of the references under clause 3.2.9.2(a), (b) & (c) respectively of Vol-I, ITB. The site visit & orientation programme shall be minimum 7 days at project site. The orientation program shall be completed before the Compliance Date;
- (m) The Operator shall within two weeks of Appointed Date, appoint/depute two key experts in consultation with the Authority in connection with the implementation of the Project. The Operator shall ensure that the two appointed key experts are available in connection with the implementation of the Project till COD.

The Operator shall further ensure that the aforesaid key experts appointed/deputed by Operator in consultation with the Authority, shall periodically and forthwith the expiry of every fifteen days period commencing from the respective date of their appointment/deputation, make themselves available in person for meetings with the Authority in order to apprise them of the progress achieved by them respectively, with regard to the work assigned to them.

The two key experts to be appointed/deputed by the Operator as above shall be (i) NRW Reduction Expert and (ii) Network design/ modeling /analysis Expert, with relevant qualifications as given below:

- (i) NRW Reduction Expert: Minimum 15 years of experience in water sector and more particularly in NRW reduction, leak detection, water loss reduction, creation of DMAs and MNF analysis
- (ii) Network design/modelling/analysis Expert: Minimum 15 years of experience in water sector and more particularly in using GIS based models for network analysis on Water GEMS/equivalent platform, experience in model calibration, analysis of hydraulic model for leakage analysis is preferred.

**Provided that** upon request in writing by the Operator, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.3. For

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the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

#### **4.1.4 Conditions Precedent for benefit of both Authority and Operator**

On or prior to one hundred and eighty (180) days from the Appointed, the following conditions shall have been satisfied:

- (a) completion of the Joint Survey of the Service Area and finalization of an inventory of the existing Project Facilities, the condition of the Project Assets including details of the network relevant for operations and inventory of assets being handed over to the Operator including the alignment of the pipelines and the location of the Existing Assets and the designs thereof along with exact demarcation of the Service Area. The details arrived at from the Joint Survey shall be attached as Schedule VA of this Agreement;
- (b) the Escrow Agreement shall have been executed between the Authority, Operator and the Escrow Bank.

**Provided that** the Authority and the Operator may, by mutual agreement, waive or extend the time period for compliance of any of the Conditions Precedent specified in Clause 4.1.4.

**4.1.5** Each Party shall make all reasonable endeavors 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.

**4.1.6** 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 fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 (and Clause 4.1.4 to the extent such non-fulfilment is solely attributable to the Authority) within the period specified in respect thereof, and (ii) the delay has not occurred as a result of failure or breach of

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the obligations under this Agreement by the Operator, or due to Force Majeure, then the Authority shall pay to the Operator Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security.

Provided that the Authority shall not be liable for any Damages or penalty whatsoever in the event of failure by Authority to comply or fulfill the condition specified in Clause 4.1.2 (k) (*earmarking of land for Najafgarh UGR*) within the period stipulated in Clause 4.1.2. It is agreed that in the event of such failure by Authority to comply with Clause 4.1.2(k), the Operator shall be eligible for an extension in the Scheduled COD as approved by the Authority, and the any actual loss incurred by Operator on account of such Authority's failure shall be compensated based on Extraordinary Rate Adjustment in accordance with this Agreement.

#### 4.3 Damages for delay by the Operator

In the event that (i) the Operator does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 (and Clause 4.1.4 to the extent such non-fulfillment is attributable to the Operator) within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, then the Operator shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

#### 4.4 Termination on account of Non-fulfillment of Conditions Precedent (other than in Clause 4.1.4)

##### 4.4.1 Termination by Authority

- (i) If the Conditions Precedent have not been satisfied on or before the expiry of the period equivalent to consummation of a maximum of 20% (twenty percent) of the Performance Security, as described in Clause 4.3, and the Authority has not extended the said period or waived, fully or partially, such conditions, then the Authority may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement by giving thirty (30) days notice in writing to the Operator. Provided that if within such period of thirty (30) days the Operator has satisfied such Conditions Precedent, then any notice for termination as aforesaid issued by the Authority shall be deemed to be withdrawn and this Agreement shall

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continue in full force and effect as if such notice was not issued by the Authority. and upon expiry of such notice this Agreement shall stand terminated.

- (ii) Upon Termination on account of non-fulfillment of Conditions Precedent by Operator, the Authority shall appropriate the Performance Security and shall also be entitled to be indemnified as determined under the Indemnity Bond.

#### 4.4.2 Termination by Operator

- (i) If the Conditions Precedent have not been satisfied on or before the expiry of the period equivalent to consummation of a maximum of 10% (percent) of the Performance Security, as described in Clause 4.2, and the Operator has not extended the said period or waived, fully or partially, such conditions, then, subject to the Operator having satisfied and fulfilled all Conditions Precedent that the Operator is required to satisfy under this Agreement, the Operator may, notwithstanding anything to the contrary contained in this Agreement, give a prior written notice of (60) days to the Authority for termination of this Agreement. Provided that if within such period of sixty (60) days the Authority has satisfied such Conditions Precedent, then any notice for termination as aforesaid issued by the Operator shall be deemed to be withdrawn and this Agreement shall continue in full force and effect as if such notice was not issued by the Operator. Provided further that the Operator shall not be entitled to terminate this Agreement on account of failure by Authority to comply or fulfill the condition specified in Clause 4.1.2 (k) (*earmarking of land for Najafgarh UGR*). It is agreed that in the event of such failure by Authority to comply with Clause 4.1.2(k), the Operator shall be eligible for an extension in the Scheduled COD as approved by the Authority, and the any actual loss incurred by Operator on account of such Authority's failure shall be compensated based on Extraordinary Rate Adjustment in accordance with this Agreement.
- (ii) In the event of Termination on account of non-fulfillment of Conditions Precedent by the Authority in accordance with this Clause 4.4.2, the Authority shall release the Performance Security and Indemnity Bond to the Operator and refund the Project Development Expenses without any interest thereon. The Operator shall not be entitled to receive any Termination Payment from the Authority.

#### 4.5 Termination on account of Non-fulfillment of Conditions Precedent under Clause 4.1.4

Except as otherwise provided under Clause 4.2 and Clause 4.3, in the event that the Conditions Precedent specified in Clause 4.1.4 have not be satisfied (unless the

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Authority and the Operator have mutually agreed to any waiver thereof) within a period of 180 (one hundred and eighty) days from the Appointed Date, or within such extended time period mutually agreed between the Authority and the Operator, as applicable, then either the Authority or the Operator may terminate this Agreement by giving twenty-one (21) days notice in writing to the Party. In the event of any termination under this Clause 4.5, neither Party shall have any liability in respect of the termination of this Agreement including payment of any damages, and the Authority shall release the Performance Security and Indemnity Bond furnished by the Operator

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## ARTICLE V DISCLAIMER

### 5.1 Disclaimer

- 5.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Service Area, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined 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 and/or Project Management Consultant 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 Operator confirms that it shall have no claim whatsoever against the Authority and/or Project Management Consultant in this regard.
- 5.1.2 The Operator acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 5.1.1 above and hereby acknowledges and agrees that the Authority and/or Project Management Consultant shall not be liable for the same in any manner whatsoever to the Operator, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 5.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 5.1.1 above shall not vitiate this Agreement, or render it voidable.
- 5.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the 'matters set forth in Clause 5.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority and/or Project Management Consultant to give any notice pursuant to this Clause 5.1.4 shall not prejudice the disclaimer of the Authority and/or Project Management Consultant contained in Clause 5.1.1 and shall not in any manner shift to the Authority and/or Project Management Consultant any risks assumed by the Operator pursuant to this Agreement.

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5.1.5 Except as otherwise expressly provided in this Agreement, all risks relating to the Project shall be borne by the Operator. The Authority and/or Project Management Consultant shall not be liable in any manner for such risks or the consequences thereof.

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## ARTICLE VI

### ACCESS TO SERVICE AREA & EASEMENTARY RIGHTS

#### 6.1 The Service Area

The Service Area of the Project shall comprise the area described in **Schedule-V** and in respect of which the Easementary Rights shall be provided and granted by the Authority to the Operator as a licensee under and in accordance with this Agreement. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Service Area shall be construed as references to all such sites and locations required for implementation of the Project.

#### 6.2 Licence, Access and Easementary Rights

**6.2.1** The Authority, as a Conditions Precedent, hereby grants to the Operator access to the Service Area for carrying out any surveys and investigations that the Operator may deem necessary, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Operator on or about the Service Area pursuant hereto in the event of Termination or otherwise.

**6.2.2** In consideration of this Agreement and the covenants and warranties on the part of the Operator herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from the Compliance Date, Easementary Rights, leave and licence rights in respect of the land (along with any buildings, constructions or immovable assets, Existing Assets, thereon), to the extent the Authority has the rights in respect thereto, comprised in the Service Area which is described, delineated and shown in **Schedule-V** 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 exclusively towards implementation of the Project, and for no other purpose whatsoever.

Notwithstanding anything to the contrary contained in this Agreement, the Operator acknowledges that if for the purposes of discharge of its obligations or exercise of its rights under this Agreement, it is required to access or enter upon any

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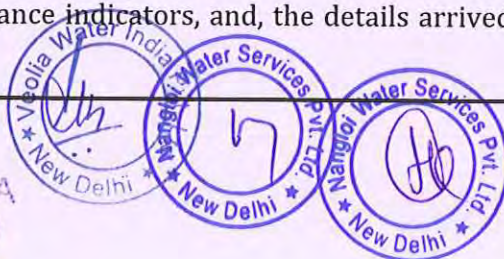


premises/area or undertake any activity for which permission from a third party is required, the Operator shall obtain such third party permission at its own costs and expense. The Authority may render reasonable assistance to the Operator in obtaining such third party permission, in accordance with Applicable Laws.

- 6.2.3** The licence, access and Easementary Right granted by this Agreement to the Operator shall always be subject to existing rights of way and the Operator shall perform its obligations in a manner so as to ensure minimal disruption and/or nuisance.
- 6.2.4** It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, 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 Operator or its sub-licensees, the licence in respect of the Service Area shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 6.2.5** The Operator hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Operator a transfer or surrender of the licence 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 Operator consents to it being registered for this purpose.
- 6.2.6** The Operator shall neither assign, transfer or sublet or create any lien or Encumbrance on this Service Area, Licensed Premises hereby granted or on the whole or any part of the Project/Project Facilities nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.
- 6.3 Procurement of the Service Area**
- 6.3.1** Pursuant to Clause 4.1.4, the Authority and the Operator shall, on a mutually agreed date and time but prior to the Compliance Date, inspect and jointly survey the Service Area and prepare a memorandum containing an inventory of the Service Area, including the Existing Assets, on or attached to the Service Area their condition and status, current performance indicators, and, the details arrived from

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which shall be attached hereto as **Schedule-VA** to this Agreement (the "**Inventory**"). Signing of the Inventory in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 6.2.2, be deemed to constitute a valid licence and Easementary Rights to the Operator for free and unrestricted use 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.

- 6.3.2** On and after signing the memorandum referred to in Clause 6.3.1, and until the Transfer Date, the Operator shall maintain a round-the-clock vigil over the Project Facilities and shall ensure and procure that no encroachment thereon takes place on and from the Compliance Date, and in the event of any encroachment or occupation on any part thereof, the Operator shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

**6.4 Project Facilities to be free from Encumbrances**

Subject to the provisions of Clause 6.3, the Project Facilities shall be made available by the Authority to the Operator pursuant hereto free from all Encumbrances and occupations and without the Operator 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 Project Facilities 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 Operator accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Facilities.

**6.5 Special/temporary right of way**

Save as otherwise excepted under this Agreement, the Operator 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 Operator 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.

**6.6 Access to the Authority and Project Management Consultant**

The licence, Easementary Rights in respect of the Service Area granted to the Operator hereunder shall always be subject to the right of access of the Authority and the Project Management Consultant and their employees and agents for

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inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### 6.7 Geological and archaeological finds

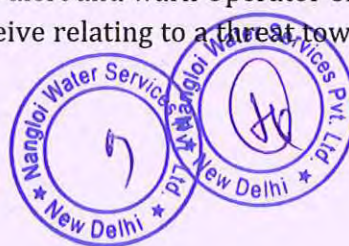
It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Operator under this Agreement and the Operator hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Service Area shall vest in and belong to the Authority or the concerned Government Instrumentality. The Operator 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 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 Operator hereunder shall be reimbursed by the Authority. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

#### 6.8 Actions in support of Operator

The Authority hereby agrees subject to the other provisions of this Agreement on and effective from the Compliance Date:

- (a) to handover the operation and maintenance of the Project Facilities to the Operator for implementation of the Project;
- (b) that the alignment of the pipelines and the location of the Existing Assets and the design thereof are of fundamental importance to the Project and undertakes that it or any Government Agency within its jurisdiction or control or acting on its behalf shall not require the alteration of such alignment and/or location, during the Agreement Period;
- (c) to ensure the maintenance of law and order at the Service Area and/or Project Facilities, and provide, at Operator's cost and expense such police personnel, as may be necessary, for the maintenance or reinstatement of law and order at the Project Facilities and further alert and warn Operator of any official information or intelligence it may receive relating to a threat towards the security of the Project Facilities.

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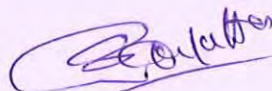
## 6.9 Extension of Service Area

Forthwith the Scheduled COD and achievement of KPIs/Performance Standards in respect of Project Facilities in terms of the Agreement, the Operator shall be entitled to submit a proposal to the Authority for extension of the Service Area. Further, in the event Authority approves the said proposal submitted by the Operator, the Operator shall have the right to undertake such extension of Service Area, at its own cost.

The Authority shall reserve the right to increase or decrease the geographical coverage of Service Area, not exceeding 5% (five percent) of the Service Area, subject always to the assured availability of raw water by the Authority in addition to raw water available under this Agreement. Any change in the geographical coverage of Service Area under this Clause shall be reckoned as Change of Scope and shall be dealt as per the terms of this Agreement.

Further, in the event that the Authority extends the Service Area, so as to require the Operator to construct, operate and maintain the Project Facilities in respect of such extended Service Area, the provision of the Services to such part of the Service Area as may be specified, shall continue to be subject to the rights and obligations given to Operator under this Agreement. The Operator shall exercise its rights and perform its obligations under this Agreement in relation to the Project and render Service in such extended Service Area as if it was a part to it originally.

  
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## ARTICLE VII PROJECT MONITORING

### 7.1 Appointment of Project Management Consultant (PMC)

7.1.1 The Authority has appointed the consortium of M/s Infrastructure Leasing & Financial Services Limited and M/s Stup Consultants Private Limited, under a competitive tendering process and from the approved panel of Ministry of Finance, GOI, as the Transaction Advisors and Project Management Consultants for the Project to perform functions and duties set forth in **Schedule-VIII** for the Project ("PMC").

7.1.2 The PMC shall consult and seek approvals from the Authority, wherever deemed necessary, for discharge of its duties and functions set forth in **Schedule-VIII**.

### 7.2 Payments to PMC

All fees, costs, charges and expenses payable to the PMC in accordance with the terms of its appointment (collectively "**the Fee**") shall be paid by the Authority exclusive of applicable taxes under the Applicable Laws, including Service Tax.

### 7.3 Duties and Functions of the PMC

The PMC shall discharge its duties and functions in accordance with the terms of reference set forth in **Schedule-VIII**.

### 7.4 Monitoring Committee

The Authority may constitute a Monitoring Committee (MC) consisting of the following representatives:

- i. Class-I Officer / Nominated representative of MCD;
- ii. Nominated Officer from GNCTD;
- iii. Nominated Member of Legislative Assembly from service area on rotation basis;
- iv. One nominated member from Non Govt. Organisation (NGO).
- v. Four members from the Authority (One officer each from Revenue and Finance side, two officers from technical side not below the rank of Superintending Engineer). One of the the Authority members shall be Member Secretary as administrative incharge of MCA; and

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- vi. One member from Residents Welfare Associations (RWA) within the Service Area;

for purposes of smooth monitoring of the progress of the Project implementation by the Operator and provide any recommendation to the Operator in the Project implementation, as per the provisions of this Agreement.

The Operator's representative will be permanent invite for MC meeting to represent operator in the meeting, as and when MC requires such representation

It is clarified that the Monitoring Committee's recommendation shall be communicated to the Operator through the Authority.

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## ARTICLE VIII THE AUTHORITY'S EMPLOYEES

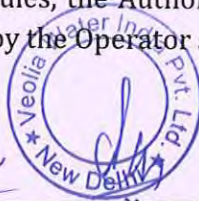
8. From the Compliance Date, the Authority shall, (in compliance with its internal applicable procedures) offer and make available for assignment such employees of the Authority of each designation as specified and listed in **Schedule-VII ("DJB Assigned Employees")** to the Operator for duties in Service Area. The Operator shall have the option of either accepting all or any of the DJB Assigned Employees at its sole discretion. However, for the sake of clarity it is expressly agreed by the Operator that:
- (a) in respect of such DJB Assigned Employees which have not been accepted by the Operator, the Authority shall be under no obligation whatsoever to provide any replacement or substitute in respect of such employees. The Authority shall provide the Operator with details of each such DJB Assigned Employee; and
  - (b) Notwithstanding anything to the contrary contained herein and notwithstanding whether the Operator having accepted all or less than all of the DJB Assigned Employees, the whole of the cost in respect of such DJB Assigned Employees in terms of and as specified in Schedule VII and Article XIII hereof shall be recovered by the Authority from the Operator by way of deductions from the monthly payments to be made to the Operator by the Authority.

### 8.1 Notification to Assign the Authority Employees

- 8.1.1 The Authority shall issue a letter to each of selected Authority's employees advising him/her of the proposed assignment to the Operator under the Assignment Rules for the purposes of the Agreement. The Operator agrees that the Authority shall be under no obligation, under any circumstances whatsoever, to make any changes to the existing terms of employment of the DJB Assigned Employees due to the assignment except as provided under the Assignment Rules.
- 8.1.2 The transfer of the DJB Assigned Employees shall commence on the Compliance Date. Subject to the Assignment Rules, the Authority, may at its discretion, further extend this period if so requested by the Operator supported by cogent reasons.

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**8.1.3** The DJB Assigned Employees shall continue to be employees of the Authority and shall continue to be governed by service conditions as applicable to other employees of the Authority from time to time.

It is hereby clarified that not before 1 (one) year from the assignment of such DJB Assigned Employee, the Operator can offer absorption to DJB Assigned Employees on its own rolls at terms not less than its respective extant gross remuneration with the Authority; provided however that: (i) such offer has been accepted by the respective DJB Assigned Employee; and (ii) any absorption of such DJB Assigned Employee shall be subject to the prior written permission/ no-objection from the Authority.

## **8.2 Management of DJB Assigned Employees**

- (a) The Operator shall have day-to-day line management responsibility for all DJB Assigned Employees from the date the DJB Assigned Employees are assigned to it.
- (b) The Authority shall ensure that the DJB Assigned Employees directly report to and receive instructions from the Operator and that the Operator shall have full powers and responsibility for the management of the DJB Assigned Employees.

## **8.3 Deduction of Costs from Operator Payments**

The Operator agrees and acknowledges that, with effect from the third anniversary of the Appointed Date the costs of the DJB Assigned Employees as mentioned in Schedule VII shall be included in and deemed to form part of the Net Operator Rate. The Authority hereby agrees and acknowledges that it shall bear the costs of the DJB Assigned Employees during the period commencing from Appointed Date until the third anniversary of Appointed Date. The Authority shall with effect from Scheduled COD deduct from the monthly Operator Payment payable to the Operator the costs of the DJB Assigned Employees in accordance with Clause 13.2.

Nothing contained herein shall oblige the Authority, in any manner whatsoever, to pay any wages, increment, bonus, compensation or any other employee benefit or entitlement to the persons directly employed by the Operator.

## **8.4 Labour Laws**

The Operator shall comply with all the relevant labour laws that apply to the DJB Assigned Employees, and shall duly afford to them all their legal rights. The Operator shall keep the Authority informed and, where necessary, consult with the Authority in respect of any discussions between the DJB Assigned Employees and

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the relevant trade unions and any actual or threatened industrial disputes which could prevent or interfere with the proper fulfillment of the Operator's obligations under this Agreement.

#### 8.5 Staff re-allocation

The Operator shall provide notice reasonably in advance and consult with the Authority regarding any organizational changes the Operator plans to introduce, which may affect the re-allocation of DJB Assigned Employees and the Operator shall have to take into consideration any submissions made by the Authority or the DJB Assigned Employees (individually or collectively). The Operator however shall not change the nature of the duties of the DJB Assigned Employees.

#### 8.6 Health and Safety

The precautions, no less onerous than that already in existence and being maintained by the Authority on the Compliance Date, shall be taken by the Operator to ensure the health and safety of the DJB Assigned Employees whilst performing duties required by the Operator under this Agreement. The Operator shall, in collaboration with and to the requirements of the local health authorities, ensure that at all times medical staff, first aid facilities and sick bay service and accommodation are and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics. The Operator shall maintain such records and make such reports (if any) concerning health, safety and welfare of persons, and damage to property as are required under the Applicable Laws.

#### 8.7 Removal of DJB Assigned Employees

The Operator may, by written notice to the Authority, request after providing adequate reasoning, to remove (or cause to be removed) any DJB Assigned Employee employed in the Service Area in order for the Operator to properly fulfill its obligations under the Agreement. If appropriate, the Authority, at its sole discretion, may assign (or cause to be assigned) a suitable replacement of the equivalent designation. Any failure of the Authority in deputing replacement for the removed employee does not release the Operator from its obligations in ensuring the Services in the Service Area. The Operator shall make such alternate arrangements of substitution without additional costs or adjustment of payment.

#### 8.8 Policies

- (a) The Operator shall establish policies in relation to the DJB Assigned Employees that will allow the Services to be performed safely, reliably in

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accordance with the provisions of this Agreement and consistent with the standards of a reasonable and prudent contractor and shall get the said policies approved by the Authority before implementing the same. In no event will the Operator establish any policy that is contrary to any existing policy of the Authority and in the event there is a conflict between the Authority's policy and the Operator's policy, the Authority's policy will prevail.

- (b) The compliance with the above policies shall be subject to any waivers which may be requested by the Operator from time to time and which may be granted by the Authority, under Applicable Laws to ensure the efficient and effective operation and maintenance of the Project Facilities, provision of the Services by the Operator, and proper fulfillment of the Operator's obligations under this Agreement.

#### 8.9 Disorderly Conduct

The Operator shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the DJB Assigned Employees, and to preserve peace and protection of persons and property in the neighborhood of the Service Area against such conduct.

#### 8.10 Safety Precautions

The Operator shall comply with all applicable safety regulations in its access arrangements and operations in the Service Area.

#### 8.11 Operator's Employees

It is expressly understood between the Parties that the employees, other than the DJB Assigned Employees, who are directly employed by the Operator shall not have any employment relationship with the Authority and Operator's performance under this Agreement does not entitle such employees to claim employment or continuation of employment with the Authority on expiry or at any time before or after expiry of this Agreement or earlier termination of this Agreement. The Operator should at all times assume full legal and social responsibility towards such employees as employer and shall not by its acts or omission provide any direct or indirect indication to the employees regarding their employment or chances of employment directly with the Authority.

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## ARTICLE IX PERFORMANCE AND O&M SECURITY

### 9.1 Performance Security

9.1.1 The Operator shall, for the performance of its obligations hereunder during the Development Period, provide to the Authority in accordance with and within the time period stipulated in Article IV of this Agreement, an irrevocable and unconditional guarantee from a scheduled commercial Bank (acceptable to the Authority) for a sum equivalent to **Rs. 2,40,000,000/- (Rupees Twenty Four Crores Only)** in the form set forth in **Schedule-I** (the "Performance Security"). Until such time the Performance Security is provided by the Operator 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 as per the terms of the RFP.

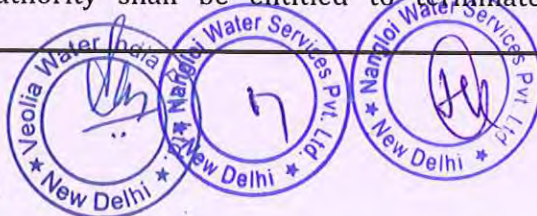
9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Operator within the period as prescribed under per Article IV of this Agreement, the Authority, unless it has consented to extend the date, will be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 9.2 Appropriation of Performance Security

9.2.1 Upon occurrence of an Operator Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the aforesaid time of 30 (thirty) days, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this

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Agreement in accordance with Article XXVI. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Operator shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Operator Default, and in the event of the Operator 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 XXVI.

- 9.2.2 The decision of the Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator. The Operator specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through encashment of the Performance Security under this Agreement and that no document or any action shall be required other than the Authority's written demand in this behalf.

### 9.3 Validity Period and Release of Performance Security

The Performance Security shall be in force and valid from the date of issue thereof and until one (1) month following the issuance of Completion Certificate as per terms of this Agreement; *provided that* the validity of the Performance Security shall be extended by Operator to meet the requirements of milestones for the Project and/or delays in Project Completion, as and when required by the Authority.

*Provided further that*, subject to there being no outstanding claims by the Authority on the Operator, the Performance Security shall be released upon expiry of one (1) month following the issuance of Completion Certificate.

### 9.4 O&M Security

- (a) The Operator shall, within three (3) months prior to the achievement of COD, furnish a rolling bank guarantee issued by scheduled bank (acceptable to the Authority) in favour of the Authority for an amount equivalent to **Rs. 1,20,000,000/- (Rupees Twelve Crores Only)** and in the format as may be approved by the Authority (the '**O&M Security**'). The O&M Security shall remain in force and valid from the date which is three (3) months prior to the achievement of COD and until 3 (Three) months from the Transfer Date. The amount of the O&M Security shall stand enhanced by 15% (fifteen percent) every third year of its subsistence during the Operations Period and which shall be replenished at least 15 (fifteen) days prior to the expiry of such rolling O&M Security in force.

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For avoidance of doubt, it is clarified that, O&M Security shall be treated as security for due performance of the obligations hereunder by the Operator during the Operations Period after achievement of COD.

**(b) Failure to provide the O&M Security**

- (i) The Operator's failure to provide the O&M Security in accordance with the provisions of this Clause 9.4 above shall (i) entitle the Authority to call in and forfeit the Performance Security and retain and appropriate the same; and (ii) constitute a Operator Event of Default.
- (ii) The Operator shall ensure that the O&M Security is valid and in force at all times during the Operations Period and until 3 (Three) months from the Transfer Date.

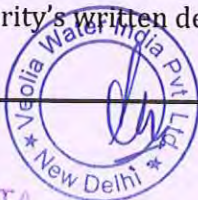
**(c) Appropriation of the O&M Security**

In the event of the Operator being in default of the due and punctual performance of its O&M obligations under Article XVII this Agreement or under any other provisions of this Agreement during the Operations Period, the Authority shall be entitled to invoke the O&M Security, whether in part or in full, without any notice to the Operator. Upon such encashment and appropriation from the O&M Security, the Operator shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the O&M Security, and in case of appropriation of the entire O&M Security provide a fresh O&M Security within the aforesaid time of 30 (thirty) days, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article XXVI. Upon replenishment or furnishing of a fresh O&M Security, as the case may be, as aforesaid, the Operator shall be entitled to a Cure Period of 90 (ninety) days for remedying the default, and in the event of the Operator not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate the entire O&M Security as Damages, and to terminate this Agreement in accordance with Article XXVI.

The decision of the Authority as to any breach/delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Operator. The Operator specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by the Authority under this Agreement is required to be provided in connection with any demand made by the Authority to recover such compensation through encashment of the O&M Security under this Agreement and that no document or any action shall be required other than the Authority's written demand in this behalf.

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(d) **Release of O&M Security**

Subject to the provisions hereof, the Authority shall return the O&M Security to the Operator within two (2) weeks from the expiry of 3 (three) months from the Transfer Date; ***provided that***, there are no outstanding claims of the Authority on the Operator and/or Operator is not in default of this Agreement.

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## ARTICLE X ESCROW ACCOUNT

### 10.1 Escrow Account

10.1.1 The Authority shall, prior to the Compliance Date, open and establish an Escrow Account with a scheduled Bank (the “Escrow Bank”), in accordance with this Agreement and the Escrow Agreement.

10.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “Escrow Agreement”) to be entered into amongst the Operator, the Authority and the Escrow Bank which shall be substantially in the form set forth in **Schedule-II**.

### 10.2 Deposits into Escrow Account

The Operator shall deposit or cause to be deposited the following inflows and receipts into the following sub-accounts of the Escrow Account:

CONSTRUCTION SUB-ACCOUNT	REVENUE SUB ACCOUNT
❖ all funds constituting the Financial Package, including Equity in accordance with the Implementation Phasing Plan;	❖ all Water Charges collected from the Consumers, including Arrears ( <i>on a daily basis</i> )
❖ Grant from the Authority; and Costs of Road Restoration payable by Authority under Article XI.	❖ Authority's contribution towards shortfall in Operator Payments in accordance with Clause 13.7.
	❖ any other revenues from or in respect of the Project, including deposits, capital receipts or insurance claims etc

### 10.3 Withdrawals during Concession Period

10.3.1 The Authority shall, at the time of opening the Escrow Account, give irrevocable instructions, in terms of the 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:

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CONSTRUCTION SUB-ACCOUNT (in the order of priority)	REVENUE SUB ACCOUNT (in the order of priority)
<ul style="list-style-type: none"><li>❖ All statutory Taxes under Applicable Laws due and payable by the Operator for and in respect of the Construction Requirements of the Project;</li></ul>	<ul style="list-style-type: none"><li>❖ All statutory taxes under Applicable Laws due and payable by the Operator for and in respect of the O&amp;M Requirements of the Project, along with payments towards sewerage charges;</li></ul>
<ul style="list-style-type: none"><li>❖ All payments relating to Construction Works and Road Restoration work for the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements.</li></ul>	<ul style="list-style-type: none"><li>❖ Payments of electricity dues, bulk water charges, in relation to the Project.</li></ul>
<ul style="list-style-type: none"><li>❖ Balance on the instructions of the Authority.</li></ul>	<ul style="list-style-type: none"><li>❖ Operator Payments, net of and after deducting: (i) costs towards any electricity consumption beyond the guaranteed power consumption in the Financial Bid submitted by the Selected Bidder; and (ii) all Damages payable to the Authority; (For avoidance of doubt, the costs of DJB Assigned Employees determined in accordance with Clause 13.2, shall be deducted from the monthly Operator Payments with effect from the third anniversary of the Appointed Date).</li></ul>
	<ul style="list-style-type: none"><li>❖ Balance as per the instructions of the Authority.</li></ul>

**Provided that** in the event amount directed to sub-account for Operator Payments after debiting bulk Water Charges and electricity dues is less than Operator Payments (after deducting for costs towards any electricity consumption beyond the guaranteed power consumption in the Financial Bid submitted by the Selected

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Bidder, the costs of DJB Assigned Employees determined in accordance with Clause 13.2, and any Damages/ penalties payable to Authority), then the shortfall thereof will automatically flow in from the Reserve Fund which in turn will be topped up by the Authority in accordance with Clause 13.7.

**Provided further that** Sewerage Charges from the Revenue sub-account will also be part of the billing, but they will be set aside / credited to Authority's sub-account under the Escrow Account

**10.3.2** The Operator shall not in any manner modify the order of payment specified in Clause 10.3, except with the prior written approval of the Authority and any modification thereof shall constitute an Operator Event of Default.

**10.3.3** It is hereby clarified that the Escrow Bank shall, on express instructions of the Authority, keep as reserve an amount equivalent to net Operator's Payments for 2 (two) months in a separate Sub-Account.

#### **10.4 Withdrawals upon Termination**

**10.4.1** 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:

- (a) all Taxes due and payable by the Operator for and in respect of the Project;
- (b) Termination Payments in accordance with the provisions of this Agreement;
- (c) O&M expenses incurred by the Authority, if any;
- (d) all Damages due to the Authority;
- (e) outstanding Operator Payments;
- (f) any other payments required to be made under this Agreement;
- (g) balance, if any, as per the instructions of the Authority.

**10.4.2** The Parties undertake and agree that the amounts deposited in the Escrow Account shall be utilized only for purposes and the manner as specified in Escrow Agreement.

**10.4.3** The provisions of this Article X and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 10.4.1 have been discharged.

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## ARTICLE XI

### GRANT & COSTS FOR ROAD RESTORATION WORKS

#### 11.1 Grant

**11.1.1** The Authority agrees to provide to the Operator cash support by way of grant upto 70% (seventy percent) of the Estimated Project Cost in accordance with the provisions of this Article (the "Grant"); ***provided always*** that the Grant shall not, in any circumstances whatsoever, exceed in aggregate an amount of **Rs. 338.81 Crores (Three Hundred Thirty Eight Crores Eighty One Lakhs only)**.

**11.1.2** The Grant shall be disbursed to the Operator by way of Equity Support in accordance with the provisions of Clause 11.2.

#### 11.2 Equity Support

**11.2.1** Subject to the conditions specified in this Clause 11.2, the Grant shall be credited to the Escrow Account and shall be applied by the Operator for meeting the Estimated Project Cost towards fulfilling the Construction Requirements as per the terms of this Agreement (the "Equity Support").

**11.2.2** The Equity Support shall not exceed the sum exceeding 70% (seventy percent) of the Estimated Project Cost, and shall be further restricted to a sum specified in Clause 11.1.1.

**11.2.3** Equity Support shall be due and payable to the Operator after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 30 (thirty) days of receiving a request from the Operator along with necessary particulars.

**11.2.4** In the event of occurrence of an Operator's Event of Default, disbursement of Equity Support shall be suspended till such time Operator's Event of Default has been cured by the Operator to the satisfaction of the Authority.

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*[Signature]*

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### 11.3 Road Restoration Costs

**11.3.1** As on the date of this Agreement, the estimate for costs of Road Restoration towards the Construction Requirements during the Development Period is **Rs. 203.91 Crores (Rupees Two hundred Three Crores Ninety One Lakhs Only)**. The Operator shall in the work plan for Road Restoration submitted under Clause 4.1.3 (j), specify the estimate of the costs to be incurred for Road Restoration towards the Construction Requirements during the Development Period. The Operator shall take into account any issues raised by the Authority in respect of such work plan and the Operator shall revise the estimate accordingly.

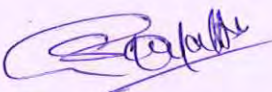
**11.3.2** Subject to the provisions hereof, the Authority shall bear the costs incurred by the Operator during the Development Period for Road Restoration towards Construction Requirements. Road Restoration charges towards Construction Requirements for new connections upto Expected New Consumer Connections shall be borne by Authority.

It is expressly agreed by the Operator that all costs and expenses for Road Restoration after Development Period shall form part of the O&M Works of the Operator and shall be deemed to be comprised in the Net Operator Payment. No additional payment shall be claimed by Operator from the Authority in this regard.

**11.3.3** The costs for Road Restoration towards the Construction Requirements during the Development Period borne by the Authority in terms of this Clause, will be released to the Operator from the designated Escrow Account on the basis of details of Works executed, furnished by the Operator at intervals specified by the Authority, within 21 (twenty one) days of requisite certification by the Authority or any agency appointed by the Authority.

**11.3.4** In the event of occurrence of an Operator's Event of Default, payment of Road Restoration costs by the Authority under this Clause shall be suspended till such time Operator's Event of Default has been cured by the Operator to the satisfaction of the Authority.

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## ARTICLE XII

### BILLING AND COLLECTION

#### 12.1 Billing and Collection Mechanism

**12.1.1** The Authority shall provide the Operator the access (without charges) to the computerized billing and collection system/software. The Operator shall not be allowed to create a separate database for the Consumers within the Service Area for the purpose of billing and collection. However the Operator will be required to feed in the Consumer meter data and generate bills on behalf of the Authority. In case the Operator requires any additional MIS reports that are not available through the software the Authority shall make the same available to the Operator on request. Further in terms of the Concession Agreement the Operator shall have to bear the cost of hardware and software including licenses and permit that may be required for establishing, operating and maintaining the connectivity between the Authority's software and the system set up by the Operator for handling billing and collection.

**12.1.2** For the purpose of billing the Consumers against the supply of Treated Water, the Operator shall, in accordance with the Applicable Laws and then extant rules and regulations of the Authority, carry out the following activities:

- (a) From the Compliance Date, the Operator shall continue to issue water bills as per the then prevailing Water Tariff Notification;
- (b) Record the water meter readings of the Consumers at the end of every month from the date of installation of the meters and assess the water charges at the prevailing water rates and advise the Consumer and the Authority on the amounts so as to provide maximum time of 2 (two) billing cycles to the Consumer to undertake any repairs in internal plumbing of the Consumer Property to minimize wastage of water supplied;
- (c) Raise Water Bill on the Consumers as per the Billing Cycle, in the name of the Authority, based on the volume of Treated Water consumed at the Water Charges set out by the Authority for the consumption, from the second month onwards from the Compliance Date and collect Water Charges from the Consumers. The Operator shall raise the Water Bills in the format specified or stipulated by the Authority;
- (d) Setup kiosks at appropriate locations in consultation with the Authority within the Service Area, for collection of payments made by the Consumers against the Water Bill (the "**Consumer Payments**") with such time frames as specified by the Authority ("**Payment Date**");
- (e) issue receipts to the consumers upon receipt of Consumer Payments

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- (f) credit the Consumer Payments all monies received or collected by the Operator including connection charges, security deposits from Consumers, in the Escrow Account within the next Business Day from the receipt of such payment(s) from the Consumer;
- (g) prepare a list of the Consumers, in Service Area, who have not made the Consumer Payments and submit the same to the Authority within five (5) days from the Payment Date and carry out disconnections of Service to such Consumers as per terms hereof;
- (h) the bills generated by the Operator should indicate that the Consumer Payment is collected on behalf of the Authority and if payment is not made by the Payment Date the Operator shall submit the information to the Authority about defaulter Consumers;
- (i) collect one time connection charges from new connections at the rates as specified by the Authority and deposit the same along with Consumer Payments;
- (j) submit monthly, quarterly and annual statements of billing and collection in the Service Area to the Authority allowing real-time, online access (with rights to extract relevant data) to the Authority to check the Project MIS and billing, collection and escrow position at the Authority's Head Quarter at all times.

**12.1.3** The Operator shall deposit all monies received or collected by the Operator including connection charges, security deposits from Consumers and Consumer Payments in Escrow Account and shall not retain any amounts with it. The Operator Payment from the Authority shall not be adjusted against the Consumer Payments, connection charges and security deposits. Any retention of any or all of Consumer Payments, connection charges and security deposits by the Operator shall attract Liquidated Damages in accordance with the clause 12.1.4 given below.

**12.1.4** In the event of the Operator's failure to deposit Consumer Payments or any other charges/ monies in the Escrow Account within the next Business Day from the receipt of such payment from the Consumer, the Operator shall pay to the Authority, Liquidated Damages at Rs 10,000/- (Rupees Ten Thousand only) per bill per day of delay.

**12.1.5** It is clarified that the Operator shall collect payments made by only Consumers within the Service Area. The Operator agrees and undertakes that it shall not receive or collect payments from any consumers outside the Service Area. In the event the Operator collects or receives payments from a consumer outside the Service Area,

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*[Signature]*

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the Operator shall pay to the Authority, Liquidated Damages at Rs.10,000/- (Rupees Ten Thousand only) per bill, and further, for each day of delay in the Operator depositing such payment with the Authority, the Operator shall pay Liquidated Damages at Rs.10,000/- (Rupees Ten Thousand only) per bill per day of delay.

## 12.2 Handling of revenues

12.2.1 The Operator shall be liable for any loss, theft or destruction of the revenues collected under this Article XII by reason of negligence or willful misconduct of the Operator, and the Operator's sub-contractors.

12.2.2 If there is any loss, theft or destruction of revenues which occurs after collection but prior to the deposit of revenues into the Escrow Account, the Operator shall pay the amount of such loss, theft or destruction to Escrow account forthwith and without recourse to any defense or objection.

12.2.3 The Operator shall put in place, prior to the receipt of any of the revenues, security measures necessary to protect such revenues from loss, theft or destruction.

## 12.3 Disconnections

Subject to Applicable Laws, in the event that a Consumer satisfies the relevant conditions in the water supply regulations made in this behalf which warrant the water supply connection of the said Consumer to be disconnected in accordance with the relevant Applicable Laws, the Operator shall be entitled to request the Authority to disconnect the said water connection, which request the Authority shall not unreasonably deny and the Authority shall within fifteen (15) business days of receipt such request for disconnection from the Operator, convey its decision in this regard in writing to the Operator.

After necessary orders have been passed by an officer authorized for the purpose by the Authority for disconnection of any such Consumer's water supply connection, the Operator shall in accordance with the applicable regulations and prescribed procedures, if any, undertake the disconnection of such water connection.

However, before making any request to the Authority for permission to disconnect the water supply connection, the Operator shall make all reasonable efforts to collect outstanding dues and arrears from the defaulting Consumers as per extant DJB rules and regulations. The Operator shall state the ground for seeking such disconnection in its request along with the report on the efforts made by the

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Operator towards recovery of such outstanding dues of the defaulting Consumer as mentioned under this Clause 12.3.

The Authority shall, if any of the ground mentioned in the relevant Applicable Laws for exercising the power of disconnection is made out, be required to authorize requisite actions by the Operator towards undertaking such disconnections in accordance with the relevant Applicable Laws. The Authority shall provide all assistance to the Operator in relation to completing and furnishing the required documentations/orders/permissions etc (including issuance of any recommendation letter to the law enforcement agencies) as may be required by the Operator for lawfully undertaking the disconnection of such water connection.

Further the Operator shall prior to undertaking such disconnection, notify the Consumer in writing, of the outstanding amount due from such Consumer and a final opportunity for making the payment of such outstanding amount failing which the Operator shall be entitled to undertake the disconnection in terms of the permissions given by the Authority.

A report of all disconnections undertaken shall be provided by the Operator to the Authority on a quarterly basis within a period of seven days from the date of commencement of the following quarter.

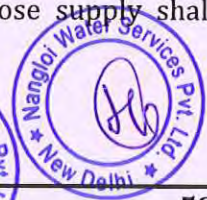
Such Consumer shall, subject to making the payments of applicable reconnection charges to the Authority, be eligible to apply for a reconnection only upon rectification of the default due to which the connection of such Consumer was disconnected and upon payment in full of the whole of the outstanding amounts (including all previously billed amounts which are outstanding and late payment charges as prescribed in the water supply regulations and/or the agreement for supply water entered into with such Consumer or the Community, as the case may be). Reconnection shall be carried out in accordance with Clause 17.16. It is made clear that reconnection charges shall be paid by consumer to the Authority.

However, in the event the Authority does not in terms of this clause 12.3 give its approval for disconnection of the defaulting Consumer within the specified time frame or in the event the Authority directs the Operator to continue the supply to the defaulting Consumer by giving written instructions, the liability of the Authority towards Operators Payment for such defaulting Consumers whose supply shall continue on account of either;

(a) non approval for disconnection by the Authority; or

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(b) on direction of the Authority to continue the water supply;

Shall be as if the amount recoverable from such defaulting Consumer has been fully billed and recovered in respect of water consumed after the earlier of the following:

- (i) Expiry of fifteen days time period for giving of approval for disconnection by the Authority; or
- (ii) Date of direction from the Authority for continuation of water supply;

## 12.4 Performance Incentives & Penalties

**12.4.1** In consideration of having achieved better performance and delivery better than the mandatory Performance Standards in the provision of Services on the following pre-identified parameters, the Operator would be paid an incentive (the "**Performance Incentive**") calculated in the manner as provided under **Schedule-X**:

- (a) Collection of past Arrears (accrued before the Compliance Date) of the Authority, provided, however that if the past arrears are collected after announcement of some scheme by the Authority commensurate adjustment to be made in the payment of Performance Incentive to be shared with the Operator;
- (b) reduction in power consumption against the power guarantee for the respective year, as guaranteed by the Selected Bidder in its Financial Bid; any Performance Incentive occasioned on account of such reduction in power consumption shall be shared between the Authority and the Operator in the proportion of 50:50 respectively.

**12.4.2** The Authority shall levy and the Operator shall be liable to make payments in the form of Damages on account of the following computed in the manner mentioned respectively against:

- (a) Failure by Operator to deposit Consumer payments into the designated Escrow Account within 1 (one) working day from date of receipt of Consumer Payments, an amount computed at rate of @ Rs. 10,000 per day of delay for each bill;
- (b) If Operator collects/ receives payment from consumer outside the Service Area, then an amount at Rs.10,000/-(Rupees Ten Thousand only) per bill, and further, for each day of delay in the Operator depositing such payment with the Authority, the Operator shall pay Liquidated Damages at Rs.10,000/-(Rupees Ten Thousand only) per bill per day of delay.
- (c) Clearing of construction debris, removal from service area all surplus construction machinery and materials, waste materials (including without

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limitation, hazardous material and waste water) rubbish and other debris (including without limitation accident debris), an amount computed at the rate of Rs 5,000/- (Rupees Five Thousand) for each day of delay after the earlier of the period prescribed under this Agreement and the Applicable Laws;

- (d) Power Consumption more than as guaranteed in the Financial Bid, then an amount equivalent to the cost of extra power consumption shall be deducted from the Operator Payments;
- (e) Failure to achieve Performance Standards as per the terms of this Agreement, and as more particularly indicated under Schedule-XIII hereto, then such Damages/ penalties specified in that Schedule for non-conformance to the Performance Standards.
- (f) If the works relating to Road Restoration is not carried out by the Operator, (i) within the time frame stipulated in Clause 17.7.1(i); or (ii) in accordance with the specifications, quality, standards and conditions as provided in Clause 17.7.1(ii), then an amount calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security (or, O&M Security, as the case may be) for each day of delay or failure, subject to a maximum period of 90 (ninety) days, after which it shall be deemed to constitute an Operator Event of Default.
- (g) such other Damages payable by the Operator, as is expressly set forth in this Agreement.

It is clarified that the Authority shall be entitled to setoff or deduct from the Operator Payments all Damages payable by the Operator.

  
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## ARTICLE XIII OPERATOR'S PAYMENTS

### 13.1 Definitions

Subject to the provisions of this Agreement and in consideration of the Operator accepting the rights under this Agreement, as per Clause 9 (2) and Clause 64 of the DWB Act and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set-forth in this agreement, the Authority agrees and undertakes to pay to the Operator fees determined in the manner set-out below (hereinafter referred to as "**Operator Payment**"). The capitalized terms used under this Article XIII and not defined otherwise shall have the meaning attributed to them, under clause 1.1 above.

### 13.2 Mechanism of Operator Payment

#### 13.2.1 Monthly Payment to Operator

The Operator Payment in a particular month 'm' of accounting year 'n' (1st April to 31st March) shall be computed as per the following formula:

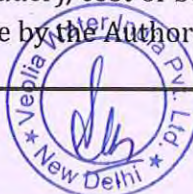
$$OP_m = (NOR_n \times VB_m \times ACE_{n-1}) - P_m + I_m - S_m$$

#### Where:

- $OP_m$  = Operator's Payment (in Rupees) for month 'm'
- $NOR_n$  = **Net Operator Rate** ("NOR") applicable for the accounting year 'n', which is equivalent to the rate expressed in Indian Rupees per kilolitre of water billed (Rs./kl), quoted by the Selected Bidder in its Financial Bid and accepted by the Authority, duly adjusted for the accounting year 'n' pursuant to the provisions contained in Article XIV of this Agreement. The Net Operator Rate quoted in the Financial Bid will be deemed to factor in all O&M expenses (including chemicals, costs of the DJB Assigned Employees, expenses incurred on all and any works including digging of roads and pits, and Road Restoration after expiry of Development Period) incurred by the Operator, recovery of its capital investment and returns from the investment, including repayment of debt with interest and all costs and charges. The Net Operator Rate will, however, exclude the cost of energy / electricity (only to the extent of the maximum guaranteed power consumption specified in the Financial Bid of the Selected Bidder), cost of bulk raw water for operation of the Project, which shall be borne by the Authority.

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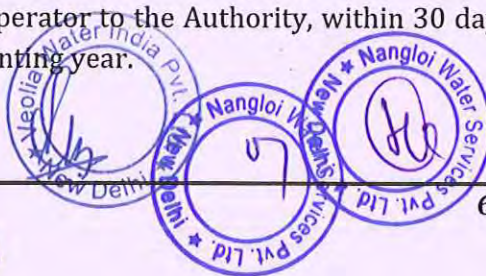
- $S_m$  = costs of DJB Assigned Employees for month 'm' in a particular accounting year with effect from third anniversary of Appointed Date. The cost of DJB Assigned Employees for the purposes of this Concession Agreement shall be as set forth in Schedule VII hereto.
- $P_m$  = All Damages levied on the Operator in accordance with the provisions of this Agreement, including Liquidated Damages, penalties on account of Power Guarantee, etc. in the month 'm'
- $I_m$  = All incentives payable to the Operator in accordance with the provisions of this Agreement, including incentives on account of Power guarantee, penal interest payable by the Authority, if any, etc. in the month 'm'.
- $VB_m$  = aggregate "Volume of water Billed" by the Operator to Consumers in month 'm'. For the period from the Compliance Date upto the COD,  $VB_m$  shall be calculated on the basis of 35,000 kilolitres/day Or aggregate Volume of Water Billed by the Operator to Consumers in the month 'm', whichever is higher. The aggregate Volume of Water Billed in a particular month shall be determined on the basis of records submitted by the Operator to the Authority within 7 (seven) days from the end of that month.
- $ACE_n$  = "Actual Collection Efficiency" achieved by the Operator in Accounting Year "n" which will be calculated as  $ACE_n = C_n/B_n$

**Where:**

- o  $B_n$  = Aggregate amount (Rs.) billed by the Operator to Consumers at Water Tariff applicable for the Accounting Year "n", from 1st April upto 31st March of Accounting Year "n".
- o  $C_n$  = Aggregate amount (Rs.) collected by the Operator from Consumers from 1st April upto 31st March of Accounting Year "n".
- o For the period from the Compliance Date upto the COD,  $ACE_n$  shall be calculated on the basis of 80% Or Actual Collection Efficiency achieved by the Operator in the year 'n', whichever is higher.
- o The Actual Collection Efficiency for a particular accounting year shall be calculated on the basis of the records of aggregate billing and collection submitted by the Operator to the Authority, within 30 days from the end of the said accounting year.

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- o The collection efficiency will not include recovery of any arrears that was outstanding before the Compliance Date. The treatment of arrears outstanding before the Compliance Date shall be governed by the provisions of Clause 12.4.1 (a).
- o  $ACE_{n-1}$  = "Actual Collection Efficiency" achieved by the Operator in Accounting Year "n-1" on the same principle as  $ACE_n$ .

For each payment to be made to the Operator, the Operator will also be entitled to claim reimbursement of applicable taxes (including Service Tax, if any) from the Authority over and above the Operator's Payment. It is clarified that the Operator will not be entitled to claim reimbursement of Corporate Income Tax from the Authority.

### 13.2.2 Annual Operator Payment

The Operator Payment in an accounting year 'n' (1st April to 31st March) shall be computed as per the following formula:

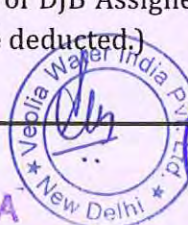
$$OP_n = (NOR_n \times VB_n \times ACE_n) - P_n + I_n - S_n$$

Where:

- $OP_n$  = aggregate Operator's entitlement (Rs.) for entire accounting year 'n'
- $NOR_n$  = **Net Operator Rate (NOR)** applicable for the accounting year 'n', which is equivalent to the rate expressed in Indian Rupees per kilolitre of water billed (Rs./kl), quoted by the Selected Bidder in its Financial Bid and accepted by the Authority, duly adjusted for the accounting year 'n' pursuant to the provisions contained in Article XIV of this Agreement. The Net Operator Rate quoted in the Financial Bid will be deemed to factor in all O&M expenses (including chemicals, costs of the DJB Assigned Employees, expenses incurred on all and any works including digging of roads and pits, and Road Restoration after expiry of Development Period) incurred by the Operator, recovery of its capital investment and returns from the investment, including repayment of debt with interest and all costs and charges. The Net Operator Rate will, however, exclude the cost of energy / electricity (only to the extent of the maximum guaranteed power consumption specified in the Financial Bid of the Selected Bidder), cost of bulk raw water for operation of the Project. (It is clarified that from the monthly Operator Payments the amount representing the salaries of DJB Assigned Employees determined in terms of the Financial Bid, shall be deducted.)

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- $VB_n$  = aggregate "Volume of water Billed" by the Operator to Consumers in accounting year 'n'. For the period from the Compliance Date upto the COD,  $VB_m$  shall be calculated on the basis of 35,000 kilolitres or aggregate Volume of Water Billed by the Operator to Consumers in the accounting year 'n', whichever is higher. The aggregate Volume of Water Billed in a particular accounting year shall be determined on the basis of records submitted by the Operator to the Authority within 30 days from the end of that accounting year.
- $S_n$  = costs of DJB Assigned Employees for Accounting Year 'n'. The cost of DJB Assigned Employees for the purposes of this Concession Agreement shall be as set forth in Schedule VII hereto.
- $P_n$  = Sum of all Damages levied on the Operator in accordance with the provisions of this Agreement, including Liquidated Damages, penalties on account of Power Guarantee, etc. for accounting year 'n'.
- $I_n$  = Sum of all incentives payable to the Operator in accordance with the provisions of this Agreement, including incentives on account of Power guarantee, penal interest payable by the Authority, if any, etc. for accounting year 'n'.
- $ACE_n$  = "Actual Collection Efficiency" achieved by the Operator in Accounting Year "n" which will be calculated as  $ACE_n = C_n/B_n$

**Where:**

- o  $B_n$  = Aggregate amount (Rs.) billed by the Operator to Consumers at Water Tariff applicable for the Accounting Year "n", from 1st April upto 31st March of Accounting Year "n".
- o  $C_n$  = Aggregate amount (Rs.) collected by the Operator from Consumers from 1st April upto 31st March of Accounting Year "n".
- o For the period from the Compliance Date upto the COD,  $ACE_n$  shall be calculated on the basis of 80% Or Actual Collection Efficiency achieved by the Operator in the year 'n', whichever is higher.
- o The Actual Collection Efficiency for a particular accounting year shall be calculated on the basis of the records of aggregate billing and collection submitted by the Operator to the Authority, within 30 days from the end of the said accounting year.

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- o The computation of collection efficiency will not include recovery of any arrears that was outstanding before the Compliance Date. The Operator shall be incentivized separately for recovery of arrears as per the provisions under this Agreement.

### 13.2.3 Annual adjustments in Operator Payment

At the end of each Accounting Year the reconciliation of payments shall be carried out based on the following formula.

$$\text{Adjustment amount (Rs.)} = OP_n - \sum OP_m$$

Where

- $OP_n$  = aggregate Operator's entitlement (Rs.) for entire accounting year 'n'
- $\sum OP_m$  = Summation of monthly Operator's Payments (Rs.) for all months of the accounting year 'n'

The Parties agree that such adjustment will be completed within the close of the first quarter of the subsequent Accounting Year.

### 13.3 Operator to raise Invoices on the Authority

All monthly payments to the Operator will fall due only after the completion of a calendar month, and subject to the Operator submitting an invoice for the same alongwith supporting documents as required under the provisions of Clause 13.4 to the Authority.

The Authority, after reviewing the same will determine the amount to be paid to the Operator, and issue instructions to the Escrow Bank, with a copy to the Operator, to make the requisite payment to the Operator.

The Authority agrees to make the payments within 15 (fifteen) working days of Authority of submission of invoice with all requisite documents by the Operator. In case of delays in payment beyond such 15 (fifteen) working days, the Operator will be entitled to charge interest at the rate of SBI Base Rate plus 2% on the outstanding amount (net of disputed claims, if any).

### 13.4 Submission of Statement of Performance by the Operator

The Operator shall submit to the Authority a Statement of Performance once at the end of every month for the "Operator Payment". The Operator shall submit to the Authority, its statement in duplicate addressed to the Authority, (with an additional copy of the same to the PMC), for the same; along-with supporting evidence of

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achievement of Performance Standards and records of billing and collection, throughout the Agreement period.

### 13.5 Calculation of the amount to be transferred to the Revenue Sub Account

In accordance with the provisions of Article XI the Authority shall open a Revenue sub-account under the Escrow Account which will be utilized to meet the liability of Operator Payments under this Agreement.

The Revenue sub-Account shall act as the receptacle for all payments received from Consumers from the Service Area from the Compliance Date upto the Transfer Date, and deficit amounts if any to be contributed by the Authority into the Revenue sub-account in case of shortfall.

Within 15 (fifteen) days of the opening of the Escrow Account, the Authority shall transfer to the Revenue Sub Account an amount equivalent to two months of Operator Payment (estimated on the basis of 35,000 kilolitres per day) alongwith a provision equivalent to two months of average electricity charges and Bulk raw Water charges, collectively called as "**Reserve Fund**".

The amounts lying to the credit of the Reserve Fund shall, during the Concession Period, be duly enhanced / adjusted every quarter to ensure the payments due to the Operator and electricity charges and Bulk raw Water charges, on the same principle of two months requirement in accordance with this Agreement. In case the fund is utilized for meeting the payment obligations, the same shall be replenished by the Authority within a maximum period of 15 (fifteen) days from intimation of such shortfall by the Escrow Bank.

Any failure by the Authority to meet the above obligations for 3 (three) occasions in an Accounting Year shall be deemed as an Authority Event of Default.

### 13.6 Internal Transfer of funds by DJB and Reconciliation

- i. In the event that a Consumer belonging to the Service Area, pays /deposits his bills/dues in any other account other than the designated Revenue sub account and /or at any collection centre outside Service Area, the Authority shall trace such consumers and transfer the paid amount into the Revenue sub account within a maximum of 60 days from the day of deposit by consumers with reconciliation thereof..

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- ii. This practice shall be enforced from the date of establishment of the Revenue sub account wherein the consumers pertaining to the Service Area shall be separately traced in advance and indexed accordingly by the Authority and the said records shall be handed over to the Operator.

### 13.7 Shortfall

In the event that the monthly collection amounts in any calendar month are less than the aggregate of the amounts required to be paid to the Operator for such calendar month in accordance with the provisions of this Article XIII, the Escrow Bank shall give a notice of the same to the Authority, with a copy to the Operator (the "**Shortfall Notice**"). Upon receipt of such Shortfall Notice, the Authority shall transfer the shortfall amount set forth in the Shortfall Notice from the Reserve Fund and deposit such amount in the Revenue Sub Account (the "**Shortfall Funds**") promptly and in any event no later than thirty (30) days from when such monies would first fall due to the Operator in accordance with the provisions of this Article XIII. In the event that the Authority fails to deposit such Shortfall Funds in accordance with this Para, such failure of the Authority shall constitute an Authority Event of Default.

### 13.8 Direct Payment by Authority

- I) The Direct Payment shall include all the payments made by the Authority towards energy / electricity, cost of bulk raw water and salaries of DJB Assigned Employees towards implementation and operation of the Project; it being clarified that costs of power consumption over and above the guaranteed maximum power consumption as specified in the Financial Bid of the Selected Bidder, shall be deducted from the Operator Payments;
- II) In addition to meeting the electricity cost, subject to any adjustment as mentioned above in respect of electrical equipments/ installations deployed in the Service Area for the purpose of this Project, the Authority shall also be responsible for meeting any additional cost towards any enhancement of existing load capacity or any new connection in respect of any new or augmented facility (including but not limited to providing the security deposit/ advance payment or any other amount that may be required to be paid/ deposited with the concerned service provider).

### 13.9 Tax Deducted at Source

The Operator's remuneration shall be liable for Tax Deducted at Source (TDS) as per rate applicable, by statutory law, as applicable, in force as on date.

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## ARTICLE XIV STANDARD OPERATOR RATE ADJUSTMENT & ESCALATION OF CAPEX

### 14.1 Standard Operator Rate Adjustment

With effect from Bid Due Date, on 1st of April of each financial year the Operator shall be entitled for an automatic annual revision of Net Operator Rate to reflect the variation in the Wholesale Price Index (WPI) and Consumer Price Index (CPI) in the previous financial year, determined in accordance with the following formula; provided however for the purposes of this sub clause:

- (i) the first financial year shall be the period commencing from Bid Due Date upto 31<sup>st</sup> March of the immediately following calendar year; and
- (ii) in first financial year, the WPI and CPI data published forthwith the Bid Due Date shall be the initial WPI and CPI data.

$$\text{Net Operator Rate (NOR}_n\text{)} = \text{NOR}_0 \{ 0.25 + 0.45 (\text{CPI}_n/\text{CPI}_0) + 0.30 (\text{WPI}_n/\text{WPI}_0) \}$$

Where:

**NOR<sub>n</sub>** is the Net Operator Rate for the Accounting Year for which the revision is being determined;

**NOR<sub>0</sub>** is the Net Operator Rate for the previous Accounting Year;

**CPI<sub>n</sub>** is CPI for Accounting Year 'n'


**CPI<sub>0</sub>** is CPI for Accounting Year immediately proceeding the Accounting Year 'n'

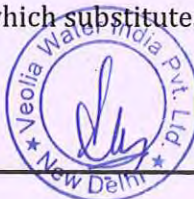
**WPI<sub>n</sub>** is WPI for Accounting Year 'n'

**WPI<sub>0</sub>** is WPI for Accounting Year immediately proceeding the Accounting Year 'n'

For the purpose of this Agreement, the expression "CPI" means the Consumer Price Index published by the Reserve Bank of India for Industrial Worker for the city of Delhi and shall include any index which substitutes the CPI.

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For the purpose of this Agreement, the expression "WPI" means the annual Wholesale Price Index for all commodities as published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India and shall include any index which substitutes the WPI.

#### 14.2 Escalation of CAPEX

It is hereby clarified that for escalation in CAPEX occasioned by increase in prices of the major input items mentioned under this clause 14.2, the following provisions shall be applicable:

**[A] For the Item Nos 2,3,4 and 6 in Schedule XI**

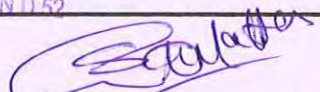
No Escalation shall be paid against CAPEX for works mentioned under above item nos. of Schedule XI.

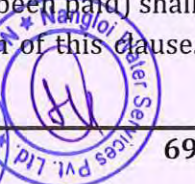
**[B] Payment due to Increase / Decrease in Prices / Wages after Receipt of Tender for Works mentioned under item nos 1,5,7 and 8 of Schedule XI**

If the prices of materials and / or wages of labor required for execution of the Work increase, the Operator shall be compensated for such increase as per provisions detailed below and the Estimated Project Cost shall accordingly be varied, subject to the condition that such compensation for escalation in prices shall be available only for the Work done during the stipulated Concession Period; **provided that**, no escalation shall be paid for Works delayed owing to reasons attributable to the Operator and/or Force Majeure. Such compensation for escalation in the prices of materials and labour, when due, shall be worked out based on the following provisions:

- (i) The base date for working out such escalation shall be 21st September 2011.
- (ii) The cost of Work on which escalation will be payable shall be reckoned as 85% of the cost of Work as per the bills, running or final, excluding any Work for which payment is made at prevailing market rates. From this amount the value of materials supplied or services rendered at fixed charges and proposed to be recovered in the particular bill, shall be deducted before the amount of compensation for escalation is worked out. In the case of materials brought to site for which any secured advance is included in the bill the full value of such materials as assessed by the Authority's engineer-in-charge (and not the reduced amount for which secured advance has been paid) shall be added to the cost of work shown in the bill for operation of this clause.

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Similarly, when such materials are incorporated in the work and the secured advance is deducted from the bill, the full assessed value of the material originally considered for operation of this clause should be deducted from the cost of the work shown in the bill, running or final.

(iii) Components of materials, labour and P.O.L. shall be as indicated below:

Sl No	Item No in Schedule XI	Material Component	Labour Component	P.O.L Component
1	1,5 and 7	65%	35%	5%
2	8	90%	5%	5%

(iv) The compensation for escalation for materials and P.O.L. shall be worked out as per the formula given below:

(a) **For P.O.L.**

$$V_P = 0.85 * W * (K_P / 100) * (P_1 - P_0) / P_0$$

Where

$V_P$  = Amount (in INR) of price variation for the POL component

$W$  = Cost of Work done during the quarter under consideration

$K_P$  = Percentage of POL component as indicated above

$P_0$  = All India Wholesale Price Index for Fuel, Oil & Lubricant as published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India as valid on 21<sup>st</sup> September 2011.

$P_1$  = Average of All India Wholesale Price Index for Fuel, Oil & Lubricant as published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India for the quarter under consideration.

(b) **For Labour**

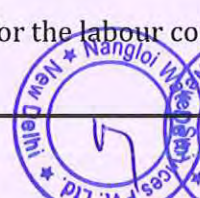
$$V_L = 0.85 * W * (K_L / 100) * (L_1 - L_0) / L_0$$

Where;

$V_L$  = Amount (in INR) of price escalation for the labour component

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W = Cost of Work done during the quarter under consideration

K<sub>1</sub> = Percentage of labour component

L<sub>0</sub> = Consumer Price Index for Industrial workers, published in the Reserve Bank of India Bulletin, as applicable to Delhi area as valid on 21<sup>st</sup> September 2011

L<sub>1</sub> = Average of monthly Consumer Price Index for Industrial workers, published in the Reserve Bank of India Bulletin, as applicable to Delhi area for the quarter under consideration.

**(c) For Material**

$$V_M = 0.85 * W * (Km/100) * (M_1 - M_0) / M_0$$

Where;

V<sub>M</sub> = Amount (in INR) of price variation for the Material component

W = Cost of Work done during the quarter under consideration

K<sub>m</sub> = Percentage of Material component as indicated above

M<sub>0</sub> = All India Wholesale Price Index for all items as published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India as valid on 21<sup>st</sup> September 2011.

M<sub>1</sub> = Average of All India Wholesale Price Index for Materials as published by Office of Economic Adviser, Ministry of Commerce and Industry, Government of India for the quarter under consideration.

**[C] For Electrical and Instrumentation Equipment**

For electrical equipment prices payable to the Contractor shall be subject to adjustment during performance of contract as per IEMA price variation adjustment formula. Escalation will be paid on the basis of the rates mentioned in the Excise duty gate pass.

**[D] For Mechanical Equipment**

For Mechanical equipment prices payable to the Contractor shall be subject to adjustment during performance of contract as per IPMA price variation adjustment formula. Date for adjustment for electro mechanical part shall be – four months prior to date of dispatch. Escalation will be paid on the basis of the rates mentioned in the Excise duty gate pass.

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- [E] In case of any permissible reimbursements pursuant to escalation in costs in terms of this Clause 14.2, the same shall be borne and reimbursed by the Authority to the Operator in terms hereof.

### 14.3 Extraordinary Rate Adjustment

Upon the occurrence of one or more acts or events listed in this Clause 14.3 "Extraordinary Service Rates Adjustment"), the Net Operator Rate shall be adjusted, in accordance with this Clause 14.3.

#### 14.3.1 Grounds for Extraordinary Service Rates Adjustment (GEA)

In addition to any event which is or is specifically deemed to be a ground for Extraordinary Service Rates Adjustment under any other Clause of this Agreement, grounds for Extraordinary Service Rates Adjustment shall also exist upon the occurrence of any of the following circumstances:

- (i) Authority and the Operator mutually agree that an amendment should be made to any obligations of the Operator in respect of Services to be provided pursuant to this Contract;
- (ii) Occurrence of a Change in Law that affects or is likely to affect the cash flows of the Operator.
- (iii) Authority has been or will be in receipt of a grant or below market financing from any source that is used to finance or offset any Expenditures, where such grant or below market financing was not known or anticipated at the Appointed Date, or at the last Rate Rebasing Date, whichever is more recent; and the benefit of such below market grant or financing is made available to and availed of by the Operator. The benefits of lower cost / grant shall be passed on to the Authority.
- (iv) Reduction in the volume of water billed reduces by equal to or more than 10% of the average monthly billing during the immediately preceding 24 months period and such reduction in billing continues for a period of not less than 6 months prior to the date of the Operator making a request for Extraordinary Service Rates Adjustment. Any request by the Operator for Extraordinary Service Rates Adjustment shall be supported by detailed reasons and circumstances attributable to such reductions (and which are not attributable to the Operator).

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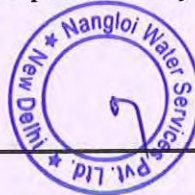
For the avoidance of doubt, each of the aforesaid grounds for Extraordinary Service Rates Adjustment and any event which is deemed to be a ground for Extraordinary Service Rates Adjustment under any other provision of this Contract shall be an independent ground for Extraordinary Service Rates Adjustment.

**14.3.2 Procedure for determination of an Extraordinary Service Rates Adjustment**

- (i) If the Operator or Authority is of the reasonable opinion that a ground for Extraordinary Service Rates Adjustment has occurred, then the Operator or Authority, as the case may be, shall notify the other Party that a ground for Extraordinary Service Rates Adjustment has occurred ("GEA Notice"), whereupon the senior representatives of the Operator and Authority shall attempt to reach a settlement through mutual consultation with respect to whether a ground for Extraordinary Service Rates Adjustment has occurred within thirty (30) Days of the GEA Notice.
- (ii) Not later than forty five (45) days following the agreement of the Operator and the Authority, the Operator and the Authority shall attempt to reach a settlement through mutual consultation with respect to the quantum of Extraordinary Service Rates Adjustment that is required to be made.
- (iii) Upon determination by the Operator and the Authority or failing mutual agreement, upon determination in accordance with Clause 30, as the case may be, the Extraordinary Service Rates Adjustment determined pursuant to this Clause 14.3.2 shall for the purposes of calculation of the Operator Payments, be effective from such date as may be mutually agreed. Such date shall be agreed at the time of determining the quantum of Extraordinary Service Rates Adjustment.
- (iv) In the event the Operator and the Authority agree on the factum of occurrence of a ground for Extraordinary Service Rates Adjustment, pending determination of the quantum of adjustment required where such the ground for Extraordinary Service Rates Adjustment has already impacted the cash flows of the Operator or is likely to impact the cash flows of the Operator prior to determination of such quantum of adjustment, the Operator shall be entitled to such interim adjustment to the Net Operator Rate which would enable the Operator to continue performing its obligations hereunder without any interruption as a consequence of the occurrence of such ground for Extraordinary Service Rates Adjustment.

In the event of disagreement the Authority or Operator may seek recourse under Clause 30.

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#### 14.3.3 Interim decision by Arbitrator

For the avoidance of doubt, the arbitrator appointed pursuant to Clause 30, shall be entitled to render an interim award pending a final determination on whether one or more grounds for Extraordinary Service Rates Adjustment have occurred and, if so, the appropriate level of Extraordinary Service Rates Adjustment within forty five (45) Days of the referral being made.

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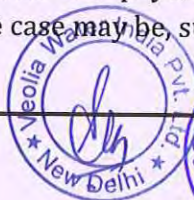
## ARTICLE XV

### ADDITIONAL CAPITAL EXPENDITURE (CAPEX)

- 15.1 If at any time before six (6) months prior to the Scheduled COD, the Operator determines that certain additional CAPEX for unforeseen conditions is required, beyond that provided in the scope as part of the RFP, to meet the targeted service level benchmarks under Performance Standards, it shall submit a detailed proposal along with due justification to the Authority and PMC; provided that no such submission made by the Operator shall be entertained by the Authority unless it is received by the Authority at least before six (6) months prior to the Scheduled COD. The proposal shall be jointly reviewed by the Authority and PMC within 90 (ninety) days. The Authority shall, on justifiable and reasonable grounds as per the Good Industry Practice, approve, modify or reject the proposal submitted by the Operator.
- 15.2 The aggregate maximum ceiling on the additional CAPEX in terms of Clause 15.1 above shall be 5% (five percent) of the Total Estimated Project Cost (computed without reference to any escalations under Article XIV and to be assessed with reference to the BOQ rates). The Operator shall be compensated for the investment of such additional CAPEX in accordance with Clause 15.4.
- 15.3 Upon acceptance of proposal by the Authority, the Operator shall be required to execute and complete such works pertaining to the additional CAPEX, prior to the COD.
- 15.4 The Authority will have an option of compensating the Operator for the works pertaining to additional CAPEX undertaken by the Operator, in either of the following form (which option, the Authority may exercise in its sole discretion):
- a) Annuity payments, over and above its normal Operator's payment /remuneration, so determined as to achieve an IRR of SBI Base Rate for the balance Concession Period: **or**
  - b) Item Rate contract basis wherein the payments shall be made to the Operator on the basis of the rates against BOQ (escalation to be determined as per Clause 14.2) as provided by the Authority in the RFP.
- 15.4.1 The Operator shall, after commencement of work pertaining to the additional CAPEX, 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

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as is sufficient in the opinion of Authority, for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills and sufficient supporting documentation, the Authority shall disburse to the Operator such amounts 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 manner and form of payments against such work pertaining to additional CAPEX shall be mutually decided amongst the Parties prior to commencement of such works.

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## ARTICLE XVI

### DEVELOPMENT OBLIGATIONS OF OPERATOR

#### 16.1 Preparation and execution of Implementation Plan

**16.1.1** The Operator shall, within the time period specified in Clause 4.1.3, prepare and submit to the Authority, a plan for development of Project Facilities for implementation of the Project (the "**Draft Implementation Plan**") in conformity with Performance Standards, Construction Requirements and O&M Requirements. The Draft Implementation Plan shall be as per the standards and specifications set forth in this Agreement and shall set out in detail the planning for carrying out the project development activities, the Modernization Plan as per clause 16.1.5, the construction plan, standards, schedules (including schedule of drawings), procedures, type, periodicity and other details of the construction activities, construction milestones for Project Facilities as well as details of the reports to be submitted, procedure for reviews and any other information as may be required by the Authority.

**16.1.2** Within 15 (Fifteen) days of receipt of the Implementation Plan, the Authority/ PMC shall review the same and convey its comments/observations to the Operator on the Draft Implementation Plan, including the need, if any, to modify the same. If the comments/observations of the Authority/ PMC require the Draft Implementation Plan to be modified, the Operator shall suitably modify the Implementation Plan to the satisfaction of the Authority. The Draft Implementation Plan as reviewed and approved by the Authority shall constitute the **Approved Implementation Plan**.

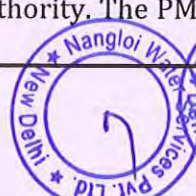
**16.1.3** The Operator shall commence construction/ rehabilitation of Project Facilities only after approval of the Implementation Plan by the Authority and the handover of Existing Assets by the Authority.

**16.1.4** During the Development Period, the Operator shall supply Treated Water to the Service Area in accordance with the performance levels of water supply services as provided under Approved Implementation Plan.

**16.1.5** In order to meet the expenses towards the Construction Requirements for the Project, the payments to the Operator shall be released from the designated Escrow Account on the basis of details of Works executed, furnished by the Operator at intervals prescribed by the Authority, within 21 (twenty one) working days of Authority of requisite certification by the PMC/ Authority. The PMC/ Authority shall

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certify the payments to the Operator on the basis of the rates against BOQ as provided by the Authority in the RFP.

In respect of any extra item expended by the Operator towards the Construction Requirements, the Operator shall, be entitled to payments as per DSR 2007 rates which shall be brought at par to the rates applicable as on 21<sup>st</sup> September, 2011 as per the DJB extant rules. The payment to the Operator for any such extra items shall always be after obtaining certification in respect thereof from the PMC/ Authority. Further, in the event any extra item expended by the Operator towards the Construction Requirements is not set out in DSR 2007, then the payment to the Operator in respect thereof shall be arrived at by the PMC/ Authority based on the analyzed rates which shall be arrived based on the market rates plus 15% thereon towards Operator's profit.

Further in respect of the Construction Requirements to be undertaken by the Operator in relation to (i) Rehabilitation of WTP (ii) Construction of New UGRs and (iii) Rehabilitation of existing UGRs, the Operator shall within 90 days of the start of the Compliance period submit to the Authority for its consideration/ review and approval, a detailed plan for the rehabilitation, construction, up gradation, modernization and strengthening of the aforesaid Project Facilities ("**Modernization Plan**"):

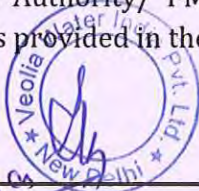
The Modernization Plan to be submitted shall contain inter-alia the following information in detail:

1. The plan and the methodology proposed to be adopted by the Operator;
2. The schedule of activities in phases to be undertaken giving the estimated commencement and the end date in respect of each such phase of activity;
3. Bill of principal quantities of permanent works together with the payment breakup schedule for each such phase of activities which will be useful for assessment and subsequent detailing for payment to the Operator towards each phase;

The payments to be made by the Authority towards the Modernization Plan shall be upon the completion of each phase of activity and as per the payment break up schedule approved by the Authority/ PMC. It is clarified that the total cumulative payments to be certified by the Authority/ PMC towards the aforesaid Project Facilities shall not exceed the rates provided in the BOQ.

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## 16.2 Designs and Drawings

### 16.2.1 Preparation of Designs and Drawings

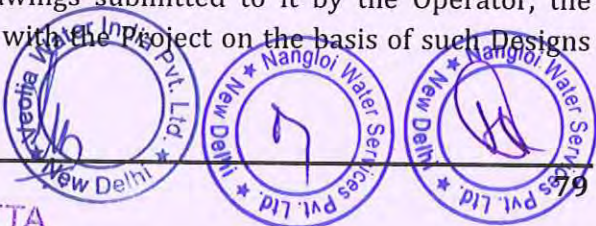
- (a) The Operator may, subject to the Performance Standards and Construction Requirements, adopt with or without modifications the Designs and Drawings made available by the Authority, if any, or adopt its own Designs and Drawings. **Provided that** the Operator shall in any event be solely responsible for the adequacy of the Drawings.
- (b) If the Operator proposes any modifications to the Designs and Drawings made available by the Authority, if any, or submits alternate Designs and Drawings or Drawings in respect of any item for which no Drawings are made available by the Authority, the same shall be subject to review by the PMC as hereinafter provided in sub-Clause 16.2.2.

### 16.2.2 Review of Designs and Drawings

- (a) The Operator shall promptly and in such sequence as is consistent with the Construction Requirements and Performance Standards, submit a copy of each of the Designs and Drawings to the PMC.
- (b) By forwarding the Designs and Drawings to the PMC pursuant to the preceding sub-Clause 16.2.2 (a), the Operator shall be deemed to have represented that it has verified and determined that the Designs and Drawings forwarded are in conformity with the Construction Requirements and Performance Standards.
- (c) Within 21 (twenty one) days of receipt of the Designs and Drawings, PMC shall review the same and convey its comments / observations to the Operator on the conformity of Designs and Drawings with Construction Requirements and Performance Standards. If the comments / observations of the PMC indicate that the Designs and Drawings are not in conformity with the Construction Requirements, such Designs and Drawings shall be revised by the Operator to the extent necessary and resubmitted to PMC for further review. The PMC shall give its observations and comments, if any, within 21 (twenty one) days of receipt of such revised Designs and Drawings, which shall be taken into account by the Operator while finalizing the Designs and Drawings. **Provided that**, the submission schedule of Designs and Drawings shall be communicated by the Operator to the Authority/PMC and be adhered to the said schedule in its actual submission.
- (d) If, within the period stipulated in the preceding sub-Clause 16.2.2 (c), the PMC does not respond to the Designs and Drawings submitted to it by the Operator, the Operator shall be entitled to proceed with the Project on the basis of such Designs

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- and Drawings submitted by it to the PMC, and intimate the same to the Authority. The same should be highlighted in the periodic reporting by the Operator.
- (e) Notwithstanding any review or failure to review by or the comments / observations of the PMC, the Operator shall be solely responsible for the adequacy of the Designs and Drawings and their conformity with the Construction Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- (f) The Operator shall be responsible for delays in meeting the Construction Requirements caused by reason of any Designs and Drawings not being in conformity with the Construction Requirements and Performance Standards, and shall not be entitled to seek any relief in that regard from the Authority.
- (g) Within 90 (ninety) days of issue of Readiness Certificate, as the case may be, the Operator shall furnish to the Authority 3 (three) copies (hard and soft each) of "as built" Drawings which have been completed as on COD.

### 16.3 Obligations of the Operator during Development Period

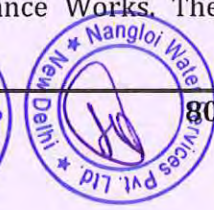
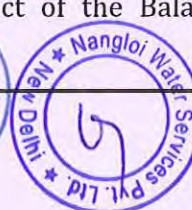
**16.3.1** The Operator shall design and develop the Project Facilities, as specified in **Schedule-XI**, in compliance with Applicable Law, in accordance with the Construction Requirements, Performance Standards and the Approved Implementation Plan.

**16.3.2** The Operator shall achieve completion of Mandatory Construction Requirements on or before 30 (Thirty) months from the Compliance Date (the "**Scheduled COD**" or "**Scheduled Commercial Operation Date**"). The Operator shall be required to achieve Project Completion within 18 (Eighteen) months from the Scheduled COD, i.e. by completing the balance works (if any) with regard to Construction Requirements ("Balance Works"). The Project Completion shall be deemed to be achieved when the completion certificate ("the **Completion Certificate**") is issued by the Authority on recommendation of PMC, in respect of completion of the Balance Works. All Tests to certify the Project Completion shall be conducted in accordance with Construction Requirements. If the Tests are successful the Authority shall, on recommendations of the PMC, issue Completion Certificate.

Provided, that certain works or things forming part of Balance Works are not complete, if following Tests, the PMC determines that the Project facilities corresponding to the Balance Works can be safely and reliably opened for operations, the PMC may issue provisional Completion Certificate (Provisional Completion Certificate) to the Operator in respect of the Balance Works. The

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Provisional Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the PMC and the Operator (the "Punch List 2"). All Punch List 2 items shall be completed by the Operator within such time as may be determined by the PMC, not exceeding 90 (ninety) days of the date of issue of the Provisional Completion Certificate. Upon satisfactory completion of all Punch List 2 items, the PMC shall promptly and in any case within 15 (fifteen) days thereof, recommend to the Authority to issue Completion Certificate for the Project facilities corresponding to the Balance Works.

If the Operator fails to complete the Punch List 2 items within the said period of 90 (ninety) days, the Authority may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Operator. The cost incurred by the Authority in completing the Punch List 2 items, as certified by the PMC, shall be reimbursed by the Operator to the Authority within 7 days from the date of receipt of a claim in respect thereof from the Authority. For avoidance of doubt, in the event of the Operator's failure to complete the all Punch List 2 items within the said period of 90 (ninety) days, the Authority shall be entitled to terminate this Agreement. Any such termination shall be without prejudice to any other rights and remedies of the Authority including the appropriation of the Performance Security.

**16.3.3** The Operator shall adhere to technical specification in Schedule XV. However, the Operator may propose better specifications with prior approval from the Authority at no extra cost.

**16.3.4** The Operator shall extend the existing water distribution network to supply water to properties presently unconnected to the Distribution Network in the Service Area as agreed with the Authority, including extension of the Distribution System within the Service Area as needed to satisfy this requirement.

**16.3.5** The Operator shall ensure that during the Development Period, the Service Area is fed with Treated Water in accordance with its normal intermittent supply entitlement and will ensure that the performance standards during this period shall not be lower than the present service levels.

#### **16.4 Appointment of Sub-Contractors**

**16.4.1** Subject to the prior approval of the Authority, and subject always to Clause 16.4.1, the Operator may sub-contract a few of the Works but not all of the Works to be

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rendered by it under this Agreement to third party sub- contractors (the "**Sub-Contractors**"). The Operator shall not enter into any contract or contracts which will result in the total or majority of its Works being performed by a Sub-Contractor(s).

**16.4.2 Save for the Works enumerated hereunder at (c), (d), (e) and (f) of this sub-Clause which may be carried out by the Operator through the O&M Member, the Operator shall not sub-contract any of the following works to any Sub-Contractor:**

- (a) Prime responsibility for all or substantially all contractual obligations;
- (b) Planning and overall management of all contracted activities;
- (c) Operation and Maintenance of all the assets in the Service Area;
- (d) Meter reading, billing, collection and debt management;
- (e) Consumer complaint and response monitoring;
- (f) Contractual responsibilities relating to performance monitoring, system infrastructure and operational data records and reporting.

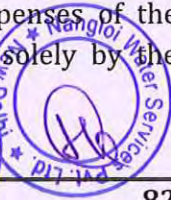
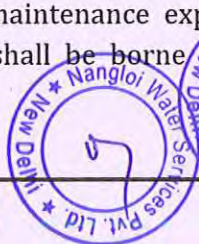
**16.4.3** The Operator shall ensure that all of its obligations under the Agreement which are relevant to the work being carried out by a Sub-Contractor are incorporated into the terms and conditions of the contract under which the Sub-Contractor is retained. If the Operator does sub-contract any part of its obligation, the Operator shall not be relieved from any liability or obligation under this Agreement and the Operator shall continue to be responsible for proper performance of its obligations under this Contract and also for the negligent acts, omissions or defaults of any Sub-Contractor as fully as if they were the negligent acts, omissions or defaults of the Operator, its officers, employees or agents.

**16.4.4** It shall be responsibility of the Operator to undertake and complete all works relating to Road Restoration during the Development Period and the Operation Period. The Road Restoration shall be undertaken by Operator in accordance with the provisions set forth in Clause 17.7.

**16.4.5** The Operator shall also provide, for the use by the Authority or its representatives till the Project Completion, 2 (two) number of new air conditioned vehicle (Tata Safari/ Innova/ Scorpio) with driver. The model and make of the vehicle shall be subject to the previous approval of the Authority. The Operator shall ensure that the vehicle, along with driver, shall be available for use by the Authority or its representatives, on a 24x7 basis. All running and maintenance expenses of the vehicle including fuel costs, costs of the driver(s), shall be borne solely by the Operator.

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## 16.5 Project Implementation: Construction Requirements

**16.5.1** The Operator shall develop the Project Facilities in accordance with the Approved Implementation Plan and shall during the Development Period, undertake all services relating to design, procurement and construction of the Project Facilities in conformity with Construction Requirements.


**16.5.2** Unless otherwise permitted by the Authority, no construction shall begin until the Draft Implementation Plan has been approved by the Authority.

**16.5.3** The Operator shall adhere to the Construction Requirements and achieve COD within the stipulated period in accordance with the terms of this Agreement.

**16.5.4** The Operator may undertake construction works by itself or through a contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Operator shall remain solely responsible to meet the Construction Requirements.

**16.5.5** The Operator shall carry out construction in accordance with the project completion schedule set forth in **Schedule-XIII**. In the event that the Operator fails to achieve any Project Milestone within the period specified therein, the Operator shall, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, pay Liquidated Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such a day by which the Project Milestone is achieved or upto a maximum period of 90 (ninety) days from the Project Milestone, whichever is earlier; **provided that** if any or all Project Milestones or the Scheduled COD is extended in accordance with the provisions of this Agreement, the dates set forth in Project Completion Schedule shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Project Completion Schedule has been amended as above; **provided further that** in the event COD is achieved on or before the Scheduled COD or Project Completion is achieved on or before the expiry of eighteen months from Scheduled COD, the Liquidated Damages paid under this sub-Clause 16.5.5 shall be refunded by the Authority to the Operator, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Liquidated Damages under this sub-Clause 16.5.5 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

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**16.5.6** For the purposes of determining that Construction Works are being undertaken in accordance with the Construction Requirements and O&M Requirements, the Operator shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the PMC and the Construction Requirements and O&M Requirements. The Operator shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

**16.5.7** All Tests to certify the completion of Mandatory Construction Requirements shall be conducted in accordance with the provisions of this Agreement. If the Tests are successful the Authority shall, on recommendations of the PMC, issue Readiness certificate for the Mandatory Construction Requirements.

**Provided, that** in the event certain works or things forming part of Mandatory Construction Requirements are not complete, and, following Tests, the PMC determines that the Project facilities corresponding to Mandatory Construction Requirements can be safely and reliably opened for operations, the PMC may issue Provisional Readiness Certificate for the Mandatory Construction Requirements to the Operator. The Provisional Readiness Certificate shall have appended thereto a list of outstanding items signed jointly by the PMC and the Operator (the "**Punch List**"). All Punch List items shall be completed by the Operator within such time as may be determined by the PMC, not exceeding 90 (ninety) days of the date of issue of the Provisional Readiness Certificate. Upon satisfactory completion of all Punch List items, the PMC shall promptly and in any case within 15 (fifteen) days thereof, recommend to the Authority to issue Readiness Certificate for the Mandatory Construction Requirements. It is, however, clarified that the issue of Provisional Readiness Certificate shall not prejudice the operation of Clause 16.5.5.

**16.5.8** If the Operator fails to complete the Punch List items within the said period of 90 (ninety) days, the Authority may, without prejudice to any other rights or remedy available to it under this Agreement, have such items completed at the risk and costs of the Operator. The cost incurred by the Authority in completing the Punch List items, as certified by the PMC, shall be reimbursed by the Operator to the Authority within 7 days from the date of receipt of a claim in respect thereof from the Authority. *For avoidance of doubt*, in the event of the Operator's failure to complete the all Punch List items within the said period of 90 (ninety) days, the Authority shall be entitled to terminate this Agreement. Any such termination shall be without

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prejudice to any other rights and remedies of the Authority including the appropriation of the Performance Security.

**16.5.9** The PMC, may, by written notice, require the Operator to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements.

**16.5.10** The Mandatory Construction Requirements shall be deemed to be complete only when the Readiness Certificate is issued by the Authority, on recommendations of the PMC, in accordance with the provisions hereof. The commercial operation date of the Project shall be the date on which the Readiness Certificate is issued by the Authority (the "COD" or "Commercial Operation Date").

*Provided that* if the Commercial Operation Date is delayed beyond 90 (ninety) days from the Scheduled COD, for the Mandatory Construction Requirements or part thereof, then notwithstanding anything contained in this Agreement, the Authority shall be entitled to terminate this Agreement. Any such termination shall be without prejudice to any other rights and remedies of the Authority including the appropriation of the Performance Security.

## **16.6 Obligation to invest in Development Period**

During the Development Period, the Operator is required & obliged to invest

- (a) The Balance amount of the Estimated Project Cost after reducing it with the amount disbursed by Authority by way of Grant; and
- (b) Replacement cost after Development Period for Project Facilities to achieve / maintain Performance Standards as part of contract obligation (except replacement of old pipes of 300 mm and above diameter with Major Repairs).

## **16.7 Exclusions**

The following cost, obligations are excluded from the Operator's obligation:

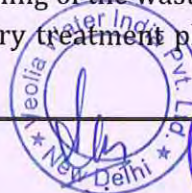
- (a) Capital cost requirement outside Service Area.

## **16.8 Waste Water Recycling**

**16.8.1** For the purpose of treatment and recycling of the waste water, the Authority may, at its discretion, construct suitable tertiary treatment plant (TWT) without involving

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the Operator. The power to all decisions in relation to recycling of waste water and supply thereof shall solely vest with the Authority.

The Operator shall be required to supply any such recycled water for non-potable purposes, on terms and conditions including tariff rates as approved by the Authority from time to time. All payments in relation to the supply of such recycled water shall be deposited by the Operator in the Escrow Account for credit to the Authority's sub-account. The payments to the Operator for the costs incurred by it in this regard shall be determined in accordance with Clause 14.3 (*Extraordinary Rate Adjustment*).

**16.8.2** The waste water treated from the TWT shall be made available by the Operator for supply within the Service Area through a separate dedicated distribution network in accordance with the applicable rules and regulations and directions of the Authority and in terms of the Applicable laws and Good Industry Practice.

The Authority may, at its sole discretion, get the dedicated distribution network executed either through the Operator or through any other agency under supervision of Operator. In the event the Operator executes such dedicated distribution network, then for the additional Capital expenditure incurred by the Operator, the Operator shall be compensated in the form of Annuity payments, over and above the Net Operator Rate, so determined as to achieve an IRR of SBI Base Rate + 3% (three per cent).

**16.8.3** The responsibility for the operations and maintenance, as per the applicable norms, standards and specifications and Good Industry Practice, of the TWT and the distribution network of the waste water supply shall be of the Operator and shall be at the Operator's own cost and expenses.

## **16.9 Tube Wells in Service Area**

### **16.9.1 Connection to Distribution Network and Closure of Tube Wells**

- (i) Prior to the Scheduled COD and in accordance with sub-clause (ii) of this Clause 16.9.1, the Operator shall connect all areas in the Service Area which as of date of this Agreement have functional Tube Wells, to the Distribution Network with Treated Water such that all Tube Wells in the Service Area can be discontinued upon the Scheduled COD.

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- (ii) The Operator shall achieve the closure of the Tube Wells in the Service Area in a phased manner by the Schedule COD by connecting to the Distribution Network with Treated Water in accordance with the schedule set forth in the Implementation Plan submitted and approved by the Authority, as per the terms of Clause 4.1.3.

#### **16.9.2 Transitional Provisions**


- (i) The provisions of this Clause 16.9.2 shall come into effect from the date of execution of this Agreement.
- (ii) In case where the water of any of the Tube Wells is not potable which is feeding such water into the existing treated water system, the Authority shall close such Tube Wells upon receiving request for such closure from the Operator. The Operator may make such request for closure prior to expiry of the Compliance Period.
- (iii) Restrictive Area  
Subject to the proviso immediately following, in area within the Service Area identified and defined in the plan attached as **Schedule - XII** (referred to as "**Restrictive Area**") where the water of Tube Wells is not potable and which is being, as of the date of this Agreement, supplied within the Service Area for non-potable use:
- (a) the Operator shall not be liable for payment of Damages for non-fulfillment of the Performance Standards, within the Restrictive Area;
- (b) the Operator shall carry out the O&M in the Restrictive Area and collect water charges from the consumers in the Restrictive Area at such tariff/ arrangement as existing on the date of this Agreement.

*Provided that* such above relaxations specified in this Clause shall be valid only till the Scheduled COD; it being understood that the Operator is obligated to connect the Restrictive Area to the Distribution Network with Treated Water prior to Scheduled COD in accordance with Clause 16.9.1.

- (iv) Costs/ Expenses till Scheduled COD

Until the Scheduled COD, the Authority will bear the costs and expenses towards the operation and maintenance of existing Tube Wells (including energy charges for such Tube Wells) in the Service Area. It is clarified that on and from the Scheduled

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COD, the Operator is obligated to connect to the Distribution Network with Treated Water, failing which it shall be deemed to have resulted in Operator Event of Default.

#### 16.10 Optional Project Sites

- (a) On and with effect from the Appointed Date, the Operator shall be entitled to, in consultation with the Authority, inspect such land parcels (whether vacant and/or with built up structures there on) which are under the possession and control of the Authority and which the Authority in its discretion can make available to the Operator for the purposes related to or incidental to the Project in terms of the provisions hereof (Optional Project Sites).
- (b) For this purpose the Authority shall within forty five (45) days of the Appointed Date make available at its office, for the perusal of the Operator, a list of all such Optional Project Sites with necessary details regarding its location, area and present usage.
- (c) The Operator shall with prior intimation to the Authority, be entitled to peruse the aforesaid list of Optional Project Sites and shall after such perusal, if it so desires make an application to the Authority requesting for the site visit and inspection of such one more Optional Project Sites. The Authority shall upon receipt of such Application within seven (7) days thereof fix a date under intimation to the Operator for undertaking such site visits and inspection by the Operator jointly with the Authority (Joint Inspection).
- (d) Upon such Joint Inspection, in case the Operator finds one or more of such Optional Project Sites suitable for the purpose of setting up of Project related facilities and amenities (such as setting up of store rooms, offices, customer service centres etc.) it shall within fifteen (15) days of such Joint Inspection make an application in this regard to the Authority inter alia clearly setting out the identified Optional Project Sites, the purpose for which such site is being required and the duration for which it is required by the Operator. The Authority shall upon receipt of such application from Operator endeavor to communicate its decision in this regard within a period of thirty days from the date of receipt of such application together with the terms and conditions which it may in its discretion specify in case the Optional Project Site/s requested are decided to be made available to the Operator by the Authority.
- (e) All developmental work to be undertaken on the Optional Project Sites made available by the Authority to the Operator shall be carried out with the prior approval of the Authority and strictly in compliance with Applicable Laws (including but not limited to

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land usage, building and construction norms) and any other terms and conditions as may be specified by the Authority in this regard. Further in case any fresh connection of utility services (such as electricity connection, water connection, sewerage etc.) or enhancement of the existing load capacity shall be managed and procured by the Operator at its own cost.

- (f) For the sake of clarity it is expressly stated that the Authority, by making available such Optional Project Site/s does not in any manner directly or indirectly or whether explicitly or by implication or inference extend any assurance or warranty of any nature regarding suitability or fitness of the Optional Project Sites for the intended purposes for which the said Optional Project Site is required by the Operator. In this regard the Operator shall alone be responsible for carrying out and undertaking all the due diligence prior to making its choice of the Optional Project Site.
- (g) All costs, charges and expenses for the developmental works (including creation of any new superstructures or upgradation or modernization of any superstructures) at the Optional Project Sites shall be borne by the Operator alone and the Authority shall be not responsible in any manner in respect of the same.
- (h) The Authority may at its discretion from time to time during the Concession Period under intimation to the Operator notify additional Optional Project Sites and in respect of the same the process defined in clause (a) to (g) shall also apply.
- (i) All requirements relating to insurance, security, licenses and compliances in terms of Applicable Laws and Good Industry Practice in relation to the Optional Project Site (including superstructures thereon) shall be the responsibility of the Operator at its own costs and expenses.
- (j) Upon the expiry of the Concession Period or early Termination thereof in terms of this Agreement all the Optional Project Sites in the possession and control of the Operator as on such date together with all the superstructures and fixtures thereon shall be transferred and stand vested in the Authority automatically free of cost along with the Project and Project Facilities and the Operator shall be responsible and liable to provide all assistance and cooperation (including execution of all deeds and documents) as may be required by the Authority for effecting such transfer.

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## ARTICLE XVII OPERATION & MAINTENANCE OBLIGATIONS OF THE OPERATOR

- 17.1 The Operator shall during the Development Period and the Operation Period, undertake all services relating to operation and maintenance of the Project Facilities in conformity with O&M Requirements.
- 17.2 The Operator shall along with the Approved Implementation Plan, submit to the PMC a plan for operation and maintenance of the Project Facilities ("O&M Plan") in conformity with the Construction Requirements, O&M Requirements and Performance Standards.
- 17.3 The O&M Plan shall set out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the Project during the Agreement Period so as to meet the O&M Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews, including developing a mechanism for grievance redressal.
- 17.4 Within 30 (thirty) days of receipt of the O&M Plan, the PMC shall review the same and convey its comments/observations to the Operator on the O&M Plan, including the need, if any, to modify the same. If the comments/observations of the PMC require the O&M Plan to be modified, the Operator shall suitably modify the O&M Plan. The O&M Plan shall be finalized with mutual consent.
- 17.5 Notwithstanding any review or failure to review by the Operator or the comments/ observations of the PMC, the Operator shall be solely responsible for the adequacy of the O&M Plan and the conformity thereof with the Performance Standards, Construction Requirements and O&M Requirements and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
- 17.6 The Operator shall within a reasonable period inform the Authority details of its key personnel responsible for O&M and subsequent changes, if any, from time to time.
- 17.7 The Operator shall undertake operations and maintenance of the Project Facilities by itself or through contractor possessing requisite

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technical/financial/managerial expertise/ capability, except those mentioned in Clause 16.4, but in either case, the Operator shall remain solely responsible to meet the O&M Requirements.

**17.8** The Operator shall incorporate good management practices and appropriate technologies required for meeting the Performance Standards.

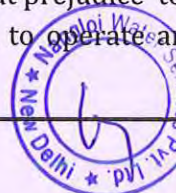
**17.9** The Operator shall, during the Concession Period;

- a. have requisite organization and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project, to deal with the PMC and the Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- b. for the purposes of determining that the Project Facilities are being maintained in accordance with the Construction Requirements and O&M Requirements, the Operator shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the PMC. The Operator shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results;
- c. conduct all Tests to ascertain compliance with Construction Requirements and O&M Requirements;
- d. suspend forthwith the whole or any part of the O&M activities upon receiving a written notice from the PMC, who may require the Operator to suspend the activities in whole or part if in the reasonable opinion of the PMC, the operations are being carried on in a manner that is not in conformity with the O&M Requirements.
- e. be entitled to, with the prior approval of the Authority, to dispose off and appropriate the proceeds realized from the disposal of the scrap or waste material generated pursuant to the rehabilitation, periodical maintenance and up-gradation of facilities of the Existing Assets during the Concession Period, save and except for any waste scrap or surplus relating to the Existing Assets pertaining to the Nangloi UGR and Mohan Garden UGR.

**17.10** The Operator shall as per pre agreed format record the system performance and periodically provide the same to PMC. In the event the Operator has failed to operate and maintain the Project in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the PMC ("**Notice to Remedy**"), the Authority may, without prejudice to any of its other rights / remedies under this Agreement, be entitled to operate and maintain the

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Project or cause to repair and maintain the Project Facilities at the risk and cost of the Operator. The Operator shall reimburse 150% of the costs incurred by the Authority on account of such operation and maintenance or repair and maintenance within 7 days of receipt of the Authority claim therefore.

**17.11** The Operator shall be deemed to be in material breach of O&M Requirements if the PMC has determined that:

- a. there has been failure or undue delay in carrying out scheduled or planned maintenance or
- b. scheduled or planned maintenance has not been carried out in accordance with the O&M Requirements;
- c. the maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- d. there has been a serious or persistent let up in adhering to the O&M Requirements and thereby the Project Facilities or any part thereof is not safe for operations;
- e. there has been persistent breach of O&M Requirements. For avoidance of doubt, persistent breach shall mean:
  - i. any breach of O&M Requirements by the Operator which has not been remedied by the Operator despite a Notice to Remedy in respect thereof issued by the PMC;
  - ii. recurrence of a breach by the Operator, during the pendency of Notice to Remedy by the PMC requiring the Operator to remedy a breach, or
  - iii. repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.

Upon occurrence of a material breach of O&M Requirements, the Authority shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement.

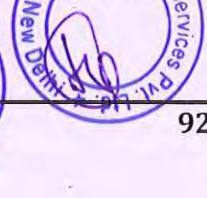
#### **17.12 General Obligations**

The Operator shall

- a. from the Compliance Date, undertake all services relating to operation and maintenance of the Project Facilities in conformity with O&M Requirements;
- b. supply continuous pressurized (by maintaining at least Minimum Pressure) Treated Water on 24x7 basis, to Consumers within the Service Area and shall meet the Performance Standards.

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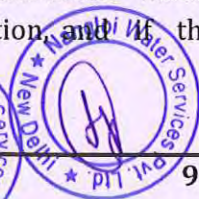


However in respect of supply of Treated Water to the slum areas within the Service Area, the Operator shall in consultation with the Authority identify such slum areas during the Compliance Period and upon approval of the same by the Authority, such slum areas shall be treated as identified slum areas. The Operator shall install stand posts as per requirement in each of the identified slum areas at a location approved by the Authority. The Operator shall supply upto 70 lpcd of Treated Water in two shifts within a day from each of the stand posts installed in the identified slum areas. Such stand posts shall be metered by the Operator and the water consumed therefrom shall be treated by the Authority as 100% water billed and collected for the purpose of determining Operator's billing efficiency.

- c. at its cost and expense, undertake emergency chlorination measures at times of outbreak of epidemics and any such emergency situations.
- d. identify Critical Measurement Points in the distribution network, in consultation with PMC for installation of pressure measurement data loggers.
- e. carryout repair to any leakages in the distribution network.
- f. repair or replace the defective water meters at its own cost and expenses or in the events where the water meters are damaged due to mis-handling or negligence of the same by Consumer, to repair or replace it and collect charges for the same from such Consumer as per the Applicable Law..
- g. from the Compliance Date, carry out the following activities in the Service Area:
  - i. Undertake repairs and maintenance of the Project Facilities, at its own cost and expense;
  - ii. Ensure that the Treated Water shall be supplied at a positive pressure being never less than 17 (Seventeen) meters measured at all the Critical Measurement Points in the Service Area at all times;
  - iii. Continuously log pressure readings at all pressure-metering points installed at Critical Measurement Points, which shall also include a point where pressure is routinely experienced at the minimum level in the Service Area, and monitor continuous pressured water supply on a daily basis in accordance with the good Industry Practice;
  - iv. Upon intimation by the Authority, provide connection to a property within a period of seven (7) days from such intimation and deposit in the Escrow Account, the connection charges and any other amounts collected.
  - v. carry on basic plumbing and shall replace, with the approval of the Authority, illegal property water connections with legal connections where the property owner accepts to legitimize the connection, and if the

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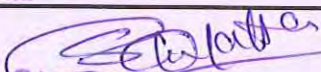






- property owner does not so opt to legitimize the connection, to facilitate in disconnection of such un-authorized connections by the Authority.
- vi. be expected to co-operate with the Authority in the implementation of the communications program to foster ownership of the Project by the local stakeholders and encourage their support for the work. The Operator shall disseminate to the Consumers the communication materials prepared by the Authority through their inclusion with water bills and their availability at the Consumer Service Centers established in the Service Area. The communication material shall include information on significance of safe quality water supplied including water conservation and benefits of continuous water supply to the Consumers. The Operator shall do nothing that would hinder the work of those involved in implementing the communications program.
  - vii. report to the Authority in respect of unauthorized water connections and connections for which the Consumers have defaulted on the payment in the Service Area. Within 3 days of such intimation the Authority shall with the assistance of Operator, undertake remedial actions by way of either regularizing the unauthorized connections or disconnecting such properties from the network within the Service Area and initiate proceedings as necessary for collecting the dues from such connections.
  - viii. report to the Authority the wrong categorization of Consumer, if any, within the Service Area. Within 3 days of such intimation, the Authority shall with the assistance of Operator assign the correct categorization of such Consumers. Further after the COD, in case upon inspection by the Authority or by any entity nominated by the Authority in this regard any discrepancy in the correct categorization of the Consumer(s) is noticed than the Operator shall be penalized for every instance of wrong categorization of Consumer on the basis of difference in the water tariff due to wrong categorization of each of such Consumer for a period of 6 months prior to the detection of such wrong categorization.
  - ix. Set up water quality surveillance program to undertake daily, testing of water quality at Consumer taps for checking the residual chlorine content and also chemical and bacteriological quality of the supplied water.
  - x. From the Compliance Date and throughout the Concession Period be responsible for ensuring adequate security of the Project Facilities (including the WTP and UGRs) and shall inter alia install, operate and maintain CCTV surveillance system at WTP and UGRs within the Service Area.

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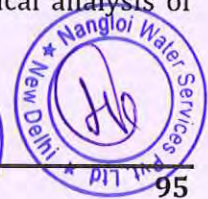
### 17.13 Other Operation and Maintenance Obligations

The Operator shall

- a. achieve the Performance Standards in accordance with the requirements of **Schedule-XIII**.
- b. ensure that the total water losses including Leakage Losses are minimized and are in adherence to the Performance Standards as set out in **Schedule-XIII**.
- c. set up a Consumer Service Centre in the Service Area within a period of (2) two months from the Compliance Date, at an appropriate location designated by the Authority, which would have a minimum of three (3) operational dedicated phone lines and a minimum of two consumer service representatives during 8am – 8pm on any working day and one consumer service representative during the remaining hours of the day for receiving Consumer calls/complaints in various forms such as telephone calls, e-mail, short message service etc. and undertake prudent consumer grievance redressal mechanisms, which shall be duly documented.
- d. continuously log the consumer complaints received by personal visit of consumer, letters, telephone calls, emails, sms etc and respond to the consumer within 24 hours from the time of receipt of such complaint and resolve the complaint within 5 working days from the time of receipt of the said complaint. Any complaints related to no water or poor quality water shall be attended within 6 hours from the time of receipt of complaint and resolved within 24 hours.
- e. initiate innovative steps to improve system efficiency i.e. efficiency in Consumer service, revenue collection, non-revenue water management and manpower deployment etc. in water supply and distribution.
- f. maintain daily records of the following and submit the same to the Authority and the PMC by the 10th day of every Month or in case the 10th day of a Month is a holiday then on the following working day of such Month:
  - i. Quantum of Treated Water as measured at the outlet of Water Treatment Plant(s);
  - ii. Quantum of treated water at the inlet and outlet of UGRs.
  - iii. Quality of treated water at the outlet of the water treatment plant.
  - iv. Results of the residual chlorine measurement in the network and the periodical measurement for chemical and bacteriological analysis of the water supplied to the Consumers;

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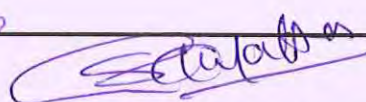


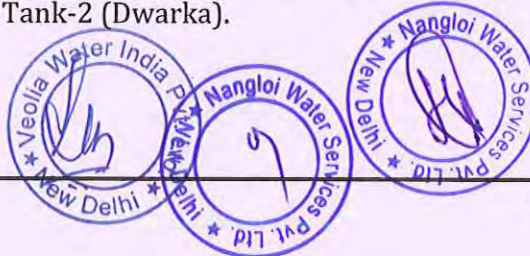
- v. Quantum of Treated Water supplied to the Consumers based on the Water Supply and Consumption Statement;
- vi. Estimation of the Leakage Losses; and
- vii. Pressure at the Critical Measurement Points;
- viii. Redressal of Consumer complaints and public disclosure

All this above information should be available at real time basis on the software accessible to authorized personnel of the Authority.

- g. provide to the Authority, a report on the project operational data ("**Project Operational Data**"), including technical and cost data, in relation to the period of twelve weeks commencing from the Compliance Date and for every subsequent period of twelve weeks commencing from expiry of the previous twelve week period. The last report on Project Operational Data should represent the period from expiry of the previous twelve-week period to the expiry of the Agreement. Every report on Project Operational Data shall include description of service levels, state of Project Facilities, physical improvements carried and consequent investments made, operational issues including Consumer service, monthly billing, and management of DJB Assigned Employees, maintenance of records, connections and disconnections.
- h. continuously log pressure readings at pressure-metering points installed at Critical Measurement Points on the distribution network as approved by the Authority including a point where pressure is routinely experienced at the minimum level in Service Area and to measure and monitor continuous pressured water supply on a daily basis in accordance with the Good Industry Practice;
- i. re-chlorinate the Treated Water so as to ensure that the residual chlorine content at the Consumer tap complies with the O&M Requirements;
- j. take necessary action as may be appropriate and in accordance with Prudent Utility Practices in the event of an emergency or risk of danger or damage to persons or property (including the Project Facilities);
- k. Replacement cost after Development Period for Project Facilities to achieve / maintain Performance Standards as part of O&M obligation (except replacement of pipes above 300 mm diameter which cannot be repaired and have not been covered under the CAPEX by the Operator under this Agreement, the cost of such pipes shall be incurred by the Authority);
- l. Ensure supply of 7.5 MGD Treated Water to the Authority from Nangloi WTP for Ujwa, Daultapur & Command Tank-2 (Dwarka).

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## 17.14 Water Shortage Period

**17.14.1** A water shortage period shall commence when the Authority has failed to supply less than 95% of the designated quantity of water as set out under Clause 18.2.2 (q)(i) and 18.2.2 (q)(ii) because of any of the following reasons not attributable to the negligence of Operator:

- i. the Authority notifying the commencement of a Water Shortage Period or
- ii. The determination by the Operator of shortage of water and certification thereof by the Authority;

During the period of such water shortage the Authority may relax the relevant KPIs/Performance Standards under the Concession Agreement provided the Operator is not in breach of any other terms and conditions of the Concession Agreement which has led to such Water shortage Period or did not adhere to any mitigation measures suggested by the Authority to offset the effect of water shortage.

Further the relaxation in any such Performance Standard/KPI for above water shortage period is to be limited to affected command area of any particular UGR, which would be identified and decided mutually at the time of water shortage period declaration.

**17.14.2** The Authority shall notify the commencement of a Water Shortage Period to the Consumers through suitable means, which shall be deemed to have commenced from the first hour of such notification.

**17.14.3** The Water Shortage Period shall cease when the Authority notifies and supplies the designated quantity as per terms of the Agreement.

**Provided that** during a Water Shortage Period or otherwise, the Authority shall have rights and power to direct the Operator to modify the water supply and regulate the allocation of potable water among the Consumers. However during the water shortage period, the service level benchmarks under the Performance Standards obligations shall be modified in mutual discussion with the Authority and PMC.

**17.14.4** During the subsistence of a Water Shortage Period, Operator shall undertake such measures so as to minimize the supply interruptions to the Consumers. Subject to the Operator making reasonable endeavours to maintain the Services, the Operator shall not be considered to be in any Material Breach under this Agreement.

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#### 17.15 Extraction of Groundwater

In the event, any Change in Law permits extraction of groundwater through new bore-wells at any time during the Concession Period, the Operator may, subject to the express approval of the Authority, be allowed to extract groundwater through new bore-wells and, accordingly, supply to the Consumers **only** along with collection of charges as per the terms of this Agreement;

**Provided that** the groundwater extracted, in terms of the Applicable Laws, shall be exclusively supplied to the Consumers in the Service Area;

**Provided, further, that** any and all capital expenditure towards such extraction of groundwater shall be solely borne by the Operator without any compensation/reimbursement, in any manner whatsoever, from the Authority.

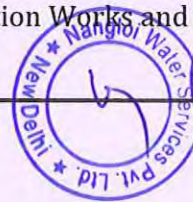
#### 17.16 New Connections

The Operator shall set-up collection centers within the Service Area wherein any Person intending to apply for a water connection can deposit its application. The Authority shall notify such collection centers as the only places where an application for seeking a water connection within the Service Area may be submitted. Upon collection of such application, the Operator shall scrutinize the application in accordance with the provisions of this Agreement, the act, rules, bye-laws, regulations of the Authority (to determine the eligibility of such applicant). The Operator shall forward the application of such applicant to the Authority. The Authority shall ensure that within 3 (three) business days of such forwarding of the names of any eligible applicant, the Authority shall enter into an agreement for water supply with such applicant and provide a copy of the same to the Operator. The Operator shall prepare the estimate as per the approved rate of the Authority for providing water connection in which the cost of plumbing, excluding water meter, shall be included. The demand note for the above cost shall be issued by the Authority to the intending applicant. On (i) the payment against such demand note by the intending applicant (which shall be collected by the Operator and deposited in the Escrow Account), (ii) the cost of new connection as per demand note and (iii) receipt of the copy of the agreement from the Authority, the Operator shall provide such connection within 7 (seven) days, including all connection work and affixation of a metering device, subject to the availability of Applicable Permits.

The Operator shall in terms of the Bidding Document (more specifically Vol III) is required to provide atleast 1,67,491 numbers of new Consumer connections ("Expected New Consumer Connections") during the Development Period. Such new Consumer connections provided by the Operator in the Service Area during the Development Period shall form part of the Construction Works and in respect of the

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same, the Operator shall be entitled to receive payments as per the terms of this Agreement.

However, in case the Operator is unable to establish fully the Expected New Consumer Connections on or before the COD in such an event the Authority may at its sole and absolute discretion upon written request from the Operator, allow to carry forward the remaining number of unexhausted Expected New Consumer Connections into the Operation Period post the COD and in respect of the same, the Operator shall be entitled to receive payments from the Authority upto 70% of the rates set forth in the BOQ provided by the Authority along with the RFP document.

Further, the cost towards New Connections beyond 167,491 during the entire Concession Period shall be borne by the Authority as per the BOQ rates from time to time.

#### **17.17 Road Restoration During Concession Period**

##### **17.17.1 Obligation to Carry Out Road Restoration**

- (i) Commencing from the Compliance Date and at all times during the Concession Period, the Developer shall be obliged to undertake and carry out all works relating to road restoration in accordance with the provisions of this Clause 17.17 ("Road Restoration"). Except as expressly set forth in Clause 11.3, the Operator shall bear all expenses incurred towards all and any Road Restoration works and including digging of roads, pits, etc. as a part of its O&M obligations, and shall be deemed to be included in the Net Operator Rate.
- (ii) The Operator shall carry out and complete the Road Restoration works on any stretch of road within a period of one (1) month of starting any work on such stretch of road, or within such time period as specified in the permission granted by the Authority, whichever is earlier.
- (iii) The Operator shall be obligated and be responsible to carry out all works relating to Road Restoration strictly in accordance with the quality, specifications, standards and conditions set out in Schedule XV. The Authority may, from time to time, modify or revise the quality, specifications, standards or conditions set forth in the Schedule, and upon any such modification, supplement or revision, the Operator shall be obliged to carry out the Road Restoration in accordance with such revised Schedule.

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#### 17.17.2 Permission from the Authority

The Operator shall before commencing any work on any stretch of road during the Concession Period, submit to the Authority details of all works to be carried out on such stretch and seek permission from the Authority to commence such work. Upon permission being granted by the Authority, the Operator shall carry out the works in accordance with the approved plan. It is clarified that the Operator shall seek and procure the prior permission of the Authority for works requiring digging of roads or pits and subsequent Road Restoration at all times during the Concession Period.

#### 17.17.3 Audit and Approval of Restoration Works

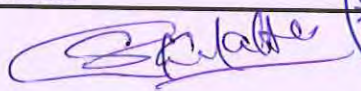
- (i) The Authority shall be entitled to appoint an auditor of its choice to inspect, monitor and supervise the Road Restoration works undertaken by the Operator. The Operator shall promptly carry out any modifications suggested by the auditor. The Operator shall obtain certification from the auditor certifying the completion and the quality, standards, specifications and conditions as laid down under the approvals granted by the Authority/any other authority and Good Industry Practice in respect of such Road Restoration work. The Operator is required to obtain and furnish to the Authority such auditor certificate not later than 15 days from the expiry of the time period as specified in Clause 17.17.1 (ii).
- (ii) The Operator shall ensure that the Road Restoration works as approved by the auditor is accepted by the agency/ authority concerned for its regular upkeep, operations and maintenance.
- (iii) The costs of audit under this Clause 17.17.3 shall be borne by the Authority.

#### 17.17.4 Approval by Chief Technical Examiner (CTE)

Without prejudice to Clause 17.17.3, the Operator agrees that Road Restoration work shall also be subject to audit by the Chief Technical Examiner (CTE). The Operator agrees and undertakes to promptly carry out all modifications as may be suggested by CTE. For avoidance of doubt, it is clarified that the requirement of audit and approval by CTE under this Clause 17.17.4 shall be in addition to the audit conducted under Clause 17.17.3.

#### 17.17.5 Approvals/ Clearances from other Authorities

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It shall be the responsibility and obligation of the Operator to obtain approvals and clearance for undertaking works including digging of roads, pits and Road Restoration, from any other authority including permission for traffic divergence. the Authority may, however, render reasonable assistance to facilitate the Operator in obtaining such clearances/ approvals.

#### **17.17.6 Defects Liability Period**

In order that the Road Restoration works carried out by the Operator is in the condition required by this Agreement, the Operator shall: (a) remedy any defect in relation to the Road Restoration works within such time period as instructed by the Authority; and (b) execute all works required to remedy defects or damage which has occurred or caused on or prior to the expiry of the Defect Liability Period.

For the purpose of this Clause 17.17.6 "**Defect Liability Period**", in respect of any Road Restoration works carried out by Operator in any stretch of road, shall mean one (1) year from the date of final acceptance of the Road Restoration works on such stretch of road certified by the auditor in terms of Clause 17.17.3.

**17.17.7** In the event any local authority concerned under whose jurisdiction falls any stretch of road in which the Operator has carried out Road Restoration in accordance with the terms of this Agreement, grants permission for digging for laying of underground utilities/works on same stretch (on which the Operator has carried out Road Restoration works) to any other agencies/ utilities (such as DISCOM, TRANSCO, GENCO, IGL, MTNL, telecom companies etc.) , the Operator shall not be liable for any damage or any future road conditions of such stretches in which digging has been carried out by such other utilities/agencies.

#### **17.17.8 Sub-Contract**

- (i) Subject to the provisions of this Clause 17.17.8, the Operator may carry out the works relating to Road Restoration through the Road Restoration Sub-Contractor (such sub-contractor to be an entity approved by the Authority) in terms of the Road Restoration Sub-Contract Agreement; provided that Road Restoration Sub-Contractor shall satisfy the eligibility criteria for road restoration capacity specified in terms of the RFP.
- (ii) The Operator covenants and undertakes that it shall maintain in full force and effect the Road Restoration Sub-Contract Agreement at least until the expiry of the second (2<sup>nd</sup>) anniversary of the Commercial Operation Date.

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- (iii) The Operator agrees and undertakes to ensure that, except with the prior written consent of the Authority, it shall not effect, agree or consent to any amendment, modification or termination of the Road Restoration Sub-Contract Agreement.
- (iv) Notwithstanding anything contained in this Agreement, the Operator hereby agrees that all acts and omissions of the Road Restoration Sub-Contractor shall be deemed to be the acts and omissions of the Operator. The Operator shall, and shall continue to be, wholly liable and responsible for any and all Road Restoration works, including payment of penalties.

7.

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*[Signature]*

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## ARTICLE XVIII GENERAL OBLIGATIONS OF THE PARTIES

### 18.1 Obligation of the Operator

**18.1.1** Subject to and on the terms and conditions of this Agreement, the Operator shall, at its own cost and expense, develop, design, engineer, procure, construct, operate and maintain the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

**18.1.2** The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

**18.1.3** The Operator 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, and obtain, renew, maintain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws, throughout the Concession Period;
- (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- (c) perform and fulfill 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 Sub-Contractors in connection with the performance of its obligations under this Agreement;
- (e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (f) 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 agreement shall excuse the Operator from its obligations or liability hereunder;
- (g) 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 Operator shall not

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enforce such replacement or amendment nor permit enforcement thereof against the Authority;

- (h) procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination or Suspension (the "Covenant"). 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 and undertake to include the Covenant in all its Project Agreements;

(i) Obligations relating to Change in Ownership

- (a) The Operator shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority;
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees that:
- (i) 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 not less than 15% (fifteen per cent) of the total Equity of the Operator; or
- (ii) acquisition of any control directly or indirectly of the board of directors of the Operator 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 Operator, and undertakes that it shall not give effect to any such acquisition of Equity or control of the board of directors of the Operator without such prior approval of the Authority.

For the purposes of this sub-Clause (b):

- (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

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- on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Operator;
- (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 Operator; 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 Operator, not less than half of the directors on the board of directors of the Operator or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Operator shall constitute acquisition of control, directly or indirectly, of the board of directors of the Operator.
- (j) ensure that that employment of foreign personnel by the Operator and/or its contractors and their sub-contractors 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 Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement;
- (k) procure that the Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Operator or its shareholders. The Operator 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;
- (l) shall ensure that (i) the O&M Member shall, at all times, subscribe and always hold at least 26% (twenty six per cent) of the subscribed and paid up equity shares in the Operator till the expiry of the Concession Period; (ii) the Members/entities on the basis of whose Technical Capacity and Financial Capacity the Selected Bidder was pre-qualified in the Bidding Process shall, at all times until the 2<sup>nd</sup> (second) anniversary of the COD, hold equity share capital representing not less than: (A) 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator; and

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- (B) 2.5% (two and half per cent) of the Estimated Project Cost; and any divestment thereafter, as per the terms of this Agreement, shall be subject to the prior approval of the Authority and, at the option of the Authority, be accompanied by a suitable no objection letters from the Lenders; (iii) the Selected Bidder shall, at all times, until the 2<sup>nd</sup> (second) anniversary of the COD, always hold not less than 51% (fifty one percent) in the issued and paid up capital of the Operator, and any divestment thereafter, as per the terms of this Agreement, be subject to the prior approval of the Authority and, at the option of the Authority, be accompanied by a suitable no objection letters from the Lenders, if applicable;
- (m) review the existing Consumer database, appropriately modify to reflect the details of Consumers and periodically update the same;
- (n) develop and maintain in a good order and up to date the inventories, maps and any other technical documents that are needed to operate the Project Facilities;
- (o) allow representatives of the Authority and/or Project Management Consultant or Persons duly authorized by the relevant Government Agency concerned with safety, security or environmental protection, access to the Project Facilities, at all reasonable times and on reasonable notice, but so as not to interfere unreasonably with the construction, operation or maintenance of the Project Facilities;
- (p) identify, during the Concession Period, any and all areas in the Service Area which may occasion any potential event of contamination of the water being supplied to the Consumers/Persons and, forthwith, inform the Authority of the same;
- (q) supply water to Persons, other than Consumers, for social, political or administrative event/function to be organized and held in the Service Area as per extant rule and regulations of Authority (as issued /modified from time to time), and demand and collect charges thereof from such Persons in accordance with the extant rule and regulations of the Authority (as issued /modified from time to time), and deposit the same in the Escrow Account against which the Operator shall be paid as per terms of this Agreement. By way of abundant clarity, the Parties hereby agree that charges collected from such Persons [in lieu of water supplied] and deposited in the Escrow Account shall be deemed and construed as incentive payable to the Operator and used for computation of Operator Payment, in accordance with clause 13.1 of the Agreement;
- (r) remove from the Service Area all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) promptly and in any case within 7 (seven) days of completion of such activity and shall keep the Service Area in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits, failing which the Operator shall be liable to pay Liquidated Damages as per terms of this Agreement;

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- (s) be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and indemnify the Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Authority be treated as employer in this regard;
- (t) pay all stamp fees, registration expenses and duties for execution of this Agreement, as applicable;
- (u) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Agreement Period;
- (v) pay all Taxes, duties and other outgoings relating to the Project Facilities;
- (w) Indemnify the Authority against all actions, suits, claims, demands and claims and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Operator and/or its Sub-Contractor in connection with the performance of its obligations under this Agreement;
- (x) provide and manage the Services in the Service Area so as to meet the Performance Standards;
- (y) develop and maintain in good order a quality and testing centre commensurate with the size of the Project Facilities and as per Good Industry Practice;
- (z) collect, in the name and on behalf of the Authority, Water Charges from the Customers and maintain control over the proper calibration of the Customers' meters to ensure that the potable water supplied is consistent with the billing and ensure timely disconnections to defaulting Consumers with prior express approval of the Authority;
- (aa) Undertake the rehabilitation / replacement work of Existing Facilities as set forth in the Approved Implementation Plan;
- (bb) provide all assistance to the Project Management Consultant as it may require for the performance of its duties and services;
- (cc) provide to the Authority reports on regular basis during the Concession Period on regular basis as may be required under this Agreement or as may be specified by the Authority from time to time in this regard;
- (dd) obtain and maintain in force workers insurance of all workmen directly employed by the Operator and cause to maintain insurance of all other workers at the Service Area;
- (ee) appoint, supervise, monitor and control the activities of Sub-Contractors under their respective Project Agreements as may be necessary;
- (ff) develop, implement and administer a surveillance and safety program for the Project, the users thereof, and the Sub-Contractors' personnel engaged in the provision of any services under any of the Project Agreements, including correction of safety violations and deficiencies, and taking of all other actions necessary to

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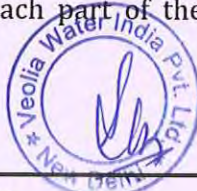






- provide a safe environment in accordance with the requirement of the Agreement, Applicable Laws and Good Industry Practice;
- (gg) take all reasonable precautions for the prevention of accidents at the Project Facilities and provide all reasonable assistance and emergency medical aid to accident victims;
  - (hh) not to place or create and nor permit any Contractor or other person claiming through or under the Operator to create or place any Encumbrance or security interest over all or any part of Service Area or the Project Assets, or on any rights of the Operator therein or under the Agreement, save and except as expressly set forth in the Agreement;
  - (ii) not claim or demand possession or control of any structures, roads or real estate which do not form part of the Project;
  - (jj) make payment to police department or any Government Authority, if required, for provision of such services as are not provided in the normal course or are available on payment;
  - (kk) hand over the Project and Project Facilities to the Authority on the Transfer Date free from any Encumbrances and in a good operable condition as per terms of this Agreement;
  - (ll) pay to the concerned Government Authorities the electricity, water, sewerage, power, telephone, sanitation and other applicable utility expenses, charges and rates, including penalties for delay or default in payment, at the rates applicable from time to time, in respect of the use of such utilities during the Concession Period for the Project Facilities and indemnify and keep indemnified the Authority in this respect;
  - (mm) not permit anything to be done on the Service Area which may be unlawful, a nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises in the vicinity. The Project shall be executed in a manner such that any inconvenience or nuisance is not caused to the existing inhabitants residing in other parts of the Service Area;
  - (nn) undertake the Project using due care and diligence in a professional manner, using sound engineering and design principles and project management and supervisory procedures and in accordance with Good Industry Practice;
  - (oo) shall always abide by the Project Completion Schedule and the Project Milestones;
  - (pp) ensure that all materials, equipment, machinery, etc installed and/or used at the Site will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required;

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- (qq) undertake energy audit and water audit of the Project and/or Project Facilities and submit reports thereof on yearly basis to the Authority in the format prescribed by Authority thereof and, accordingly, inform the Authority about significant problems and its remedial measures including anticipated fresh investment through an annual plan in advance to the Authority so as to allow the Authority to make requisite Budgetary provisions in respect thereof;
- (rr) set up and operate requisite number of Consumer service centre and helpline (an telephone-based IVR system) along with mobile service centers;
- (ss) continuously strive to improve and upgrade the levels of Service to Consumers and achieve the targeted KPIs;
- (tt) ensure timely provision of new service connections and prevent proliferation of unauthorized connections in the Service Area;
- (uu) undertake 2% (two percent) of the existing network replacement each year not covered under the CAPEX;
- (vv) undertake calibration of meters and replacement of water meters (bulk + consumer) and Service connections as and when required during the Concession Period;
- (ww) Ensure continuous pressurized water supply to all Consumers at prescribed service levels, including standby operations through tankers in times of emergency;
- (xx) Ensure maintenance of emergency water supply through water tankers in the short supply areas and in the areas where no Distribution System exists, it is clarified that the tanker shall be phased out after laying of distribution system by the Operator, **provided that** no water tanker to be sent outside Service Area until clear and written communication by the Authority. Further the Operator shall be obliged to install GPS on all the tankers used by it within the Service Area and shall make the monitoring of tankers feasible for the Authority on real time basis
- (yy) ensure regular up-gradation of the GIS database and preparation of long-term assets management plan;
- (zz) ensure that water available to the Operator for supply in the Service Area shall be exclusively used for the purpose specified under this Agreement and as permitted under the extant rules and regulations of the Authority;
- (aaa) that, the Operator having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Operator shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business, activity or interests, other than as envisaged herein;
- (bbb) ensure due, punctual and unconditional compliance and fulfillment of other obligations of the Operator and/or the Selected Bidder under this Agreement

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## 18.2 Obligations of the Authority

18.2.1 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.

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

- (a) upon written request from the Operator, and subject to the Operator complying with Applicable Laws, provide reasonable support and assistance to the Operator in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) subject to the provisions of Applicable Law, provide permissions (which it is legally empowered to do so) for road cutting and Road Restoration upon request of the Operator throughout the Concession Period, as per the terms and conditions of this Agreement;
- (c) upon written request from the Operator, provide reasonable assistance to the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Operator than those generally available to commercial customers receiving substantially equivalent services;
- (d) on being informed of any potential event of contamination in the Service Area by the Operator, the Authority shall in consultation with the Operator mutually decide on the pre-emptive steps towards obviating any such events;
- (e) assist the Operator in procuring police assistance for regulation of Service over the Service Area and security on or at the Project/Project Facilities including, *inter alia*, in disconnection of Service of the defaulting Consumers at Operator's cost and expense;
- (f) hand over the vacant possession of the Existing Facilities and enable access to the Service Area and the Existing Facilities, free from Encumbrances, in accordance with the Agreement;
- (g) permit peaceful use of the Licensed Premises by the Operator as licensee under and in accordance with the provisions of the Agreement without any let or hindrance from the Authority or persons claiming through or under it;
- (h) provide such information, documents and records relating or connected with the Project Facilities that the Authority may have in its possession and which the Operator may require in order to meet its obligations under the Agreement;
- (i) handover to the Operator drawings and all other technical and financial information of the Existing Assets and Consumers in the Service Area (including the list of past arrears of the billing amount) to the Operator prior to the Compliance Date;

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- (j) set out the Water Tariff payable by the different categories of Consumers for consumption of Treated Water (Water Charge) and intimate the same to the Operator including revisions made therein;
- (k) provide the Operator the permission to repair and replace the Project Facilities which the Operator is responsible for, and the right to lay new water mains on behalf of Authority, including the right of way to carry out the Services;
- (l) provide or facilitate provision of land/facilities to the Operator for the purpose of setting up of kiosks for collection of water charges from Consumers based on the intimated Water Charges;
- (m) make timely Operator Payment including/adjusting the performance based penalties/ incentives/ liquidated damages to the Operator as per this Agreement;
- (n) assist the Operator in preparation of the Implementation Plan and provide details of inventory of Existing Assets;
- (o) during the period between the Appointed Date and the Compliance Date, the obligation to supply water to the Service Area shall be that of the Authority and the Operator shall not be held responsible for the same. The Authority shall ensure adequate O&M of the existing Water Supply system in the Service Area including metering, billing and revenue collection in respect thereto, till the Compliance Date;
- (p) cooperate with the Operator so as to enable Operator to comply with its obligations and agree not to interfere in or impede in any manner or otherwise limit, restrict or impose conditions in the carrying out the Operator's obligations under this Agreement and confirms and accepts that the Construction Requirements, O&M Requirements and Performance Standards relating to the Project;
- (q) ensure availability of Bulk Water (Minimum 44 MGD at the Outlet of Bawana Intake Works) during the Concession Period;
- (i) Provided that the Authority shall till COD require the Operator to make available to the Authority treated water not exceeding 7.5 MGD at a place or aggregate of places (as conveyed by Authority) for supply by the Authority to the other areas and in lieu thereof Authority shall arrange to make available to the Operator till COD at least 5 MGD of treated water conforming to treated water standards at a place or aggregate of places (as conveyed by Authority) from alternate sources for supply in the service area to the Consumers;
- (ii) Provided further that the Authority shall with effect from 1<sup>st</sup> April 2016 and thereafter during the remaining term of Concession Agreement also make available to the Operator at any one place or aggregate of places in the service area additional 7.5 MGD of treated water conforming to treated water standards for supplying to the Consumers within the service area. Notwithstanding anything to the contrary contained herein, the Authority

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may in its sole discretion make available to the Operator prior to 1<sup>st</sup> April 2016 and thereafter during the remaining Term, at any one place or aggregate of places in the service area such 7.5 MGD of treated water conforming to treated water standards for supplying to the Consumers within the service area

In the event of Authority decides to make available and makes available additional 7.5 MGD of treated water to Operator in the Service Area prior to 1<sup>st</sup> April, 2016 as aforesaid, then the financial benefit likely to accrue to the Operator in lieu thereof during the period commencing from the date when Authority makes available to the Operator in the Service Area such additional 7.5 MGD of treated water until 1<sup>st</sup> April 2016, shall constitute a ground for Extra Ordinary Rate Adjustment and shall be dealt accordingly.

- (iii) Provided further that in the event the Authority supplies water less than 80% of the assured quantity set out under sub-clause 18.2.2 q (i) or 18.2.2 q (ii) as the case may be for more than 30 days, the Operator shall be paid a minimum amount equivalent to 80% of last one years' average billing which shall be valid for 60 days. In the event the Authority is unable to increase the supply of water to a level which is equivalent to or greater than 80% of the assured quantities within the said 60 days in such event the Operator shall be eligible for Extraordinary Rate Adjustment for the period in excess of 60 days during which the water supplied by the Authority is less than 80% of the aforesaid assured quantities set out under sub-clause 18.2.2 q (i) or 18.2.2 q (ii) as the case may be.
- (r) contribute Authority's share of the Estimated Project Cost as per the agreed schedule in the Approved Implementation Plan;
- (s) ensure due and timely payments with respect to electricity, sewerage, bulk water charges, to the competent Government Authority to enable smooth and timely implementation of the Project;
- (t) issue orders/authorization letters, as the case may be, for Disconnections in case of defaulting Consumers to Operator, provided that if the Authority does not act for due recovery of amount within specified time limit, as per terms hereof, and allow continuation of Services, the Operator shall be accordingly compensated;
- (u) procure public consultation and counselling in case of issues arising out of Authority's / GNCTD's policy decisions;
- (v) ensure and maintain overall monitoring, oversight of the activities of the Operator in the larger public interest;
- (w) be responsible for any and all obligations towards sewerage connections to Persons, other than Consumers, including charging and collection of charges against such

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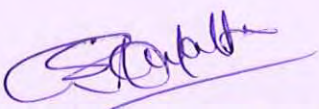
sewerage connections and the Operator shall not, in any manner whatsoever, be responsible for the same;

- (x) Ensure that the existing tube wells are maintained and operated at its own cost, as per the applicable guidelines and Good Industry Practice, until the Scheduled COD.

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## ARTICLE XIX

### UTILITIES AND ROADS

#### 19.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Operator shall ensure (including in discharging its obligations towards Road Restoration) that the respective entities owning the existing roads, right of way or utilities on, under or above the Service Area are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility.

#### 19.2 Shifting of obstructing utilities

The Operator shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Service Area if and only if such utility causes or shall cause a Material Adverse Effect on the construction, development, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Operator shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

#### 19.3 Felling of trees

The Authority shall assist the Operator in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Operator, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and/or respective Government Authority, as the case may be, and shall be disposed in such manner and subject to such conditions as the Authority and/or respective Government Authority, as the case may be, may in its sole discretion deem appropriate.

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## ARTICLE XX CHANGE OF SCOPE

### 20.1 Change of Scope

**20.1.1** The Authority may, notwithstanding anything to the contrary contained in this Agreement but subject always to the assured availability of raw water by the Authority in addition to raw water available under 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 XX and the costs thereof shall be expended by the Operator and reimbursed to it by the Authority in accordance with Clause 20.3.

**20.1.2** If the Operator determines at any time that a Change of Scope is necessary for providing safer and improved services to the Consumers, it shall by notice in writing (with proper justifications for such Change in Scope) require the Authority to consider such Change of Scope. The Authority shall, within 30 (thirty) 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 XX or inform the Operator in writing of its reasons for not accepting such Change of Scope.

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

### 20.2 Procedure for Change of Scope

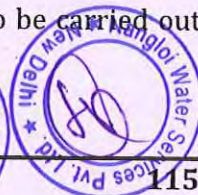
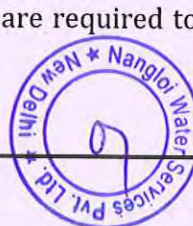
**20.2.1** In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Operator a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

**20.2.2** Upon receipt of a Change of Scope Notice, the Operator 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 Development Period; and

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- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs in terms of the BOQ as provided by Authority in the RFP and time thereof, including a detailed breakdown by Work classifications i;

**20.2.3** Upon receipt of information set forth in Clause 20.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Operator. and shall issue an order (the "**Change of Scope Order**") requiring the Operator to proceed with the performance thereof.

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

### **20.3 Payment for Change of Scope**

**20.3.1** Upon receipt of a Change of Scope Order, the Operator shall, after commencement of work, present to the Authority bills based on the BOQ rates provided by the Authority in the RFP 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 Operator such amounts 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 payments to the Operator against such Change of Scope shall be on the basis of the rates set out in the BOQ as provided by the Authority in the RFP.

**20.3.2** Notwithstanding anything to the contrary contained in Clause 20.3.1, all costs arising out of any Change of Scope Order issued during the Development Period shall be borne by the Operator, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Estimated Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 20.3.1. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Estimated Project Cost shall, to the extent borne by the Operator, be deemed to form part of the actual capital cost of the Project.

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## 20.4 Restrictions on certain works

**20.4.1** Notwithstanding anything to the contrary contained in this Article XX, but subject to the provisions of Clause 20.4.2, the Authority shall not require the Operator to undertake any works or services if such works or services are likely to delay completion of the Project; **provided that** in the event that the Authority considers such Works 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 Order shall not be reckoned for purposes of determining completion of Project and issuing the Readiness Certificate.

**20.4.2** Notwithstanding anything to the contrary contained in this Article XX, in case the cumulative capital cost incurred by the Operator in relation to the Change of Scope Orders exceeds 5% (five per cent) of the Estimated Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or 20% (twenty per cent) of the Estimated Project Cost at any time during the Concession Period, then in such event the Operator shall be entitled to payment of cost incurred by it towards O&M Obligations in connection with such change of scope orders in accordance with Clause 14.3 (Extraordinary Rate Adjustment).

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## ARTICLE XXI

### HANDBACK OF PROJECT FACILITIES

#### 21.1 Operator's Obligations

**(A) Project Facilities**

- (i) The Operator shall on the date of expiry of Agreement Period, hand back on an 'as-is-where-is basis', the Project Facilities to the Authority free of cost and in good operable condition. For the purpose of clarity, the Operator shall leave behind all assets in good and operable condition including tools, spares, inventory, machinery and all other movables required for continuous water supply.
- (ii) Atleast 6 (six) months before the Transfer Date a joint inspection of the Project Facilities and Optional Project Sites (as defined under clause 16.10) shall be undertaken by the Authority and the Operator. The Authority shall, within 45 (forty) days of such inspection prepare and furnish to the Operator a list of works/ jobs (the "**Handback Requirements**"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Operator shall promptly undertake and complete such works / jobs at least 3 (three) months prior to the Transfer Date and ensure that the Project Facilities continue to meet such requirements until the same are handed back to the Authority. On Transfer Date, the Parties shall undertake a joint inspection of the Project Facilities so as to ensure that Handback Requirements are met. The release of the final installment of the Operator Payment and other outstanding payments, if any, shall be subject to the Handback Requirements being fully met to the satisfaction of the Authority.
- (iii) the Authority shall, within 45 (forty five) days of the joint inspection undertaken under preceding sub-Clause (ii) prepare and furnish to the Operator a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to the Authority.
- (iv) The Operator, upon written request by the Authority no later than 180 days prior to the Transfer Date, shall provide all requisite assistance and training, to those staff identified by the Authority during a transitional period of up to 60 (sixty) days prior to the Transfer Date ("**Transition Assistance**"). The purpose is to ensure a smooth transition between Operator and a subsequent manager of the Project Facilities.

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- (B) The Operator hereby acknowledges the Authority's rights specified and enforceable against it upon Termination as per the terms of this Agreement and its corresponding obligations arising there from. The Operator undertakes to comply with and discharge promptly all such obligations.

## 21.2 Authority's Obligations

The Authority shall duly discharge and release to the Operator the final installment of the Operator Payment and other outstanding payments, if any, within 3 months from the Transfer Date, subject to the Authority's right to deduct amounts towards:

- (a) carrying out works/jobs listed under Handback Requirements which have not been carried out by the Operator;
- (b) purchase of items, which have not been handed back to the Authority in terms of Clause 21.1 (A)(iii); and
- (c) any outstanding dues, which may have accrued in respect of the Project till the Transfer Date.

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## ARTICLE XXII

### INTELLECTUAL PROPERTY

#### 22.1 Intellectual Property

22.1.1 The Operator shall make available to and hereby licenses the Authority to use free of charge all Intellectual Property owned by the Operator (or to the extent they are legally able to do so licensed to the Operator by third parties) which is required in connection with the performance of the Operator's obligations under this Agreement (the "**Operator Intellectual Property**"). This license is for the purposes of providing the Services but no other purpose. Such license shall terminate 2 (two) years after the termination of this Agreement but shall otherwise be irrevocable, shall be royalty free, shall not be transferable and shall not carry the right to grant sub-licenses. Notwithstanding anything contained herein, any Intellectual Property that is created specifically in connection with the Services by the Operator during the Agreement Period shall be owned by the Authority and the Operator hereby assigns all its rights in such Intellectual Property, including all copyrights, patent and moral rights arising there from and related thereto, to the Authority. The Operator shall execute all necessary and appropriate documents and deeds as the Authority may require in order perfecting the title of the Authority to the Intellectual Property.

22.1.2 The Authority shall, to the extent it is legally able to do so, grant the Operator during the term of this Agreement a royalty free, non-exclusive, irrevocable personal and non-transferable license to use Intellectual Property which is owned by or licensed to the Authority by third parties (the "**the Authority Intellectual Property**") only to the extent necessary to enable the Operator to perform its obligations under this Agreement. Such licenses shall not carry the right to grant sub-licenses. The Authority shall indemnify the Operator in full in respect of all loss, damage and expense of whatever kind and nature arising out of the use by the Operator of any the Authority Intellectual Property in accordance with its terms which infringes the rights of any third party.

22.1.3 The Operator shall indemnify the Authority in full in respect of all loss, damage and expense of whatever kind and nature arising out of the use by the Authority of the Operator Intellectual Property in accordance with its terms which infringes the rights of any third party.

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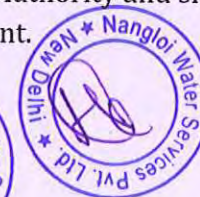
**22.1.4** The Operator shall use reasonable efforts:

- (a) to ensure that Intellectual Property owned or developed by third parties and utilized by the Operator in connection with the performance of its obligations under this Agreement is licensed to the Operator on reasonable terms for the purposes of the operations and maintenance or repair of the Project Facilities and otherwise for the purposes of the Agreement but for no other purpose; and
- (b) to ensure that no Intellectual Property of a third party is otherwise used in the performance of the Operator's obligations under this Agreement without the prior written approval of the Authority.

**22.1.5** All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Operator in accordance with this Agreement shall become and remain the property of the Authority, and the Operator shall, not later than upon termination or expiration of this Agreement, deliver all such documents and software to the Authority, together with a detailed inventory thereof. The Operator may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified by the Authority and shall be binding on the Operator surviving termination of this Agreement.

  
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## ARTICLE XXIII ACCOUNTS AND AUDIT

### 23.1 Audited Accounts

**23.1.1** The Operator shall maintain books of accounts recording all its receipts, 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 Operator 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 90 (ninety) 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 Operator 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.

**23.1.2** The Operator 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.

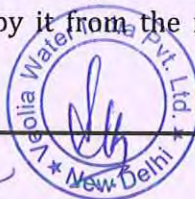
**23.1.3** On or before the thirty-first day of May each Year, the Operator shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Water Charges billed, charged and received, and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require.

### 23.2 Appointment of auditors

**23.2.1** The Operator 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 10 (ten)

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reputable firms of chartered accountants (the "**Panel of Chartered Accountants**").  
All fees and expenses of the Statutory Auditors shall be borne by the Operator.

**23.2.2** The Operator 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.


**23.2.3** Notwithstanding anything to the contrary contained in this Agreement, and without prejudice to the provisions of Applicable Laws, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, 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.

**23.3 Certification of claims by Statutory Auditors**


Any claim or document provided by the Operator 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.

**23.4 Set-off**

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

  
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## ARTICLE XXIV REDRESSAL OF PUBLIC GRIEVANCES

### 24.1 Public Relation Office

The Operator shall maintain adequate number of Public Relations Offices in all water supply zones of the Service Area for consumer grievances redressal and keep it open for public access at all times. At each such office, the Operator shall make arrangements for recording of complaints (either through website or register) from consumers /citizens at any time. The Operator shall ensure and provide at least the following Grievance Redressal Mechanisms including transparency in providing services to the citizens as mentioned below:

#### A) 24 HOURS CONSUMER GRIEVANCES REDRESSAL CELL

- (1) Complaints relating to Services shall be received at such office i.e. Consumer Grievances Redressal Cell on 24 x 7 basis and communicated immediately to the concerned staff of the Operator for appropriate Redressal;
- (2) Computer terminals shall be provided in such cell wherein each complaint shall be immediately registered and complaint number shall be given forthwith to the complainant for the purpose to follow up;
- (3) Minimum three Telephone Nos. (3 lines) shall be provided in such Cell to facilitate the receipt of the Consumers' grievances / complaints;
- (4) Complaints shall be registered, numbered and immediately passed on to the concerned staff of the Operator for redressal through tailor made software to be installed by the Operator;
- (5) Redressal of complaints shall be closely monitored by senior officers of the Operator;
- (6) set up and operate requisite number of Consumer service centre and helpline (an telephone-based IVR system) along with mobile service centers.

#### B) COMPLAINTS AGAINST OPERATOR'S STAFF

The Operator shall nominate adequate number of its superior officers to suitably deal with consumer's complaints pertaining to staff of the Operator.

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**C) INTRODUCTION OF ONLINE COMPLAINT MONITORING SYSTEM THROUGH TAILOR MADE SOFTWARE:**

- (1) For speedy redressal of complaints / grievances / petitions, a latest Software Technology or tailor made software shall be introduced and managed by the Operator;
- (2) Operator shall open a separate website to facilitate the consumers / citizens to lodge their complaints at any time via internet;
- (3) The complainant shall get OLC No. (Online Complaint No.) as receipt as soon as a complaint is registered in the website;
- (4) The complaint lodged shall be communicated to concerned through e-mail / SMS and their redressal monitored;
- (5) Online complaints shall be attended immediately by the Officers concerned and replied to the complainant through e-mail with a copy to Consumer Grievance Redressal Cell;
- (6) Within 1 (one) week following the close of each calendar month, the Operator shall communicate to the Authority a summary of complaints received / redressed during such month. The Authority may direct the Operator to take such further reasonable action as the Authority may deem appropriate.

**D) INFORMATION & FACILITATION COUNTERS**

The Operator shall provide adequate number of Information and Facilitation Counters at each Public Relations Office for the following services:

- (1) Issue of application forms for new water connections;
- (2) Changes pertaining to name address and size of connection etc;
- (3) Generally to guide the consumers on matters pertaining to water supply services.

**24.2 Penalties**

**24.2.1** On breach by the Operator, of any of its obligations towards consumer services, the Authority may propose appropriate damages/ penalties depending upon the type of the breach and duration of its continuance. The Authority shall prepare the Schedule of such penalties which may be modified time to time as per DSR of the Authority / Central Public Works Department (CPWD) (or CPHEEO). Penalty payable by Operator shall not be less than 110% of cost of a service and shall not exceed 300% of cost of the service which was affected due to breach of its obligation by the operator; Provided that if, for any breach of obligations towards consumer

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services, the damages/ penalty prescribed under the citizens charter notified by the competent government authority, as applicable from time to time, is higher than the damages/ penalty specified under this Agreement, then the Operator shall be liable for payment of such higher damages/penalty.

The cost of a service shall be determined by the Authority and Operator jointly within 12 months from the date of commencement and such cost shall be revised proportionate with Operator's rate or cost index, whichever is higher.

24.2.2 Whenever the Authority is required to make alternate arrangements for the redressal of consumers grievances related to water supply services, the Authority shall be entitled to recover the actual cost of such measures along with the penalties, assessed, if any, from monthly payments to the Operator as per terms of this Agreement.

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## ARTICLE XXV FORCE MAJEURE

### 25.1 Force Majeure Events

Force Majeure Event shall mean any event or circumstance or a combination of events and circumstances (occurring in India) set out hereunder or the consequence(s) thereof which affect or prevent the Party (the Authority or Operator) claiming force majeure ("**Affected Party**") from performing its obligations, in whole or in part, under this Agreement and which event or circumstance **(i)** is beyond the reasonable control and not arising out of the fault of the Affected Party, **(ii)** the Affected Party has been unable to overcome such event or circumstance by the exercise of due diligence and reasonable efforts, skill and care and following Good Industry Practice, and **(iii)** has a material and adverse effect of such Party. Such events mean:

#### (A) Non Political Events

- (a) Acts of God or natural disasters beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, including but not limited to storm, cyclone, typhoon, hurricane, flood, tsunami, landslide, drought, lightning, earthquakes, volcanic eruption, fire or exceptionally adverse weather conditions affecting the implementation of the Project;
- (b) Radio active contamination, ionizing radiation;
- (c) Epidemic, famine;
- (d) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, terrorist or military action, nuclear blast / explosion, sabotage or civil commotion;
- (e) Any judgment or order of any court of competent jurisdiction or statutory authority in India made against the Operator in any proceedings (which are non collusive and duly prosecuted by the Operator) for reasons other than failure of the Operator or of any Person claiming through or under it to comply with any Applicable Law or terms of Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Authority;
- (f) strikes or boycotts (other than those involving the Operator, Sub-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

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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 Clause 25.1 (B);

- (g) Any event or circumstances of a nature analogous to any of the foregoing.

**(B) Indirect Political Events**

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Water Charges by the Operator for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

**(C) Political Events**

- (a) A Change in Law which has a Material Adverse Effect and to which the specific provisions of this Agreement cannot be applied;
- (b) Expropriation or compulsory acquisition by any Government Authority of the Project or part thereof or rights of the Operator relating thereto in accordance with Applicable Laws;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Operator 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 Operator's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorization, no objection certificate, exemption, consent, approval or permit; or
- (d) any event or circumstance of a nature analogous to any of the foregoing.

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## 25.2 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event ("**the Notice**") as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- (b) The Notice shall inter-alia include full particulars of:
- (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) the duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under this Agreement;
  - (iii) the measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
  - (iv) any other relevant information.
- (c) So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly) written reports containing the information called for by Clause 25.2 (b) and such other information as the other Party may reasonably request.

## 25.3 Period of Force Majeure

The period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Clause 25.4.

## 25.4 Performance Excused

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this Agreement as a consequence of the Force Majeure Event shall be excused from performance of such obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event. Notwithstanding any provision

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of this Article XXV, a Force Majeure Event shall not absolve the Operator from any obligation

- (iv) to supply Treated Water under the Service Area to the Consumers, on a best effort basis, which shall, considering the essential nature of Services to be performed by the Operator and on a best effort basis, be facilitated by the Authority; and
- (ii) make any payments in respect of its obligations under this Agreement in the event such obligations have arisen or accrued prior to the occurrence of the Force Majeure Event.

#### 25.5 Resumption of Performance

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

#### 25.6 Extension of Time

To the extent the performance of the obligations of the Affected Party is affected by the Force Majeure Event, the time period for the performance of the obligations of the Affected Party shall be extended by a similar time period on a day-to-day basis.

#### 25.7 Consultation and Duty to Mitigate

Without prejudice to clause 25.4, the Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure Event.

#### 25.8 Liability for Other Losses, Damages Etc

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

#### 25.9 Termination Due to 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,

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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 XXV, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

#### **25.10 Termination Payments for Force Majeure Event**

**25.10.1** If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Operator in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover;

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

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity.

**25.10.3** If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Operator in an amount that would be payable under Clause 26.7.2 as if it were an Authority's Event of Default.

#### **25.11. Dispute Resolution**

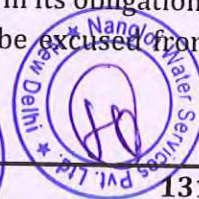
In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure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

#### **25.12 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

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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

  
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## ARTICLE XXVI

### EVENTS OF DEFAULT & TERMINATION

#### 26.1 Operator Event of Default

On the occurrence of any of the following events or circumstances, and the Operator fails to cure or rectify such defaults within the period against such default as mentioned hereunder from the date of occurrence of such event or circumstance, or where no such period is specified then within a Cure Period of sixty (60) days, the Operator shall be considered in default of this Agreement (herein the "**Operator Event of Default**"), providing the Authority the right to terminate this Agreement in accordance with Clause 26.3, unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The Operator Event of Default, referred to hereinabove, shall include:

- (i) At any time during the Agreement Period, the Operator fails to adhere to the Construction Requirements and/or O&M Requirements;
- (ii) The Operator has failed to achieve any or all of the Project Milestones, including without limitation, the achievement of Project Completion in terms of the Agreement;
- (iii) The Operator has failed to deposit the Water Charges or any other charges/ security deposits/ other monies collected from the Consumers in the designated account of the Escrow Account within the time frame specified in Clause 12.1.2 (f), for more than 3 (three) instances in any given 6 (six) months during the Agreement Period;
- (iv) the Operator's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (v) the Operator's failure to perform or discharge any of its obligations under any other Project Agreements, which has or is likely to have a Material Adverse Effect;
- (vi) the Operator's failure to perform or discharge any of its obligations under the Escrow Agreement which leads to a Operator Escrow Default;
- (vii) any representation made or warranties given by the Operator under this Agreement are found to be false or misleading;
- (viii) any representation, statement or information given by or on behalf of the Selected Bidder to the Authority are found to be false or misleading;
- (ix) the Operator passing a resolution for voluntary winding up;
- (x) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Operator by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

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- (xi) levy of an execution or distraint on the Operator's Assets which has or is likely to have Material Adverse Effect and such execution or distraint remaining in force for a period exceeding 30 (thirty) days or any authority, regulatory body, court, tribunal or judicial authority passing or issuing any order or direction against the Operator which would have an or likely to have an Material Adverse Effect on the project or the ability of the Operator to comply with or discharge the obligations and responsibilities under this Agreement;
- (xii) amalgamation of the Operator with any other company or reconstruction or transfer of the whole or part of the Operator's undertaking (other than transfer of assets in the ordinary course of business) without the Authority's prior written approval, provided, if the amalgamated entity, reconstructed entity or the transferee as the case may be, has the financial and technical ability demonstrated to the satisfaction of the Authority, to undertake, perform/discharge the obligations of the Operator under this Agreement, necessary approval shall be granted by the Authority;
- (xiii) Operator has failed to make any payments due to the Authority as per the terms of this Agreement and more than 90 (ninety) days have elapsed since the due date of such payment;
- (xiv) The Operator has failed to demonstrate to Authority, adherence to the Performance Standards as per **Schedule-XIII** for two consecutive quarters or any four quarters in a period of 2 (two) consecutive years;
- (xv) the Operator engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;
- (xvi) the penalties payable and/or levied on the Operator, as per terms of this Agreement, for the Financial Year are greater than ten (10) % of the Operator Payment for the last Financial Year;
- (xvii) the aggregate penalty payable and/or levied on the Operator, as per terms of this Agreement during any three consecutive Financial Years, is greater than (7.5) % of the aggregate Operator Payment received from the Authority for the three Financial Years immediately preceding the third year amongst the said three consecutive years in respect of which the penalty is payable and/or levied on the Operator.

For example if the penalties payable and/or levied on the Operator for FY 2015-16, FY 2016-17 and FY 2017-18 is aggregated and determined to be more than 7.5% of the aggregate Operator Payment made by the Authority.

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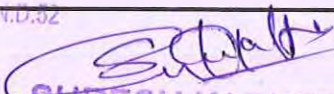
for FY 2014-15, FY 2015-16 and FY 2016-17, then this shall be construed to be an Operator's Event of Default;

- (xviii) the Operator repudiates this Agreement or otherwise takes any action or evinces or conveys an intention not to be bound by this Agreement;
- (xix) the Operator fails to replenish or provide fresh Performance Security and/or O&M Security within a period of 30 (thirty) days after it has been encashed and appropriated;
- (xx) the Operator has made any addition, replacement or amendment to any of the Financing Agreement without the prior consent of the Authority, and such replacement or amendment has the effect of imposing or increasing any financial liability or obligation on the Authority [and/or the Operator has enforced such replacement or amendment not permit enforcement thereof against the Authority];
- (xxi) the Selected Bidder, either itself or any of its constituent Member (including O&M Member) has undertaken any steps towards dilution of its Equity in the Operator in contravention to the terms of this Agreement;
- (xxii) the Operator is adjudged bankrupt or insolvent;
- (xxiii) the whole of Project Facilities or any part of the Project Facilities remains closed/ un-operational (except for reasons on account of Force Majeure or the Authority's Event Of Default) owing to which its O&M obligations under this Agreement are not fulfilled for a continuous period of 48 (forty eight) hours;
- (xxiv) the Operator committing any breach or non compliance of any of the terms and conditions of the Financing Agreements executed between the Operator and if all or any of the Lender(s) have recalled their outstanding dues;
- (xxv) any failure of the Operator to meter, generate or distribute the regular bills of Water Charges to Consumer(s) within the Billing Cycle as per the terms of this Agreement;
- (xxvi) failure to enter into Road Restoration Sub-Contract Agreement in accordance with the terms of this Agreement and/or any termination, amendment, or modification thereof except as provided in this Agreement; and
- (xxvii) such events as have been specified as Operator's Events of Default under the provisions of this Agreement.

## 26.2 Authority Event of Default

For the purposes of this Agreement, each of the following events or circumstances, to the extent not caused by a default of the Operator or are not Force Majeure Events, and if not rectified within a Cure Period of ninety (90) days shall be considered, as events of default of the Authority (herein the " **Authority Event of**

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**Default")**, which shall provide the Operator the right to terminate this Agreement in accordance with Clause 26.3:

- (i) the Authority has failed to provide the Operator Payment within sixty (60) days from the receipt of invoice to the Operator as per the terms set out in Article XIII;
- (ii) the Authority's failure to perform or discharge any of its obligations under the Escrow Agreement and the same results into an Authority Escrow Default;
- (iii) the Authority's repudiation or failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement that has a Material Adverse Effect unless such failure has occurred as a consequence of an Operator Event of Default or a Force Majeure Event;
- (iv) failure by the Authority to maintain the Reserve Fund as per the provisions of Article XIII;
- (v) any representation made or warranties given by the Authority under this Agreement is found to be false or misleading;
- (vi) expropriation or compulsory acquisition by any Government Authority of the Project/Project Facilities or part thereof or any material assets or rights of the Operator; provided the same has not resulted from an act or default of the Operator;
- (vii) such events (except those covered by sub-clause (i) to (vi) of this Clause 26.2), as have been specified as Authority's Events of Default under the provisions of this Agreement.

## 26.3 Notice of Termination & Suspension

### 26.3.1 Notice of Termination

- (i) Without prejudice to any other rights or remedies which the non-defaulting Party may have under this Agreement, upon the occurrence of either a Operator Event of Default or a the Authority Event of Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice expressing its intention to terminate this Agreement to the other Party (herein the **"Notice of Intention to Terminate"**) and requiring the defaulting party to rectify the Event of Default within thirty (30) days of the date of Notice of Intention to Terminate. A copy of Notice of Intention to Terminate shall be sent to the Lenders Representative/Lenders.
- (ii) In case of the failure by the Operator to rectify the Event of Default within thirty (30) days of the date of Notice of Intention to Terminate, the Authority shall issue a notice to the Operator (herein the **'Suspension Notice'**), a copy of which shall be

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sent to the Lenders Representative/Lenders for taking action in terms of the Substitution Agreement.

- (iii) Without prejudice to any other right under this Clause 26.3 and in the event of no debt servicing obligations of the Operator under the Financing Agreement are subsisting, the Authority may, in case of the failure by the Operator to rectify its Event of Default within thirty (30) days of the date of Notice of Intention to Terminate, also terminate the Agreement through a notice (herein the 'Termination Notice').

#### 26.3.2 Suspension upon Operators Event of Default

- (i) Upon occurrence of a Operators Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Operator under this Agreement; and (ii) exercise such rights and obligations of the Operator under this Agreement, either by itself or authorize any other person to exercise the same on its behalf during such suspension (herein the "Suspension"). Suspension hereunder shall be effective forthwith upon issuance of Suspension Notice by the Authority and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such Suspension Notice.
- (ii) 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, the 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 Operator Default

#### 26.4 Substitution by Lenders' Representative

26.4.1 On occurrence of a Operator's Event of Default, the Authority shall, through the Notice of Intention to Terminate to the Lender's Representative, grant 30 (thirty) days from the date of Notice of Intention to Terminate to the Lender's Representative, for making a representation on behalf of the Lenders stating the intention to undertake Substitution of the Operator in accordance with the Substitution Agreement.

26.4.2 In the event the Authority receives such a representation on behalf of the Lenders, it shall withhold the termination for a period not exceeding 180 (one hundred and eighty) days from the date of the Suspension Notice, and exercise its right of

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Suspension, as per Clause 26.3 above, for enabling the Lender's Representative to exercise the Lenders right of Substitution in accordance with the Substitution Agreement.

#### 26.5 Substitution by the Authority

In the event that no company is nominated by the Lender's Representative or the company selected by the Lenders' Representative in terms of Clause 26.4, within the period of 180 (one hundred and eighty) days from the date of Suspension Notice or the Lenders/Lenders' representative fails to make a representation as required under Clause 26.4.1, is not acceptable to the Authority, it may either substitute the Operator or terminate the Agreement.

#### 26.6 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Defaulting Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

**Provided that** the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

#### 26.7 Termination Payments

**26.7.1** Upon Termination on account of a Operator's Event of Default during the Operation Period, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Operator hereby acknowledges that no Termination Payment shall be due or payable on account of an Operator's Event of Default occurring prior to COD.

**26.7.2** Upon Termination on account of an Authority's Event of Default, the Authority shall pay to the Operator, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

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For the purpose hereof, and this Agreement, the expression "**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 2nd(Second) 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 Second anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.56% (zero point five six per cent) thereof at the commencement of each month following the 2nd (Second) 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; [and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees and expended for the Project].

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

**26.7.3** Termination Payment shall become due and payable to the Operator within 15 (fifteen) days of a demand being made by the Operator to the Authority with the necessary particulars. 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.

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

26.7.5 Termination Payment due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the exchange rate (notified by the Reserve Bank of India) for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 30 (thirty) days from date falling one and half (1.5) years from the COD, the Operator shall notify in writing to the Authority, the Total Project Cost as on the date falling one and half (1.5) year from the COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed to the Authority shall form the basis of computing Termination Payment.

## 26.8 Rights & Obligation of the Parties upon Termination.

26.8.1 The Termination of this Agreement shall be without prejudice to any other right or remedies which are exercisable by the Parties either under this Agreement or equity or law.

26.8.2 Upon Termination of this Agreement for any reason whatsoever, the Authority shall have the power and authority to:

(i) enter upon and take possession and control of the Service Area, the Project Assets and the Project Facilities upon the Service Area along with the Works and related original construction documents, certificates, manuals, instruction booklets, guarantees/ warranty cards in respect of, material and equipment included as part of the Construction Works forthwith;

(ii) prohibit the Operator and any person claiming through or under the Operator from entering upon/ dealing with the Service Area, the Project Assets and the Project Facilities upon the Service Area.

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**26.8.3** Notwithstanding anything contained in this Agreement and save for the DJB Assigned Employees, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Operator in connection with the Project, and the taking over of the Service Area, the Project Assets and the Project Facilities by the Authority shall be free from any such obligations.

**26.9 Survival of Rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 26.7.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Hand Back Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

7.

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*[Signature]*

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## ARTICLE XXVII REPRESENTATION & WARRANTIES

### 27.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and to carry out the transactions contemplated hereby;
- (d) this Agreement constitutes its legal, valid and binding obligation, fully enforceable against it in accordance with the terms hereof;
- (e) It has the financial standing and capacity to undertake the Project;
- (f) In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same. However, such notification shall not be deemed to discharge the notifying Party from its respective obligation, until expressly waived in writing, by the non-notifying Party.

### 27.2 Further Representations and Warranties of the Selected Bidder/Operator

In addition, the Selected Bidder/Operator represents and warrants to the Authority that:

- (a) The execution, delivery and performance of this Agreement and all instruments or agreements required hereunder do not conflict with, contravene, violate, result in the breach of, constitute a default under or accelerate performance of any agreement or instrument to which the Selected Bidder/Operator is a party, including without limitation, its articles and memorandum of association or by which it is or may be bound or any Applicable Laws or any covenant, agreement, understanding, decree or order, injunction, award to which it is a party or by which it or any of its properties or assets is bound or affected;
- (b) There are no actions, suits, proceedings, or investigations pending or, to the Selected Bidder/Operator's 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 or constitute a default of the Selected Bidder/Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect;

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- (c) 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 Authority or any other pending or potential matters which may result in any Material Adverse Effect or impairment of the Selected Bidder/Operator's ability to perform its obligations and duties under this Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which individually or in the aggregate have or may have Material Adverse Effect;
- (e) No representation or warranty by the Selected Bidder/Operator contained herein or in any other document furnished by it to the Authority or to any Government Authority in relation to Applicable Permits or otherwise contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (f) Each Consortium Member/ was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Selected Bidder/Operator entering into this Agreement and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

**Provided that** whenever any pending or potential matter, including the matters listed in the sub-sections above, comes to the knowledge of the Selected Bidder/Operator, during the Concession Period, the outcome of which may result in the breach of or constitute a default of the Selected Bidder/Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect or impairment of the Selected Bidder/Operator's ability to perform its obligations and duties under this Agreement, the Selected Bidder/Operator shall immediately intimate the same to the Authority;

- (g) In submitting its Bid, the Selected Bidder/Operator has complied with all the Applicable Laws and it is and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal proceedings or liabilities which individually or in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to implement the Project.
- (h) All rights and interests of the Selected Bidder/Operator in the Project, the Project Facilities and Project Assets shall pass to and vest in the Authority or its nominated agency on the Transfer Date free and clear of all liens, claims, and Encumbrances, without any further act or deed on the part of the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Selected Bidder/Operator 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; and

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- (i) No sums, in cash or kind, have been paid or will be paid by or on behalf of the Selected Bidder/Operator, to any person by way of commission or otherwise for securing the execution of this Agreement or for influencing or attempting to influence any officer or employee of the Authority.
- (j) it shall ensure that (i) the O&M Member shall, at all times, subscribe and always hold at least 26% (twenty six per cent) of the subscribed and paid up equity shares in the Operator till the expiry of the Concession Period; and (ii) the Members/entities on the basis of whose Technical Capacity and Financial Capacity the Selected Bidder was pre-qualified in the Bidding Process shall, until the 2<sup>nd</sup> (second) anniversary of the COD, hold equity share capital in the Operator representing not less than: (A) 26% (twenty six per cent) of the subscribed and paid-up equity of the Operator; and (B) 2.5% (Two and half per cent) of the Estimated Project Cost; and, any divestment thereafter, as per the terms of this Agreement, shall be subject to the prior approval of the Authority and, at the option of the Authority, be accompanied by a suitable no objection letters from the Lenders; and (iii) the Selected Bidder shall, at all times until the 2<sup>nd</sup> (second) anniversary of the COD, always hold not less than 51% (fifty one percent) in the issued and paid up capital of the Operator shall and any divestment thereafter, as per the terms of this Agreement, shall be subject to the prior approval of the Authority and, at the option of the Authority, be accompanied by a suitable no objection letters from the Lenders, if applicable.
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 18.1.3 (i).

### 27.3 Waiver of Sovereign Immunity

Each Party hereto unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts and that it is subject to the civil and commercial laws of India with respect to this Agreement;
- (b) agrees that any proceedings be brought against it or its assets, other than the assets protected by the diplomatic and consular privileges under the Foreign Sovereign Immunities Act / any analogous legislation ("Exempted Assets") in any jurisdiction, in relation to this Agreement or any transaction contemplated by this Agreement, no immunity, sovereign or otherwise from such proceedings, execution, attachment or other legal process shall be claimed by or on behalf of itself or with respect to any of its assets (other than the Exempted Assets);
- (c) consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process

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in connection with such proceedings including without limitation the making, enforcement or execution against or in respect of any property irrespective of its use subject to (b) above.

#### 27.4 Disclaimer

- (a) Without prejudice to any express provision contained in this Agreement, the Selected Bidder/Operator acknowledges that prior to the execution of this Agreement, the Selected Bidder/Operator has after a complete and careful examination made an independent evaluation of the Project, the legal and contractual framework, the Applicable Laws and Applicable Permits and the technical and financial aspects of the Project, the Performance Standards, the Service Area and the suitability of its condition, soil and location for implementation of the Project, the availability of goods, materials and things needed for implementing Project, all the information and documents provided by the Authority, its consultants or any Government Authority, the market and demand conditions, information relating to users and the cost, risks, consequences and liabilities involved in implementing the Project, and has determined to the Selected Bidder/Operator's complete satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Operator in the course of performance of its obligations hereunder. It has also carried out a title search, including without limitation the title, ownership, possession, in respect of the Service Area.
- (b) The Selected Bidder/Operator further acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-clause (a) above and hereby confirms that the Authority, its consultants or any Government Authority shall not be liable for the same in any manner whatsoever to the Selected Bidder/Operator or Persons claiming through or under the Selected Bidder/Operator.
- (c) The Selected Bidder/Operator accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Operator by the Authority, its consultants or any Government Authority and that it shall accept and act thereon at its own cost and risk.
- (d) The Selected Bidder/Operator shall be solely responsible for the contents of its Bid, adequacy and correctness of the Design and Drawing, data and detailed engineering prepared or procured by the Operator for implementing the Project.
- (e) The Selected Bidder/Operator is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.

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## ARTICLE XXVIII INSURANCE

### 28.1 Insurance

**28.1.1** The Operator shall effect and maintain, throughout the Concession Period, at its own cost such insurances, including but not limited to, external perils, damage to adjacent property, third party insurance, professional liability, defect liability, damage/breakdown during construction etc to cover any and all risks that may arise during the implementation of the Project for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice and shall in any event include those insurances specified in Clause 28.1.2 (herein the "**Insurance Cover**"). The Operator 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 Operator during the Concession Period. For the avoidance of doubt, the level of insurance to be maintained by the Operator after repayment of Lenders dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders dues.

**28.1.2** Without prejudice to anything contained under this Article XXVIII, the Operator shall at its cost and expense, purchase and maintain by due re-instatement or otherwise,

(a) during the period from Compliance Date till Project Completion for the Project Facilities, such insurance as are necessary including but not limited to the following:

- (i) Contractor's all risk insurance;
- (ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Service Area;
- (iii) workmen's compensation insurance;
- (iv) loss, damage or destruction of the Project Facilities excluding for the Existing Assets at replacement value;
- (v) standard fire and special perils;
- (vi) Cash in transit equivalent for such amounts as may be reasonably determined by the Authority from time to time;

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- (vii) Third Party Motor Vehicle Liability Insurance Covering use of all vehicles used by the Operator or its Sub- Contractors, whether or not owned by them, in connection with its obligation under this Agreement; and
- (viii) any other insurance that may be necessary to protect the Operator, its employees and its assets against loss, damage, destruction, including insurance against all Force Majeure Events that are insurable.

(b) during the period from COD till the Transfer Date for the Project Facilities, such insurance as are necessary including but not limited to the following, against:

- (i) loss, damage or destruction of the Project Facilities excluding for the Existing Assets at replacement value;
- (ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Service Area;
- (iii) workmen's compensation insurance;
- (iv) standard fire and special perils
- (v) the Operator's general liability arising out of the rights granted by the Authority under this Agreement;
- (vi) liability to third parties;
- (vii) Cash in transit equivalent for such amounts as may be reasonably determined by the Authority from time to time;
- (viii) Third Party Motor Vehicle Liability Insurance Covering use of all vehicles used by the Operator or its Sub- Contractors, whether or not owned by them, in connection with its obligation under this Agreement; and
- (ix) any other insurance that may be necessary to protect the Operator, its employees and its assets against loss, damage, destruction, including insurance against all Force Majeure Events that are insurable.

## 28.2 Notice to the Authority

Not later than 45 (forty-five) days from the Appointed Date, the Operator 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 XXVIII. The Authority may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto, and the Operator shall forthwith procure & maintain such insurances. However, failure by the Authority to intimate the requirement of other insurances to the Operator, shall not, in any manner

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Ashok Vihar Over Head Tank N.D.52

  
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EX. ENGINEER (E&M)  
WTP NANGLOI, D.J.B.  
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whatsoever, relieve or absolve the Operator of its obligation under Clause 28.1 above.

### **28.3 Evidence of Insurance Cover**

All insurances obtained by the Operator in accordance with this Article XXVIII shall be maintained with insurers on terms consistent with Good Industry Practice. Within 45 (forty-five) days of obtaining any insurance cover, the Operator shall furnish to the Authority, notarized true copies of the certificate (s) of insurance, copies of insurance policies and premia 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 non-renewal has been delivered by the Operator to the Authority.

### **28.4 Remedy for failure to insure**

If the Operator 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 premia and recover the costs thereof from the Operator, 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 Operator.

### **28.5 Waiver of Subrogation**

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article XXVIII 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, constituents, 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.

### **28.6 Operator's Waiver**

The Operator 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, Constituents, employees, successors, insurers and underwriters, which the Operator 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 Operator pursuant to this

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Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **28.7 Application of Insurance Proceeds**


Subject to the provisions of the Financing Agreements and unless otherwise provided herein, the proceeds from all insurance claims, except for life and injury, shall be promptly credited to the Escrow Account, in accordance with the terms hereof and thereof, the Operator shall apply such proceeds for the repair, renovation, restoration or re-instatement of the Project or any part thereof, which may have been damaged or destroyed. The Operator shall designate the Authority as the loss payees under the insurance policies.

#### **28.8 Distribution of Insurance Proceeds upon Termination**

Whenever this Agreement is terminated following a Force Majeure Event and insurance proceeds are available in connection with the insurance policies to which the Operator is entitled or should be entitled pursuant to this Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or to make repairs to the Project, be distributed first, (a) for the payment towards indebtedness (actual or contingent) owing to the Lenders; (b) payment of dues, if any, to the Authority; and (iii) the residual amount, if any, to the Operator.

#### **28.9 Validity of the Insurance Cover**

The Operator shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish certified true copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) days' clear notice of cancellation is provided to Authority in writing. If at any time the Operator fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, the Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority therefore shall be reimbursed by the Operator forthwith on demand, failing which the same shall be recovered by the Authority by exercising right of set off or otherwise.

  
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## ARTICLE XXIX INDEMNITY

### 29.1 General Indemnity

- (i) The Operator will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and, third party claims (other than a claim by the Authority) for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, operation and maintenance of the Project or arising out of a breach by Operator of any of its obligations under this Agreement (except to the extent that any such claim has arisen due to the Authority Event of Default). The Operator shall provide an indemnity bond in the format set out in **Schedule-IV** to this extent undertaking to indemnify the Authority against damages if any caused to the Existing Assets during discharge of its obligation under this Agreement.
- (ii) The Authority will, indemnify, defend and hold harmless the Operator against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of the Authority in the Licensed Premises adversely affecting the performance of the Operator's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by the Authority, its Officers, servants, agents, subsidiaries and contractors ("**the Authority Indemnified Persons**") including the Authority Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, servants or agents including due to Operator Event of Default.
- (iii) Notwithstanding anything to the contrary mentioned under this Agreement, and in addition to Clause 29.1, the Operator will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and, third party claims (other than a claim by the Authority) for loss, damage and expense of whatever kind and nature arising out of contamination of water being supplied in the Service Area. The Operator will indemnify, defend and hold the Authority harmless against any and all claims for damages which may be caused to the Project Facilities during the Agreement Period or in the consequence of the execution of the Works

- 29.2 Without limiting the generality of Clause 29.1 and in addition thereof, the Operator shall fully indemnify, save harmless and defend the Authority including its officers, servants, agents and subsidiaries from and against any and all loss and damages

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arising out of or with respect to (a) failure of the Operator to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Operator contractors, suppliers and representatives, income or other taxes required to be paid by the Operator without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Operator or any of its Contractors which are payable by the Operator or any of its contractors.

- 29.3 Without limiting the generality of the provisions of this Article, the Operator shall fully indemnify, save harmless and defend the Authority Indemnified Person from and against any and all 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 Operator or by the Operator's Contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit 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 Operator 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 Operator is unable to secure such license within a reasonable time, the Operator 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 parts or process, or modify the same so that it becomes non-infringing.
- 29.4 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article XXIX (the '**Indemnified Party**') it shall notify the other Party ("**Indemnifying Party**") within 7 (seven) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

#### 29.5 Defense of Claims

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**29.5.1** 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 their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article, 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 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, 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.

**29.5.2** If the Indemnifying Party has exercised its rights under Clause 29.4, 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).

**29.5.3** If the Indemnifying Party exercises its rights under Clause 29.4 then 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 such Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

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- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement;
- provided that if clauses (b), (c) or (d) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defense of such claim, 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.

## 29.6 No consequential claims

Notwithstanding anything to the contrary contained in this Article XXIX, 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.

  
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EX. ENGINEER (W&S)  
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## ARTICLE XXX

### DISPUTE RESOLUTION MECHANISM

#### 30.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.
- (b) Either Party may require such Dispute (including dispute relating to rebasing) be referred to a single member Board (the "**Dispute Adjudication Board**" or "**DAB**") will be selected by both Parties after mutual agreement. In absence of agreement between the Authority and the Operator on the choice of single member than the Parties shall constitute a 3-member Board consisting of one member each from the Authority and the Operator and the third member will be selected by both Parties after mutual agreement, for the time being, for amicable settlement. Upon such reference, both the Parties shall meet at the earliest mutual convenience and in any event within 15 (fifteen) days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 30.2 below.

#### 30.2 Arbitration

##### (a) Procedure

Subject to the provisions of Clause 30.1, any Dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996 (the '**Arbitration Act**'). The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 (fifteen) days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

##### (b) Place of Arbitration

The place of arbitration shall be at New Delhi but by mutual agreement of the Parties, the arbitration hearings, if required, may be held elsewhere in India.

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**(c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. The Award shall be a speaking order.

**(d) Performance during Arbitration**

Pending the submission of and/or decision on a dispute and until the arbitral award is published the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

**(e) Costs**

Each of the Parties to this Agreement shall bear their own respective costs for and during the Arbitration and shall not raise any claim in respect thereof as against the other Party

**(f) The Award passed by the Arbitrator under this Agreement shall be final and binding on the Parties.**

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## ARTICLE XXXI

### MISCELLANEOUS PROVISIONS

#### 31.1 Governing Law and Jurisdiction

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

#### 31.2 Waiver & Remedies

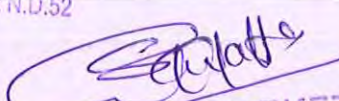
- (a) The waiver by either Party, including conditional or partial waiver, of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) No failure on the part of any Party to exercise, and no delay in exercising, any right, power, obligation or privilege hereunder or time or indulgence granted by a Party to the other Party shall operate or be treated or deemed as a waiver thereof or a consent thereto or the acceptance of any variation or relinquishment of any such right hereunder; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by the Applicable Laws.
- (c) 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 there under 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.

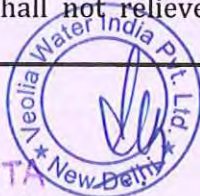
#### 31.3 Survival

The Termination/expiry of this Agreement

- (a) shall not relieve either Party of any obligations hereunder which expressly or by implication survive Termination/expiry hereof, and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or

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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/Expiry or arising out of such Termination/Expiry.

#### 31.4 Entire Agreements and Amendments

- (a) This Agreement constitutes the complete, exclusive and entire statement of the terms of the agreement between the Parties on the subject hereof and supersede all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof.
- (b) No amendment or modification or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be valid and effective unless the same is in writing and signed by the Parties or their duly authorised representative especially empowered in this behalf and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.


#### 31.5 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised courier, mail, email, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

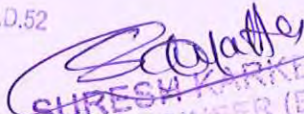
***If to the Authority:***

**Chief Executive Officer**

Delhi Jal Board  
Varunalaya Ph-II, Jhandewalan,  
Karol Bagh,  
New Delhi-110 005.  
Tel: +91 23544795  
Fax: +91 23516182  
Email: ceodjb@hotmail.com

  
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Ashok Vihar Over Head Tank N.D.52



  
**SURESH KARKET**  
EX. ENGINEER (E&M)  
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**If to Operator:**

**The Managing Director,**

Nangloi Water Services Private Ltd.

B-1 Marble Arch,

9, Prithviraj Road, New Delhi- 110 011

Tel: +91 24651465

Fax: +91 24600099

Email:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, email when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Party in writing prior to the adoption thereof.

**31.6 Severability**

- (a) If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.
- (b) The Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted, as nearly as is practicable, to such invalid, illegal and unenforceable provision. Provided failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure under this Agreement or otherwise.

**31.7 No Partnership**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the Provisions of this Agreement. Neither Party shall have any authority to bind the other in any manner whatsoever.

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Ashok Vihar Over/Head Tank N.D.52

  
SURESH KARKETTA  
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NEW DELHI-110041







### 31.8 Language

The language of this Agreement is English. All notices, correspondence, Project Contracts, documentation, Designs and Drawings, DPR, design data, test reports, certificates, specifications and standards and information in respect of this Agreement, under or in connection with this Agreement shall be in the English language. All other written and printed matter, communications, documentation, proceedings and notices etc. pursuant or relevant to this Agreement shall be in the English language.

### 31.9 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 any Party not contained in a binding legal agreement executed by the Parties.

### 31.10 Counterparts

This Agreement may be executed in any number of originals or counterparts, each in the like form and all of which when taken together shall constitute one and the same document.

### 31.11 Further Assurances

At all times after the date hereof the Parties shall execute all such documents and do such acts, deeds and things as may reasonably be required for the purpose of giving full effect to this Agreement.

### 31.12 Regulatory Framework for Infrastructure Projects

Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the grant, implementation and supervision of concessions related to infrastructure projects is introduced by GOI or GNCTD, the Parties shall consult in good faith and to agree to such amendments to this Agreement, as may be reasonably necessary to take account of such regulatory framework but so that the rights of the Operator hereunder are not adversely affected or additional material liabilities imposed.

### 31.13 Remedies Cumulative

The exercise of right by either Party to terminate this Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be

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cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

#### 31.14 Confidentiality

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is by its nature or is marked as proprietary material or "confidential", concerning the other (including any information concerning the contents of this Agreement) except to its officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This provision shall not apply to information:

- (i) already in the public domain, otherwise than by breach of this Agreement;
- (ii) already in the possession of the receiving Party on a lawful basis before it was received from the other Party in connection with this Agreement and which was not obtained under any obligation of confidentiality;
- (iii) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality;
- (iv) disclosed to the Lenders under terms of confidentiality; or
- (v) which is required to be disclosed by judicial, administrative or stock exchange process, any enquiry, investigation, action, suit, proceeding or claim or otherwise by or under any Applicable Law or by any Government Authority.

#### 31.15 Joint Responsibility

In the event that any damage is caused in part only due to the negligence or default or omission on the part of the Authority and in part only due to the negligence or default or omission on the part of the Operator, each Party shall be liable to the other Party only in proportion to its respective degree of negligence or default or omission as the case may be.

#### 31.16 Joint and Several Responsibility of the Selected Bidder/Operator

For avoidance of doubt it is hereby clarified that the grant of Concession for implementation of the Project as per the terms hereof has been accorded to the Operator placing reliance on, *inter alia*, the Technical expertise and financial capabilities of the Selected Bidder. The Selected Bidder and the Operator shall,

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subject to the provisions of 18.1.3 (l), be jointly and severally responsible to the Authority for compliance with the terms of this Agreement and/or implementation of the Project as per terms hereof, at all times until the expiry of the second (2<sup>nd</sup>) anniversary of the COD. IN case of the Consortium, the Lead Member shall have the authority to bind all the members of the Consortium. Except as expressly provided herein, the composition of the Consortium shall not be altered without the prior written approval of the Authority.

### 31.17 No Liability for Review

Except to the extent expressly provided in this Agreement,

- (a) no review, comment or approval by the Authority/Government Authorities/ Project Management Consultant of the DPR, the Designs and Drawing, the Project Agreement or Financing Agreement and other the documents submitted by the Operator nor any observation or inspection of the construction, operation or maintenance of the Project Facilities nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority or any Government Authority or GNCTD shall not be liable to the Operator by reason of any review, comment, approval observation or inspection referred in sub-section (a) above.

### 31.18 Change in Law

In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Operator may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Operator and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure described under Article XXX of this Agreement.

### 31.19 Depreciation

For the purpose of depreciation under the Applicable Laws, the property representing the capital investments made by the Operator in the Project shall be deemed to be acquired and owned by the Operator.

MUKUL BHANDULA  
Executive Engineer (Project) Water-IX  
DJB Govt. of NCT of Delhi  
Ashok Vihar Over Head Tank N.D.52

SURESH KARKETTA  
EX. ENGINEER (E&M)  
WTP NANGLOI, D.J.B.  
NEW DELHI-110041







### 31.20 Assignability

- (a) Except as otherwise provided in this Agreement, the Operator shall not assign its rights, title or interest in this Agreement in favour of any Persons without prior written consent of the Authority. Provided the Operator may assign its rights, interests and benefits under this Agreement to the Lenders as security for the Financial Assistance in accordance with Clause 31.22.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Operator, assign any of its rights and benefits and/or obligations hereunder pursuant to any direction of GOI, GNCTD, by the operation of law on such terms and conditions as the Authority may deem appropriate or as may be required by law.

### 31.21 Interest and Right to Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

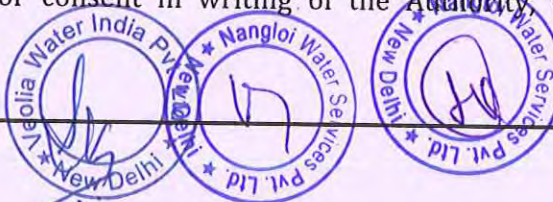
The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to the Bank Rate of the Reserve Bank of India plus 2% (two percent), and recovery thereof shall be without prejudice to the rights of the Parties under the Law and this Agreement, including termination thereof.

### 31.22 Assignment and Charges

- (a) The Operator shall not assign in favor of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the Authority.
- (b) The Operator shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of the Authority, which

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consent the Authority shall be entitled to decline without assigning any reason whatsoever.

- (c) Restraint set forth in clauses (a) and (b) above shall not apply to:
- Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Operator;
  - Pledges / hypothecation of goods / moveable assets, revenue and receivables, of the Operator as security for indebtedness, in favor of the Lenders and working capital providers for the Project;

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement by their duly authorized representative on the date first above written

**For Delhi Jal Board**

.....  
Authorized Signatory

Name : Mr Mukul Bhandula  
Executive Engineer,  
Projects, W-IX, First Floor,  
Overhead Tank Office Complex,  
Ashok Vihar, Phase - IV, Delhi 110052  
Telefax: 27303265

.....  
Authorized Signatory

Name: Mr Suresh Kerketta  
Executive Engineer (E&M),  
Nangloi WTP,  
Nangloi,  
Telefax: 25945594  
Delhi-110 041

**For Nangloi Water Services Private Limited**

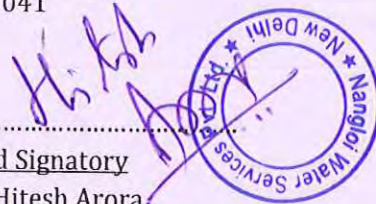
.....  
Authorized Signatory

Name: Mr Patrick Rousseau  
Chairman  
B-1 Marble Arch  
9, Prithviraj Road  
New Delhi- 110011



.....  
Authorized Signatory

Name: Mr Hitesh Arora  
Director  
Vishwakarma  
86 C, Topsia Road (S)  
Kolkata- 700 046



**For Veolia Water India (Pvt) Limited & SWACH Environment Private Limited**

.....  
Authorized Signatory

Name: Mr SVK Babu  
Director, Veolia Water India (Pvt.) Ltd.  
B-1, Marble Arch, 9-Prithviraj road, New Delhi-110 011



Witness 1

Witness 2

Anshul Gupta (21.09.06)