

CONCESSION AGREEMENT
for
DEVELOPMENT OF SEWAGE TREATMENT PLANTS AND SEWERAGE NETWORKS
IN PATNA, BIHAR
MAY 2018

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CONCESSION AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Notwithstanding anything to the contrary in this Concession Agreement, the Definitions shall be as described below.

Item	Definition
Acres	means a unit of land area equal to 43,560 sq.ft. or 4,046.86 sq.m.
Additional Performance Security	means a performance security that must be submitted by the Selected Bidder to BUIDCO alongwith Performance Security and ESHS Performance Security to secure the obligations of the Concessionaire/ Bidder in relation to the <i>clause 16.5 of the RFP document</i> .
Adjoining Property	means any land and/or property adjoining or adjacent to the STP Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
Adjusted DG Set Units	has the meaning ascribed to it in Clause 9.4(g)(ii)(B)(II).
Affected Party	means the Party affected by a Force Majeure Event.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government (including the GoB), any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Concession Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Concession Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the Environment (Protection) Act, 1986, the Environment (Protection) Rules, 1986, Ganga 2016 Order, and the Companies Act, 1956 and amendments thereof.
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Concession Agreement in accordance with the Applicable Laws, as set out in Schedule 8.
Appointed Date	means the date of signing of this Digha-Kankarbagh Project Agreement.

Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Concession Agreement.
Associate	means, in relation to the Concessionaire, the Selected Bidder or a Member of the Selected Bidder, a Person who Controls, or is Controlled by/with such Selected Bidder or Member of the Selected Bidder, as the case may be.
Associate Infrastructure	means Digha Associate Infrastructure or Kankarbagh Associate Infrastructure
Availability	means the availability of the STP Facilities to convey, accept and treat the Sewage, as determined in accordance with Clause 8.12(a)(i) and the term 'Available' shall be construed accordingly.
Availability Liquidated Damages	means the liquidated damages payable by the Concessionaire to BUIDCO for failure to achieve the Guaranteed Availability, in accordance with Clause 8.12(a)(v).
Bank	means [the International Bank for Reconstruction and Development (IBRD)/International Development Association (IDA)].
Basic Engineering Designs	means the following designs and documents to be submitted by the Concessionaire and approved by BUIDCO as a Condition Precedent: <ul style="list-style-type: none"> (a) process description, process calculations, and hydraulic calculations; (b) list of design codes and standards; (c) master drawing schedule; (d) drainage design; (e) STP Facilities layout; (f) process flow diagram; (g) hydraulic flow diagram; (h) mass balance diagram; (i) process and instrumentation diagram; (j) single line diagram; (k) electrical load list; and (l) general arrangement diagrams of all units of the STP Facilities.
Bid	means the bid consisting of the Qualification Proposal and the Financial Proposal submitted by a Bidder for qualification and award of the Project, and Bids mean collectively, all the bids for the Project.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the single-stage bidding process, with two sub-stages, undertaken by BUIDCO to award the Project to the Selected Bidder on the terms and conditions set out in the RFP. The Bid Process commenced with the issuance of the RFP and ends on the Appointed Date.
Bid Project	means the Digha Bid Project Cost and/or the Kankarbagh Bid Project Cost, as the

Cost	context may require.
BOD	means biochemical oxygen demand.
BUIDCO	has the meaning ascribed to it in the array of Parties.
BUIDCO Applicable Permits	means the Applicable Permits which are required to be obtained by BUIDCO to undertake the Project.
BUIDCO Event of Default	has the meaning ascribed to it in Clause 16.3.
BUIDCO Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of BUIDCO, acting in that capacity; (b) any contractor or subcontractor of BUIDCO and their directors, officers, servants, employees or agents, acting in that capacity; or (c) any Person acting on behalf of BUIDCO. <p>For the avoidance a doubt, BUIDCO Related Parties' does not include the Concessionaire or NMCG.</p>
BUIDCO's Representative	means any officer nominated by BUIDCO, from time to time, to act on its behalf and liaise with the Concessionaire and NMCG for the purposes of this Concession Agreement and notified as such in writing to the Concessionaire and NMCG.
Capex Annuity	means the Digha Capex Annuity and/or the Kankarbagh Capex Annuity, as the context may require.
Capital	means, in respect of the Concessionaire, the total capital of the Concessionaire that will be raised by the issuance of equity shares, preference shares and convertible instruments.
Change in Law	<p>means the occurrence of any of the following events after the Bid Due Date:</p> <ul style="list-style-type: none"> (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority;

	<p>(d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or</p> <p>(e) the introduction of any new Tax (including goods and services tax) or a change in the rate of an existing Tax.</p> <p>It is clarified that Change in Law shall not include any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire.</p>
Clause	means a clause of this Concession Agreement.
COD Certificate	means the certificate issued by BUIDCO to the Concessionaire upon issuance or deemed issuance of, the Trial Operations Completion Certificates for the Digha and Kankarbagh STP Facilities and upon satisfaction of the conditions set out in Clause 7.15
Commercial Operations Date or COD	means the date on which the COD Certificate is issued or deemed to be issued to the Concessionaire in accordance with Clause 7.15.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the STP Facilities, as set out in Schedule 8.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 16.1.
Concessionaire Related Parties	<p>means any of the following:</p> <p>(a) the Selected Bidder or Associates of the Selected Bidder;</p> <p>(b) an officer, servant, employee or agent of the Concessionaire acting in that capacity;</p> <p>(c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or</p> <p>(d) any Person acting on behalf of the Concessionaire.</p>
Concessionaire's	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with BUIDCO and NMCG for the purposes of this

Representative	Concession Agreement and notified as such in writing to BUIDCO and NMCG.
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Clause 3.2, the obligations of BUIDCO that are set out at Clause 3.3 and the obligations of NMCG that are set out at Clause 3.4, and ' Condition Precedent ' means any one of these.
Confidential Information	means any part of this Concession Agreement, or any information contained therein or any material provided to any Party pursuant to this Concession Agreement, all of which information shall be deemed to be confidential, except to the extent that this Concession Agreement otherwise requires.
Construction Completion Date	means, with respect to the Digha STP Facilities, the date on which the Digha STP Construction Completion Certificate is issued or deemed to be issued to the Concessionaire and with respect to the Kankarbagh STP Facilities, the date on which the Kankarbagh STP Construction Completion Certificate is issued or deemed to be issued to the Concessionaire, in accordance with Clause 7.13(c)(iii), and the reference to Construction Completion Date shall be construed accordingly.
Construction Payments	has the meaning ascribed to it in Clause 9.3.
Construction Period	has the meaning ascribed to it in Clause 7.1.
Construction Plan	has the meaning ascribed to it in Clause 7.3
Construction Price Index	shall comprise: (a) 70% of WPI; and (b) 30% of CPI(IW), which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Control	means, with respect to a Person: (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term ' Controlled ' shall be construed accordingly.
Cost	means all documented expenditure reasonably incurred by the Concessionaire,

	whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-Stop Date	has the meaning ascribed to it in Clause 3.5(a).
CPI(IW)	means the Consumer Price Index for Industrial Workers published by the Labour Bureau, GoI and shall include any index which substitutes the CPI(IW), and any reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published on the last date of the preceding quarter.
Debt Due	<p>means the relevant aggregate of the following sums expressed in Rupees outstanding on the date of issuance of the Notice of Intent to Terminate:</p> <p>(a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing 45% of the Bid Project Cost but excluding any part of the principal that had fallen due for repayment 2 years prior to the date of the Notice of Intent to Terminate, as set out in the Financial Package; and</p> <p>(b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in (a) above until the date of the Notice of Intent to Terminate but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the date of the Notice of Intent to Terminate, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a BUIDCO Event of Default or an NMCG Event of Default,</p> <p>provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Concession Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken.</p> <p>For the purpose of calculating Debt Due:</p> <p>(A) the aggregate of the principal amounts of the debt provided by the Lenders under the Financing Documents shall, in no event, exceed 45% of the Bid Project Cost; and</p> <p>(B) any amount of Debt Due in foreign currency as on the date of the Notice of Intent to Terminate shall be converted to Rupees at the exchange rate published on the official website of the Reserve Bank of India as at 12 noon on date of the Notice of Intent to Terminate.</p>

Delay Event	has the meaning ascribed to it in Clause 7.11(b).
Delay Liquidated Damages	has the meaning ascribed to it in Clause 7.12.
Designs and Drawings	means, collectively, the Phase I Designs and Drawings and the Phase II Designs and Drawings.
Design Capacity	means the average flow of Sewage that the STP Facilities should be designed to handle and treat in a day, which, for the Digha STP Facilities shall be 100 MLD and for the Kankarbagh STP Facilities shall be 50 MLD.
DG Sets	means the backup diesel generators set maintained by the Concessionaire at the Site, to ensure continuous supply of power for the operation of the STP Facilities, when the supply of power from the grid is not available.
Digested Sludge	means the sludge which is obtained after the treatment and digestion of the Sewage at the Digha STP or the Kankarbagh STP.
Digha Associate Infrastructure	means the pumping stations including the rising main and trunk sewer of the specific pumping station, proposed to be built in Digha as part of the Sewerage Network Facilities
Digha Bid Project Cost	means INR [] (Rupees []), being the cost of construction of the Digha STP Facilities and power plant if any, as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes, and all other pre-operative expenses, in relation to the Digha STP Facilities. For clarification purposes, the Digha Bid Project Cost means collectively the Bid Project Cost for the Digha STP Facilities excluding Digha I&D Works, and the Bid Project Cost for the Digha I&D Works, as quoted by the Bidder in its Financial Proposal.
Digha Capex Annuity	means the amount payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of 60% of the Digha STP Completion Cost.
Digha I&D Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the O&M Period (other than any units expected to be generated and consumed from the Power Plant), to operate and maintain the Digha I&D Works
Digha I&D Power Charges	means the power charges required for operating the Digha I&D Works
Digha I & D Works	means the Digha Interception and Diversion works including the two pumping stations of I&D Works and appurtenant structures, to be constructed as part of the STP Facilities for diverting sewage flow from the existing nalas or drains to the Digha STP for treatment as per Digha I&D Option 1 or Digha I&D Option 2. Details of the I&D Works are provided in the Annexure 12 of the RFP. For clarification purposes, the two pumping stations of I&D Works include the pumping station at Rajapur Nalla (I&D SPS A) and the pumping station in the

	premises of the STP (I&D SPS B). The SPS A, SPS B, rising mains, trunk sewers of Digha Sewerage Network Facilities are not considered to be part of the Digha I&D Works, and shall continue to remain as part of the Digha Sewerage Network Facilities.
Digha Inlet Point	means the point mutually agreed to between BUIDCO and the Concessionaire at the Digha STP where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the Digha STP Facilities.
Digha Lateral Network	means the Digha network starting from the property chambers till the trunk sewer including related works
Digha Network	means the Sewerage Network of 303 km to be laid at <i>Digha</i> including online monitoring system and related works to be built as part of the Project
Digha Outlet Point	means the outlet of the Digha STP where the sample of the Treated Effluent shall be drawn periodically to test compliance with the Discharge Standards.
Digha Power Charges	means the power charges for operating and maintaining the Digha STP Facility or Digha Sewerage Network Facility as the context may require.
Digha Sewerage Network Facilities	means the Digha Associate Infrastructure and Digha Lateral Network
Digha STP	means the STP of 100 MLD to be set up at the Digha STP Site, as part of the Project.
Digha STP Completion Cost	means the cost of completing the construction of the Digha STP Facilities, as calculated in accordance with Clause 9.4(b).
Digha STP Construction Completion Certificate	means the certificate issued by BUIDCO to the Concessionaire to certify completion of construction of the Digha STP Facilities and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with Clause 7.13(c).
Digha STP ESHS Performance Security	has the meaning ascribed to it in Clause 5.1.
Digha STP Facilities	means collectively, the Digha STP, the Online Monitoring System, the on-site testing laboratory STP Facilities, the Digha I&D Works and such other STP Facilities associated with the Digha STP, required to be set up by the Concessionaire, as described in greater detail in the Schedule 11 (<i>Technical Specifications</i>) and Schedule 1 (<i>Scope of Work</i>).
Digha STP Guaranteed	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the

Energy Consumption	O&M Period (other than any units expected to be generated and consumed from the Power Plant), to operate and maintain the Digha STP Facilities excluding the Digha I&D Works, at varying volumes and BOD of Sewage.
Digha STP Mobilization Advance	means an amount equivalent to 10% of the Digha STP Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction works for the Digha STP Facilities in accordance with Clause 9.3(d).
Digha STP Mobilization Advance Guarantee	has the meaning ascribed to it in Clause 5.21.
Digha STP O&M Charges	means the amount required by the Concessionaire per quarter (including all Taxes) computed based on the quote provided by the Bidder in its Financial Proposal, excluding Digha STP Power Charges and Digha I&D Power Charges, to operate and maintain the Digha STP Facilities during the O&M period. For clarification purposes, means collectively the O&M Charges for the Digha STP Facilities excluding Digha I&D Works, and the O&M Charges for the Digha I&D Works, as the context may require.
Digha STP O&M Security	has the meaning ascribed to it in Clause 5.5.
Digha STP Payment Milestones	means the 5 milestones listed in Clause 9.3(e) for release of the Construction Payments to the Concessionaire, and ' Digha STP Payment Milestone ' shall mean any one of them, as the context may require.
Digha STP Performance Security	has the meaning ascribed to it in Clause 5.1.
Digha STP Power Charges	means the power charges required for operating the Digha STP Facilities excluding the Digha I&D Works
Digha STP Site	means the land admeasuring [] Acres in Digha, Patna, required by the Concessionaire to develop the Digha STP Facilities excluding Digha I&D Works, as quoted by the Selected Bidder as its 'Digha STP Land Requirement' and/ or means the land admeasuring [] Acres in Digha, Patna, required by the Concessionaire to develop the Digha I&D Works, as quoted by the Selected Bidder as its 'Digha I&D Land Requirement' ; as the context may require Details of the STP Site are presented in Schedule 12.
Digha Supporting Infrastructure	means the supporting infrastructure required for the operation of the Digha STP Facilities and Sewerage Network, which will be provided, operated and maintained by BUIDCO during the Term

Digha Waste Disposal Site	means the site identified by BUIDCO for disposal of the STP By-Products and other waste material (including silt) from the Digha STP Facilities and Digha Sewerage Network Facilities.
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(iii).
Discharge Standards	means the minimum standards set out in the Technical Specifications that the Treated Effluent and Digested Sludge must comply with.
Dispute	has the meaning ascribed to it in Clause 21.1.
Dispute Notice	has the meaning ascribed to it in Clause 21.1.
Dispute Meeting	has the meaning ascribed to it in Clause 21.1.
Effective Date	has the meaning ascribed to it in Clause 3.1.
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of BUIDCO, the Project Engineer or the Concessionaire, may endanger the environment or lives or security of people at or around the Site or that poses an imminent threat of material damage to any property (including the STP Facilities) at or around the Site.
Encumbrances	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
End of Concession	means the date on which the Concession ends, and is defined as 15 years from the COD, subject to early termination in accordance with Article 14 (Force Majeure) or Article 16 (Events of Default).
Engineering Institute	means an Engineering Institute of repute, mutually agreed between BUIDCO and NMCG
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
Equity	means the sum expressed in INR representing the paid up equity share capital of the Concessionaire for meeting the equity component of its financial obligations under this Concession Agreement and the Financing Documents, which, for the purpose of this Concession Agreement, shall include convertible instruments that shall compulsorily convert into equity share capital and any loans provided by any shareholder of the Concessionaire.
Escrow	means the interest-bearing account opened by NMCG with the Escrow Bank in

Account	accordance with the Escrow Agreement, which shall be operational until the expiry of the Term.
Escrow Agreement	means the agreement to be executed among BUIDCO, NMCG, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, in the form set out at Schedule 3.
Escrow Bank	means the Scheduled Bank with which NMCG opens the Escrow Account, pursuant to the Escrow Agreement.
ESHS	means environment, social, health and safety.
ESHS Documents	means, collectively, the Safeguard Documents and Safety Documents prepared by the Concessionaire and approved by BUIDCO in accordance with Clause 7.4.
ESMF	means the Environment and Social Management Framework agreed with the National Ganga River Basin Authority, available at http://nmcg.nic.in/Disclosure.aspx .
Event of Default	means a BUIDCO Event of Default, NMCG Event of Default or a Concessionaire Event of Default, as the context may require and as set out in Article 16.
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the [<i>Selected Bidder/Member(s)</i>] ¹ determined in accordance with the RFP.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance.
Financial Package	means the financing package indicating the means of financing the STP Facilities, and includes all Financial Assistance specified in the Financing Documents and the Equity.
Financial Proposal	means the financial proposal submitted by the Selected Bidder in accordance with the RFP for undertaking the Project.
Financial Year	means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a company, then the 12-month period for which such company files its statutory audited accounts in the normal course of its business.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded

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

	financial assistance, including loans, advances and or any re-financing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.
First Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(A).
First Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(A).
FM Notice	has the meaning ascribed to it in Clause 14.2(a).
Force Majeure	has the meaning ascribed to it in Article 14
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.
Forced Unavailability	means an interruption of or a reduction in the Availability of any STP Facility that is the result of: <ul style="list-style-type: none"> (a) a maximum capacity utilization of such STP Facility, as notified by the Concessionaire to BUIDCO in accordance with Clause 8.9; (b) a suspension of the performance of the O&M services for such STP Facility pursuant to Clause 15.1(a)(i) or Clause 15.2(a)(i), to the extent any such event is not attributable to the Concessionaire; or (c) unavailability or breakdown of the Supporting Infrastructure for such STP Facility.
Fuel Price	means the average price of diesel at Indian Oil Corporation or Hindustan Petroleum Corporation Limited's retail outlets in Patna, Bihar, during the month as determined by dividing the sum of daily price of diesel by the number of days in that particular month.
Fundamental Change in Law	means any Change in Law that: <ul style="list-style-type: none"> (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Concession Agreement; or (b) renders a material part of this Agreement invalid, illegal or unenforceable; or (c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Concession Agreement.
Ganga 2016 Order	has the meaning ascribed to it in Recital B.
GoB	means the Government of Bihar.

GoI	means the Government of India.
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of STPs in India of the type and size similar to the STP Facilities.
Government Authority	means the GoI, any State Government (including the GoB), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoB exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Concession Agreement.
Grace Period	has the meaning ascribed to it in Clause 7.12(e).
Guaranteed Availability	has the meaning ascribed to it in Clause 8.12(a)(i).
Hand-back Conditions	mean the condition in which the Site, the STP Facilities and the Sewerage Network Facilities, and the Power Plant, if any, shall be handed back to BUIDCO or any entity nominated by BUIDCO on expiry or early termination of this Concession Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Concession Agreement and are described in greater detail in the Schedule 11 of this Concession Agreement, Schedule 23 and Schedule 25, Schedule 35 and Schedule 37 of the Conditions of Contract.
Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the STP Facilities and the Sewerage Network Facilities upon termination of the Project, as set out in Clause 19.3.
I&D Works	means the Digha I&D Works or the Kankarbagh I&D Works, as the context may require
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(ii).
Influent Standards	means characteristics of the incoming sewage as set out in Schedule 10
Inlet Point	means the Digha Inlet Point or the Kankarbagh Inlet Point, as the context may require.

Intellectual Property Rights	means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Invoice	has the meaning ascribed to it in Article 9
Kankarbagh Associate Infrastructure	means the Pumping Station proposed to be built in Kankarbagh including the Rising main and Trunk Sewer of that Pumping Station.
Kankarbagh Bid Project Cost	means INR [] (Rupees []), being the cost of construction of the Kankarbagh STP Facilities and power plant if any, as quoted by the Selected Bidder in its Bid, which includes the interest during construction, Taxes and all other pre-operative expenses in relation to the Kankarbagh STP Facilities. For clarification purposes, the Kankarbagh Bid Project Cost means collectively the Bid Project Cost for the Kankarbagh STP Facilities excluding Kankarbagh I&D Works, and the Bid Project Cost for the Kankarbagh I&D Works, as quoted by the Bidder in its Financial Proposal
Kankarbagh Capex Annuity	means the amount payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of 60% of the Kankarbagh STP Completion Cost.
Kankarbagh Inlet Point	means the point mutually agreed to between BUIDCO and the Concessionaire at the Kankarbagh STP where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the Kankarbagh STP Facilities.
Kankarbagh I&D Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume (other than any units expected to be generated and consumed from the Power Plant), to operate and maintain the Kankarbagh I&D Works (including the SPS B of Kankarbagh Sewerage Network Facilities) from COD till OSD of Kankarbagh Sewerage Network Facilities
Kankarbagh I&D Power Charges	means the power charges required for operating the Kankarbagh I&D Works and the SPS B of Kankarbagh Sewerage Network Facilities
Kankarbagh I & D Works	means the Kankarbagh Flow Diversion Work/ Interception and Diversion works excluding SPS B of the Kankarbagh Sewerage Network Facilities and appurtenant structures, to be constructed as part of the STP Facilities for diverting sewage flow from the existing nalas or drains to the Kankarbagh STP for treatment
Kankarbagh Lateral Network	means the Kankarbagh network starting from the property chambers till the trunk sewer including related works
Kankarbagh	means the Sewerage Network of 150 km to be laid at <i>Kankarbagh</i> including

Network	online monitoring system and related works to be built as part of the Project.
Kankarbagh Outlet Point	means the outlet of the Kankarbagh STP where the sample of the Treated Effluent shall be drawn periodically to test compliance with the Discharge Standards.
Kankarbagh Power Charges	means the power charges for operating and maintaining the Kankarbagh STP Facility or Kankarbagh Sewerage Network Facility as the context may require.
Kankarbagh Sewerage Network Facilities	means the Kankarbagh Associate Infrastructure and Kankarbagh Lateral Network
Kankarbagh STP	means the STP of 50 MLD to be set up at the Kankarbagh STP Site as part of the Project.
Kankarbagh STP Completion Cost	means the cost of completing the construction of the Kankarbagh STP Facilities, as calculated in accordance with Clause 9.4(b).
Kankarbagh STP Construction Completion Certificate	means the certificate issued by BUIDCO to the Concessionaire to certify completion of construction of the Kankarbagh STP Facilities and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with Clause 7.13(c).
Kankarbagh STP ESHS Performance Security	has the meaning ascribed to it in Clause 5.1.
Kankarbagh STP Facilities	means collectively, the Kankarbagh STP, the Online Monitoring System, the on-site testing laboratory STP Facilities, the Kankarbagh I&D Works, the temporary storage STP Facility for the Digested Sludge and such other STP Facilities associated with the Kankarbagh STP, required to be set up by the Concessionaire, as described in greater detail in Schedule 11 (<i>Technical Specifications</i>) and Schedule 1 (<i>Scope of Work</i>).
Kankarbagh STP Guaranteed Energy Consumption	means the maximum number of units of power (in kWh) per MLD quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the O&M Period (other than any units expected to be generated and consumed from the Power Plant), to operate and maintain the Kankarbagh STP Facilities excluding the Kankarbagh I&D Works, at varying volumes and BOD of Sewage.
Kankarbagh STP Mobilization Advance	means an amount equivalent to 10% of the Kankarbagh STP Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction works for the Kankarbagh STP Facilities in accordance with Clause 9.3(d).

Kankarbagh STP Mobilization Advance Guarantee	has the meaning ascribed to it in Clause 5.21.
Kankarbagh STP O&M Charges	means the amount required by the Concessionaire per quarter (including all Taxes), excluding Kankarbagh STP Power Charges and Kankarbagh I&D Power Charges, to operate and maintain the Kankarbagh STP Facilities during the O&M period. For clarification purposes, means collectively the O&M Charges for the Kankarbagh STP Facilities excluding Kankarbagh I&D Works, and the O&M Charges for the Kankarbagh I&D Works, as the context may require.
Kankarbagh STP O&M Security	has the meaning ascribed to it in Clause 5.5.
Kankarbagh STP Payment Milestones	means the 5 milestones listed in Clause 9.3(e) for release of the Construction Payments to the Concessionaire, and ' Kankarbagh STP Payment Milestone ' shall mean any one of them, as the context may require.
Kankarbagh STP Performance Security	has the meaning ascribed to it in Clause 5.1.
Kankarbagh STP Power Charges	means the power charges required to operate and maintain the Kankarbagh STP Facilities excluding the Kankarbagh I&D Works
Kankarbagh STP Site	means the land admeasuring [] Acres in Kankarbagh, Patna, required by the Concessionaire to develop the Kankarbagh STP Facilities, as quoted by the Selected Bidder as its 'Kankarbagh Land Requirement' in the Financial Proposal, as presented in Schedule 12.
Kankarbagh Supporting Infrastructure	means the supporting infrastructure facilities required for the operation of the Kankarbagh STP Facilities and Kankarbagh Sewerage Network Facilities, that includes the facilities beyond the discharge point of the effluent channel, Waste Disposal site, connection of household to sewerage network and any other facilities, which will be provided, operated and maintained by BUIDCO during the Term.
Kankarbagh Waste Disposal Site	means the site identified by BUIDCO for disposal of the STP By-Products and other waste material (including silt) from the Kankarbagh STP Facilities and Kankarbagh Sewerage Network Facilities.
KPI Adherence	has the meaning ascribed to it in Clause 8.12(b)(vi).

Report	
KPIs	means the key performance indicators set out in Schedule 10, which the STP Facilities must achieve during the O&M Period.
Lead Member	[means the Member nominated by the Members of the Selected Bidder to act as the lead member in accordance with the RFP.] ²
Lenders	includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents but does not include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.
Liquidated Damages	means the Delay Liquidated Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the Power Consumption Liquidated Damages for the STP Facilities.
LOA	has the meaning ascribed to it in Recital G.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Concession Agreement and which act or event causes a material financial burden or loss to any Party.
Member	[means, where the Selected Bidder is a Consortium, a member of the Selected Bidder.] ³
Minimum Escrow Balance	has the meaning ascribed to it in Clause 9.5(b).
Minor Casualty	means any fire or other casualty that results in physical damage to the Digha STP Facilities or the Kankarbagh STP Facilities to the extent that the total cost (as estimated by the Project Engineer) of repairing and/or replacing the damaged portion of the Digha STP Facilities or the Kankarbagh STP Facilities, as the case may be, to the same condition as previously existed would not exceed the amount of INR 25,00,000 (Rupees twenty five lakhs).
MLD	means million litres per day.
Mobilization Advance	has the meaning ascribed to it in Clause 9.3 (d) of this Concession Agreement, Article 1 of Schedule 19 and Article 1 of Schedule 31 of the Conditions of Contract.
Mobilization Advance	has the meaning ascribed to it in Clause 5.21 of this Concession Agreement, and Article 5.5.2 of the Conditions of Contract the term Mobilization Advance

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

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

Guarantee	Guarantees shall be construed accordingly.
MoWR	means the Ministry of Water Resources, River Development and Ganga Rejuvenation, GoI.
Network	means the Digha Network or Kankarbagh Network as the context may require.
NMCG	has the meaning ascribed to it in the array of Parties.
NMCG Event of Default	has the meaning ascribed to it in Clause 16.4.
NMCG's Representative	means any officer nominated by NMCG, from time to time, to act on its behalf and liaise with the Concessionaire and BUIDCO for the purposes of this Concession Agreement and notified as such in writing to the Concessionaire and BUIDCO.
Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 14.1(b)(i).
Notice of Arbitration	has the meaning ascribed to it in Clause 21.2
Notice of Intent to Terminate	means a notice of intent to terminate issued by BUIDCO in case of a Concessionaire Event of Default (in accordance with Clause 16.2) or a notice of intent to terminate issued by the Concessionaire in case of a BUIDCO Event of Default or an NMCG Event of Default (in accordance with Clause 16.5), stating its intention to terminate this Agreement.
O&M	means operation and maintenance.
O&M Charges	means the O&M Charges for the STP Facilities as the context may require.
STP O&M Charges	means the Digha STP O&M Charges and/or the Kankarbagh STP O&M Charges, as the context may require.
O&M Manual	means the manual required to be prepared by the Concessionaire and approved by BUIDCO for the operation and maintenance of the STP Facilities in accordance with Clause 8.2.
O&M Payments	has the meaning ascribed to it in Clause 9.4.
O&M Period	means the meaning as ascribed to it in Clause 8.1
O&M Price Index	shall comprise: (a) 70% of CPI(IW); and (b) 30% of WPI,

	which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Online Monitoring System	means the monitoring system(s) to be set up by the Concessionaire as part of the STP Facilities and Sewerage Network Facilities for continuous monitoring of the volume, specifications and characteristics of the Sewage and the Treated Effluent, as the context may require.
Operations Starting Date or OSD	means the date after issue of Operations Acceptance Certificate, upon successful construction completion and, testing and commissioning of the Sewerage Network Facilities. means either the Digha Operations Starting Date or Kankarbagh Operations Starting Date, as the context may require. For the Sewerage Network Facilities, O&M will commence from the Operations Starting date.
Outlet Point	means the Digha Outlet Point or the Kankarbagh Outlet Point, as the context may require.
Patna STPs	means, collectively, the Digha STP and the Kankarbagh STP.
Performance Liquidated Damages	means the liquidated damages payable by the Concessionaire to BUIDCO for a failure to meet the Discharge Standards, in accordance with Clause 8.12(b)(iii).
Performance Securities	has the meaning as ascribed to it in Clause 5.1 of this Concession Agreement, Article 5.5.1 of the Conditions of Contract
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organization or any other legal entity.
Phase I Designs and Drawings	means: (a) the Basic Engineering Designs; (b) the Screening Report; and (c) the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required for achieving the first STP Payment Milestone.
Phase II Designs and Drawings	means the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required for achieving the second, third, and fourth STP Payment Milestones and fifth STP Payment Milestone corresponding to STP Construction Completion Date.
Power Charges	means the Digha STP Power Charges, or the Kankarbagh STP Power Charges, or the Digha Sewerage Network Power Charges, or the Kankarbagh Sewerage Network Power Charges, as the context may require.
Power Consumption Liquidated Damages	has the meaning ascribed to it in Clause 9.4(g)(ii)(C).

Power Outage	means any interruption in the supply of electricity from the grid or any DG Sets maintained by the Concessionaire at the STP Site, which disrupts the continuous operation of any STP Facility.
Power Plant	means a biogas power plant or a rooftop solar plant, or any other such power plant that the Concessionaire decides to set up at the relevant STP Site as part of the Project, for production of clean energy.
Power Unit Rate	means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Site), which will be the prevailing tariff per unit of power charged by the relevant distribution licensee in the relevant month during the O&M Period.
PPP	means public private partnership.
Price Index	means, for the Construction Payments, the Construction Price Index, and for the O&M Payments, the O&M Price Index.
Price Index Multiple	<p>means, the variation multiple in the Price Index occurring between the Reference Index Date preceding the Bid Due Date and the Reference Index Date preceding the date of the Invoice, which is calculated by dividing the Price Index on the Reference Index Date preceding the date of the Invoice by the Price Index on the Reference Index Date preceding the Bid Due Date.</p> <p>For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Bid Due Date, say 30 May, 2017, is 200; (b) the Invoice is submitted on 15 April, 2020; and (c) the Price Index as on 31 March, 2020 is 210, then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05.</p>
Project	has the meaning ascribed to it in Recital D.
Project Engineer	means the engineering firm appointed by NMCG in accordance with Article 6.
Proposed Technology	means the proven technology(ies) proposed to be used by the Concessionaire to develop the Digha and Kankarbagh STPs, as specified by the Concessionaire in its Designs and Drawings. The proposed technology for each STP must meet the Qualification Criteria set out in Clause 4 of this RFP
Qualifying Change in Law	<p>means any Change in Law, which:</p> <ul style="list-style-type: none"> (a) is directly applicable to the Project; (b) impacts the Cost or time for undertaking the Project; and (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Due Date.

Reference Index Date	means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.
Residual Grit	means the grit which is obtained as residual matter after the treatment of the Sewage at the Digha STP or the Kankarbagh STP.
RFP	has the meaning ascribed to it in Recital E.
Rupee or Rs. or INR	means Indian Rupees, the lawful currency of India.
Safeguard Documents	has the meaning ascribed to it in Clause 7.4.
Safety Documents	has the meaning ascribed to it in Clause 7.4.
Schedule	means a schedule of this Concession Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled COD	means the date which is 28 months from the Appointed Date by which the Concessionaire is required to obtain COD certificate.
Scheduled Maintenance	means a planned maintenance of any STP Facility that: <ul style="list-style-type: none"> (a) has been scheduled and allowed by BUIDCO in accordance with the Scheduled Maintenance Programme; and (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of such STP Facility, as the case may be.
Scheduled Maintenance Programme	means, for each year of the O&M Period, the schedule for undertaking preventive and corrective maintenance of the STP Facilities, as prepared by the Concessionaire and approved by BUIDCO in accordance with Clause 8.11(f).
Scheduled STP Construction Completion Date	means the date which is 21 months from the Effective Date or the date defined under the Clause 7.3 whichever is earlier with reference to the Digha STP Facilities, and the Kankarbagh STP Facilities.
Scheduled STP Payment Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant STP Payment Milestone.

Scope of Work	means the scope of work for construction and O&M of the Project as set out in Clause 2.1
Screening Report	means, for each STP Facility, the environmental and social design safeguards screening report prepared by the Concessionaire and submitted to BUIDCO for its review as part of the Phase I Designs and Drawings, in the format set out in part [●] of Schedule 9.
Screenings	means solids such as fibres, plastic and other products or things, which need to be removed from the Sewage, prior to the treatment of Sewage at the Patna STPs.
Second Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(B).
Second Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(B).
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means the Bidder selected by BUIDCO for award of the Project.
Sewage	means the sewage that is in liquid, solid or semi-solid form and brought for treatment to the STP Facilities from the Sewerage Network Facilities.
Sewerage Network Facilities	means the Digha Sewerage Network Facilities and/or the Kankarbagh Sewerage Network Facilities, as the context may require, and the term Sewerage Network Facility shall be construed accordingly.
Sewerage Network O&M Charges	means the Digha Sewerage Network O&M Charges or the Kankarbagh Sewerage Network O&M Charges as the context may require. Also referred to as O&M Prices or O&M Charges in the Conditions of Contract.
Sewerage Network Site	means, the Digha Sewerage Network Site and/or the Kankarbagh Sewerage Network Site, as the context may require.
Site	means, the STP Site and/or the Sewerage Network Site, as the context may require.
Sq. ft.	means square feet.
Sq. m.	means square metre
STP	means a sewage treatment plant.
STP By-Products	means the by-products of the treatment process after the Sewage has passed through the STP Facilities comprising the Digested Sludge, the Residual Grit and the Screenings.
STP	means the Digha STP Completion Cost or the Kankarbagh STP Completion Cost,

Completion Cost	as the context may require.
STP Construction Completion Certificate	means the Digha STP Construction Completion Certificate or the Kankarbagh STP Construction Completion Certificate, as the context may require.
STP ESHS Performance Securities	means the Digha STP ESHS Performance Security or the Kankarbagh STP ESHS Performance Security, as the context may require, and the term STP ESHS Performance Securities shall mean collectively, the Digha STP ESHS Performance Security and the Kankarbagh STP ESHS Performance Security.
STP Facilities	means the Digha STP Facilities and/or the Kankarbagh STP Facilities, as the context may require, and the term STP Facility shall be construed accordingly.
STP Guaranteed Energy Consumption	means the Digha STP Guaranteed Energy Consumption or the Kankarbagh STP Guaranteed Energy Consumption, as the context may require.
STP Milestone Completion Certificate	means, in respect of any STP Payment Milestone, a certificate issued by BUIDCO in accordance with Clause 7.13(a), to certify that such STP Payment Milestone has been achieved in accordance with the requirements of this Concession Agreement.
STP O&M Charges	means the Digha STP O&M Charges or the Kankarbagh STP O&M Charges, as the context may require.
STP O&M Securities	means the Digha STP O&M Security or the Kankarbagh STP O&M Security, as the context may require, and the term STP O&M Securities shall mean collectively, the Digha STP O&M Security and the Kankarbagh STP O&M Security.
STP Payment Certificate	has the meaning ascribed to it in Clause 9.3(e)(v) and Clause 9.4(k).
STP Payment Milestone	means the Digha STP Payment Milestones or the Kankarbagh STP Payment Milestones, and STP Payment Milestone shall mean any one of them, as the context may require.
STP Site	means, the Digha STP Site and/or the Kankarbagh STP Site, as the context may require.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Concession Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Substitution	means the substitution agreement to be executed by BUIDCO, NMCG, the

Agreement	Concessionaire and the Lenders, in the format set out in Schedule 2.
Supporting Infrastructure	means the Digha Supporting Infrastructure and/or the Kankarbagh Supporting Infrastructure, as the context may require.
Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, goods and service tax, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors, and the term Tax shall be construed accordingly.
Technical Capacity	means the technical capacity and experience of the [Selected Bidder/Member(s)] ⁴ determined in accordance with the RFP.
Technical Specifications	means the technical specifications for design, construction, operation and maintenance of the STP Facilities, as set out in Schedule 11 and for Sewerage Network Facilities, as set out in Schedule 23 and Schedule 25 of the Conditions of Contract.
Term	has the meaning ascribed to it in Clause 3.7.
Termination Compensation	means the compensation payable by NMCG upon termination of this Concession Agreement, in accordance with Article 18.
Third Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(C).
Third Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(C).
Threshold Limit	has the meaning ascribed to it in Clause 13.2(e)(i).
Total Casualty	means any fire or other casualty that results in physical damage to the Digha STP Facilities or the Kankarbagh STP Facilities, to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Digha STP Facilities or the Kankarbagh STP Facilities, as the case may be (as determined by the Project Engineer) to the same condition as existed previously would be more than 25% of the then total replacement cost of the STP Facilities.
Treated Effluent	means the water which is obtained after the treatment of the Sewage at the Patna STPs.
Trial Operations	means the Trial Operations of the Digha STP Facilities and the Kankarbagh STP Facilities as may be determined in accordance with Clause 7.14. Trial Operations period shall refer to the time from the relevant STP Construction Completion Date till the issue of the relevant Trial Operations Completion

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

	Certificate.
Trial Operations Completion Certificates	means the certificates issued by BUIDCO to the Concessionaire upon successful completion of the Trial Operations of the Digha STP Facilities and the Kankarbagh STP Facilities, and the term Trial Operations Completion Certificate shall mean the certificate issued for either of the STP Facilities.
Trial Operation Procedures	means the procedures for conducting the Trial Operations, as set out in the Technical Specifications of this Concession Agreement.
Unscheduled Outage	means an interruption of or a reduction in the Availability of any Patna STP that is not the result of a Forced Unavailability.
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by BUIDCO or proposed by the Concessionaire, in accordance with Article 20.
Variation Order	means an order issued by BUIDCO certifying its approval of a proposed Variation and recording the terms and condition on which the proposed Variation is required to be implemented.
Waste Disposal Site	means the Digha Waste Disposal Site or the Kankarbagh Waste Disposal Site, as the context may require.
Website	means the web portal of BUIDCO available at the url: www.buidco.in/ .
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Concession Agreement.
World Bank Group Safeguard Policies and Performance Standards	means the World Bank Group Safeguard Policies and Performance Standards, available at https://policies.worldbank.org/sites/PPF3/Pages/Manuals/Operational%20Manual.aspx , http://www.ifc.org/performancestandards ; and http://pubdocs.worldbank.org/en/497851495202591233/Managing-Risk-of-Adverse-impact-from-project-labor-influx.pdf
WPI	means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Rules of Interpretation

The Rules of Interpretation relating to the STP Facilities shall be as under:

In this Concession Agreement, unless the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Concession Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Indian Standard Time; any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Unless otherwise provided, any late payment charges to be calculated and payable under this Concession Agreement shall accrue *pro rata* on a monthly basis and from the respective due dates as provided for in this Concession Agreement.
- (h) A requirement that a payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the next business day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on their behalf only by any authorized persons.
- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The terms of the RFP form an integral part of this Concession Agreement and will be in full force and effect as though they were expressly set out in the body of this Concession Agreement. In the event of any discrepancy between this Concession Agreement and the RFP, the provisions set out in this Concession Agreement shall prevail.
- (l) The provisions of the Articles, Clauses and the Schedules of this Concession Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Articles, Clauses and the Schedules.

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

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

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

- (p) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Concession Agreement.

- (q) The Parties acknowledge that damages for specific defaults prescribed under this Concession Agreement (including the Delay Liquidated Damages, the Performance Liquidated Damages, the Availability Liquidated Damages and the Power Consumption Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Concession Agreement, and are not in the nature of a penalty.

1.3 Units of Measurement

The Units of Measurement relating to the Project shall be as described below:

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

2. SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION

2.1 Scope of the Project

The Scope of the STP Facilities shall be as set out in Schedule 1 and shall include:

- (a) designing, financing, constructing and completing the STP Facilities by the Scheduled STP Construction Completion Date, in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the Construction Plan, the ESHS Documents and Good Industry Practices; and
- (b) operating and maintaining the STP Facilities in accordance with Applicable Laws, Applicable Permits, Technical Specifications, Designs and Drawings, the O&M Manual, the ESHS Documents and Good Industry Practices to ensure compliance with the KPIs; and
- (c) handback of the STP Facilities upon expiry or early termination of this Concession Agreement in accordance with the Hand-back Conditions and the Hand-back Requirements.

2.2 Grant of Concession

- (a) On and from the Effective Date and subject to the terms of this Concession Agreement, Applicable Laws and Applicable Permits, BUIDCO grants to the Concessionaire the exclusive right to:
 - (i) design, finance, construct and complete the STP Facilities; and
 - (ii) upon completion of construction of the STP Facilities, operate and maintain the STP Facilities during the O&M Period.
- (b) The Grant of the Concession set out in Clause 2.2(a) shall oblige or entitle the Concessionaire, as the case may be, to the following:
 - (i) access to the STP Site from the Effective Date, for the sole purpose of implementing the Project;
 - (ii) apply for and obtain all the Concessionaire Applicable Permits and utilities required to undertake the Project;
 - (iii) raise funds (through both debt and equity financing) to finance 60% of the respective STP Bid Project Cost;
 - (iv) complete the construction of the STP Facilities on or before the Scheduled STP Construction Completion Date;
 - (v) upon completion of construction of the STP Facilities, undertake Trial Operations;
 - (vi) upon successful completion of the Trial Operations, operate and maintain the STP Facilities till the End of Concession;

- (vii) receive, treat and process Sewage up to the Design Capacity;
- (viii) store, treat, market, sell or dispose off the STP By-Products subject to and in accordance with this Concession Agreement;
- (ix) store, treat or dispose off the Treated Effluent subject to and in accordance with this Concession Agreement;
- (x) transfer the STP Facilities to BUIDCO upon the expiry of the Term or termination of this Concession Agreement, after rectification of any defects in the STP Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements;
- (xi) receive the Construction Payments during the Construction Period and the O&M Payments during the O&M Period, subject to compliance with the terms and performance of the obligations under this Concession Agreement;
- (xii) appoint Subcontractors, agents, advisors and consultants and enter into Subcontracts to undertake the Project, with the prior approval of BUIDCO;
- (xiii) construct a biogas Power Plant or a solar rooftop Power Plant at the Digha STP Site, at its sole option and discretion; and
- (xiv) construct a biogas Power Plant or a solar rooftop Power Plant at the Kankarbagh STP Site, at its sole option and discretion.

2.3 Description of the STP Facilities

- (a) The STP Facilities shall include the Patna STPs along with the associated, the Online Monitoring Systems, the on-site testing laboratory facilities, temporary storage facilities for the Digested Sludge, the I&D Works and all other such facilities necessary or associated with the Patna STPs for treatment, processing and disposal of the Sewage, as described in greater detail in Schedule 1 (*Scope of Work*) and Schedule 11 (*Technical Specifications*).
- (b) The Concessionaire shall operate the STP Facilities and treat the Sewage in a manner such that the KPIs are achieved, and the Treated Effluent and Digested Sludge comply with the Discharge Standards.
- (c) The by-products of the Sewage treated at the Patna STPs (i.e., STP By-Products) will be bifurcated into the Screenings, the Digested Sludge and the Residual Grit. The Concessionaire will be required to dispose the STP By-Products and silt as follows:
 - (i) the Residual Grit, the Screenings and silt will be disposed at the relevant Waste Disposal Site to be identified by BUIDCO within a radius of 15 km from the relevant STP Site, in accordance with the Technical

Specifications; and

- (ii) the Concessionaire shall dry the Digested Sludge at a sludge handling facility to be provided by the Concessionaire at the STP Site, and have the option to sell the Digested Sludge to farmers/other third party buyers or dispose the Digested Sludge at the relevant Waste Disposal Site. Provided that if the Concessionaire sells the Digested Sludge to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with BUIDCO.
- (d) From the Outlet Point, the Treated Effluent shall be transferred through the Supporting Infrastructure to any discharge point(s) indicated by BUIDCO. The Concessionaire is not permitted to divert, transfer or sell the Treated Effluent generated from the Patna STPs to any third party.

2.4 Use of Proposed Technology

The Use of Proposed Technology for the STP Facilities shall be as described below:

- (a) The Concessionaire shall design and develop the Patna STPs on the basis of the Proposed Technology, approved by BUIDCO as part of the Designs and Drawings.
- (b) If the Selected Bidder/a Member is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected Bidder/such Member, under which the Selected Bidder/such Member will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the STP Facilities.
- (c) If the Selected Bidder/a Member does not own the Proposed Technology, then the Concessionaire shall, at its own cost, enter into a technology license agreement with the technology provider, under which the technology provider will grant to the Concessionaire an irrevocable, perpetual, assignable and royalty-free license to use the Proposed Technology. At no point will BUIDCO or NMCG be obliged to make any payments to the Concessionaire towards the licensing and use of the Proposed Technology.
- (d) Upon the expiry or early termination of this Concession Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the Patna STPs to BUIDCO at no additional cost to BUIDCO.
- (e) The Concessionaire shall indemnify BUIDCO and NMCG for any claims, losses, damages and costs suffered by BUIDCO and/or NMCG as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Patna STPs.
- (f) If the 2 (two) Patna STPs are developed using different technologies, then, the provisions of this Clause 2.4 shall apply to each such technology adopted for the

Patna STPs.

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1 Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied in accordance with this Article 3, shall be the Effective Date.
- (b) This Article 3 and Article 2 (*Scope of the Project and Grant of the Concession*), Article 5 (*STP Performance Securities, STP ESHS Performance Securities, STP O&M Securities and Mobilization Advance Guarantees*), Article 6 (*Project Engineer*), Article 10 (*Financing Arrangements and Security*), Clause 11.1 (*Indemnity and Limitation of Liability*), Article 12 (*Change in Ownership*), Article 13 (*Change in Law*), Article 14 (*Force Majeure*), Article 21 (*Dispute Resolution*), Article 22 (*Representations and Warranties*) and Article 23 (*Miscellaneous*) and the related Schedules, shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Concession Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.
- (c) submit to BUIDCO a legal opinion stating that: (i) this Concession Agreement, the Substitution Agreement and the Escrow Agreement have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Concession Agreement, the Substitution Agreement and the Escrow Agreement have been taken, fulfilled or done;

3.2 Conditions Precedent to be satisfied by the Concessionaire

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

- (a) submit the Phase I Designs and Drawings to BUIDCO for its approval in accordance with Clause 7.2;
- (b) prepare the Construction Plan within 30 days from the Appointed Date and submit the Construction Plan to BUIDCO for its approval in accordance with Clause 7.3;
- (c) prepare the ESHS Documents within 90 days from the Appointed Date and submit the ESHS Documents to BUIDCO for its approval in accordance with Clause 7.4;
- (d) obtain all Concessionaire Applicable Permits that are required for achieving Financial Close and for commencement of construction of the STP Facilities at its

own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;

- (e) execute and provide a copy to BUIDCO of the technology license agreement(s) executed with the Selected Bidder/a Member or the third party technology supplier for setting up the Patna STPs;
- (f) submit to BUIDCO certified true copies of all resolutions adopted by the board of directors of the Concessionaire authorising execution, delivery and performance of this Concession Agreement, Substitution Agreement and the Escrow Agreement by the Concessionaire;
- (g) execute the Substitution Agreement with BUIDCO, NMCG and the Lenders in the agreed form set out at Schedule 2;
- (h) achieve Financial Close and submit a copy of the Financing Documents and the Financial Package to BUIDCO, duly certified by a director of the Concessionaire;
- (i) [execute a shareholders' agreement amongst the shareholders of the Concessionaire, and deliver to BUIDCO a certified true copy of the shareholders' agreement (attested by a director of the Concessionaire);]⁵
- (j) execute the Escrow Agreement with BUIDCO, NMCG, and the Escrow Bank in the agreed form set out at Schedule 3;
- (k) submit to BUIDCO certified true copies of the constitutional documents of the Concessionaire;
- (l) if [a Member/the Selected Bidder]⁶ has submitted unaudited annual accounts along with the Bid, the Concessionaire shall submit to BUIDCO, within 60 days of the Appointed Date: (i) a certified copy of [such Member's/the Selected Bidder's]⁷ duly audited balance sheet, annual report and profit and loss account for the latest Financial Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the [Selected Bidder/Member]⁸ continues to meet the Financial Capacity specified in the RFP; and
- (m) submit to BUIDCO a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire.

3.3 **Conditions Precedent to be satisfied by BUIDCO**

BUIDCO shall satisfy the following Conditions Precedent (if not already fulfilled on the

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

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

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

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

Appointed Date):

- (a) grant access to the Digha STP Site and the Kankarbagh STP Site, including the site for I&D Works , and all necessary rights of way to the Digha STP Site and the Kankarbagh STP Site to the Concessionaire, free of Encumbrances and encroachments;
- (b) to the extent relevant, obtain any change in land use permission from the relevant Government Authority to enable the Concessionaire to undertake the Project at the STP Site;
- (c) subject to Clause 3.2(a), review and approve the Phase I Designs and Drawings in accordance with Clause 7.2;
- (d) subject to Clause 3.2(b), review and approve the Construction Plan in accordance with Clause 7.3;
- (e) subject to Clause 3.2(c), review and approve the ESHS Documents in accordance with Clause 7.4;
- (f) obtain all approvals and consents, including BUIDCO Applicable Permits and any approvals from the National Green Tribunal, required for BUIDCO to enter into this Concession Agreement and undertake the Project;
- (g) provide access road(s) to the Digha STP Site and the Kankarbagh STP Site, which are capable of being used for transportation of equipment and material to the Digha STP Site and the Kankarbagh STP Site for the construction of the STP Facilities;
- (h) execute the Substitution Agreement with the Concessionaire, NMCG and the Lenders in the agreed form set out at Schedule 2; and
- (i) execute the Escrow Agreement with the Concessionaire, NMCG and the Escrow Bank in the agreed form set out at Schedule 3.

3.4 **Conditions Precedent to be satisfied by NMCG**

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

- (a) obtain all approvals and consents that may be required for NMCG to enter into this Concession Agreement and undertake the Project;
- (b) appoint the Project Engineer within 7 days of the Appointed Date in accordance with Article 6;
- (c) execute the Substitution Agreement with the Concessionaire, BUIDCO and the Lenders in the agreed form set out at Schedule 2;
- (d) execute the Escrow Agreement with the Concessionaire, BUIDCO, and the Escrow Bank in the agreed form set out at Schedule 3 and open the Escrow

Account with the Escrow Bank; and

- (e) fund the Escrow Account with an amount equivalent to the first two Digha STP Payment Milestones and Kankarbagh STP Payment Milestones, and the first two instalments for Digha Sewerage Network Facilities and first two instalments for Kankarbagh Sewerage Network Facilities.

3.5 **Satisfaction of Conditions Precedent**

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

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

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

3.6 **Consequences of failure to satisfy Conditions Precedent**

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

- (ii) If either BUIDCO or NMCG fails to satisfy any of the Conditions Precedent that they are required to fulfil by the CP Long-stop Date, as may be extended in accordance with Clause 3.5(b), any Party may terminate this Concession Agreement forthwith by issuing a notice to the other Parties.
 - (iii) No Party shall be permitted to waive any Condition Precedent required to be fulfilled by any other Party.
- (b) If the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it other than due to the reasons set out in Clause 3.5(b) and this Agreement is terminated in accordance with this Clause 3.6, then:
 - (i) BUIDCO shall be entitled to forfeit the STP Performance Securities up to INR 2,25,00,000 (Rupees two crores and twenty five lakhs) as a genuine pre-estimate of and reasonable compensation for loss and damage caused to BUIDCO as a result of the Concessionaire's failure to satisfy any of the Conditions Precedent and the consequent termination of this Agreement;
 - (ii) the Concessionaire shall not be entitled to receive any payments due or compensation from BUIDCO or NMCG for the costs and expenses incurred by the Concessionaire in performing any of its obligations under this Concession Agreement (including preparing any Phase I Designs and Drawings, the Construction Plan and the ESHS Documents) prior to the termination of this Agreement;
 - (iii) the Concessionaire shall hand over to BUIDCO all documents, designs, plans, data and any Confidential Information provided by BUIDCO or NMCG to the Concessionaire prior to termination of this Agreement;
 - (iv) BUIDCO shall hand over to the Concessionaire the Phase I Designs and Drawings, the Construction Plan, the ESHS Documents and any other document and Confidential Information submitted by the Concessionaire to BUIDCO or NMCG prior to termination of this Agreement; and
 - (v) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with BUIDCO, free from all Encumbrances.
- (c) If BUIDCO or NMCG has failed to satisfy any of the Conditions Precedent required to be satisfied by it or the Concessionaire has failed to satisfy any of the Conditions Precedent required to be satisfied by it due to the reasons set out in Clause 3.5(b), and this Concession Agreement is terminated in accordance with this Clause 3.6, then:

- (i) BUIDCO shall return the STP Performance Securities, the Sewerage Network Performance Securities, the STP ESHS Performance Securities, and the Sewerage Network ESHS Performance Securities submitted by the Concessionaire;
 - (ii) the Concessionaire shall hand over to BUIDCO all documents, designs, plans, data and any Confidential Information provided by BUIDCO or NMCG to the Concessionaire prior to termination of this Agreement;
 - (iii) BUIDCO shall hand over to the Concessionaire the Phase I Designs and Drawings, the Construction Plan, the ESHS Documents and any other document and Confidential Information submitted by the Concessionaire to BUIDCO or NMCG prior to termination of this Agreement; and
 - (iv) if the access to any part of the Site has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear the Site and remove all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site, and thereafter, the Site will be deemed to automatically vest with BUIDCO, free from all Encumbrances.
- (d) Upon termination of this Concession Agreement pursuant to this Clause 3.6, other than to the extent specified in this Clause 3.6, no Party shall have any liability to the other Parties in connection with this Concession Agreement and the Concessionaire shall not be entitled to receive any termination compensation from NMCG or BUIDCO.

3.7 **Term**

Subject to early termination in accordance with Article 14 (*Force Majeure*) or Article 16 (*Events of Default*), this Agreement shall come into full force and effect on the Effective Date and remain in full force and effect until the End of Concession (“**Term**”).

4. **SITE AND ASSET OWNERSHIP**

4.1 **Grant of License over the STP Site**

- (a) BUIDCO shall grant the Concessionaire a license over the Digha STP Site and the Kankarbagh STP Site, along with all necessary rights of way, to enter upon, access and occupy the Digha STP Site and the Kankarbagh STP Site, free of all Encumbrances in accordance with this Clause 4.1, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:
 - (i) design, construct and commission the STP Facilities including I&D Works;
 - (ii) operate and maintain the STP Facilities during the O&M Period;

- (iii) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the STP Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (iv) use access roads, gates, fences and utilities at or about the STP Site;
 - (v) discharge, store, treat and manage the STP By-Products and the Treated Effluent produced by the STP Facilities; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the STP Site.
- (b) On and from the Effective Date and subject to the provisions of this Concession Agreement, BUIDCO shall grant the Concessionaire: (i) a license over the Digha STP Site and the Kankarbagh STP Site including the exclusive right to occupy and use the Digha STP Site and the Kankarbagh STP Site to construct the STP Facilities; and (ii) all necessary rights of way to the Digha STP Site and the Kankarbagh STP Site. Any charges payable for obtaining the right of way will be paid directly by BUIDCO.
- (c) BUIDCO shall provide the Digha STP Site and the Kankarbagh STP Site to the Concessionaire free of Encumbrances and encroachments as a Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Digha STP Site and/or the Kankarbagh STP Site by BUIDCO, BUIDCO will remove such hazardous substances at its own cost and expense.
- (d) The Concessionaire shall not without the prior written consent or approval of BUIDCO use the STP Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Concession Agreement or as may be otherwise approved by BUIDCO.
- (e) The full ownership and title over the STP Site shall vest with BUIDCO for the entire Term.
- (f) BUIDCO warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Concession Agreement, occupy the STP Site, from such time that access is granted to the Concessionaire and until the expiry of the Term. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the STP Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the STP Site or any part thereof, BUIDCO shall, if called upon by the Concessionaire, defend such claims and proceedings.
- (g) Subject to any substitution rights exercised by the Lenders, the license granted by BUIDCO shall automatically terminate upon termination of this Concession Agreement or expiry of the Term.

4.2 **Right, Title and Interest in the STP Facilities**

- (a) The full ownership, rights and title to the STP Facilities constructed or installed by the Concessionaire pursuant to this Concession Agreement shall vest with BUIDCO during the entire Term and thereafter. The Concessionaire shall have the right to enter upon the STP Site, access and operate the STP Facilities during the Term, to exercise its rights and fulfil its obligations under this Agreement.
- (b) Except as otherwise provided in this Concession Agreement, the Concessionaire shall not:
 - (i) sell or otherwise dispose or create any Security over the STP Facilities or any part thereof;
 - (ii) dispose any assets forming part of the STP Facilities, other than for the purposes of replacement due to normal wear and tear; or
 - (iii) transfer, assign or novate all of its rights and obligations under this Concession Agreement,

without the prior written consent of BUIDCO (such consent not being unreasonably withheld or delayed).

4.3 **Site Data and Verification**

- (a) BUIDCO has made available to the Concessionaire, the layout plans, load flow studies and all other relevant data, studies and reports in BUIDCO's possession in connection with the STP Site and the STP Facilities.
- (b) The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the STP Facilities at the STP Site.
- (c) The Concessionaire shall also be deemed to have inspected and examined the STP Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by BUIDCO and any other information available with respect to the STP Facilities and the STP Site and to have satisfied itself as to all the relevant matters including:
 - (i) the nature of the STP Site, including the subsurface, hydrological, climatic and general physical conditions of the STP Site;
 - (ii) the suitability of the STP Site for undertaking the construction and operation of the STP Facilities;
 - (iii) the condition of the utilities available till the battery limits of the STP Site;
 - (iv) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;

- (v) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Concession Agreement;
- (vi) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
- (vii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
- (viii) the suitability and adequacy of any access roads to the STP Site and other utilities and facilities to be provided by the relevant Government Authority; and
- (ix) all other matters that may affect the performance of its obligations under this Concession Agreement.

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

4.4 **Unforeseen Site Conditions**

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

4.5 **Site Related Covenants**

The Concessionaire agrees and undertakes that:

- (a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the STP Site or its rights and interest in the STP Site, other than as specifically permitted under this Concession Agreement;
- (b) the Concessionaire shall not allow any encroachment on, or unauthorized

occupation of any part of the STP Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthorized occupants to be removed from the STP Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the STP Site;

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

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

If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of any Government Authority to undertake such

construction works and/or the O&M services. BUIDCO shall provide all assistance to the Concessionaire for procuring such approvals.

4.6 **Access to BUIDCO Related Parties, NMCG Related Parties, the Bank and Government Authorities**

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

- (a) the rights of BUIDCO, BUIDCO's Representative, NMCG's Representative, the Project Engineer, the Bank and other BUIDCO Related Parties and NMCG Related Parties to enter upon and access the STP Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Concession Agreement, provided that BUIDCO and/or NMCG shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the STP Facilities in any manner whatsoever; and
- (b) the rights of the Government Authorities or other utility providers to enter upon and access the STP Site for laying or installing telegraph lines, electric lines or for any other public purpose.

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

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

The Performance Securities, ESHS Performance Securities, O&M Securities, Additional Performance Securities, and Mobilization Advance Guarantees related to the STP Facilities shall be as described below:

5.1 The Concessionaire shall have submitted to BUIDCO, prior to the Appointed Date:

- (a) an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 9% of the Digha STP Bid Project Cost (the **Digha STP Performance Security**);
- (b) an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 9% of the Kankarbagh STP Bid Project Cost (the **Kankarbagh STP Performance Security**);
- (c) an unconditional and irrevocable bank guarantee for an amount equal to INR []

(Rupees []), corresponding to 1% of the Digha STP Bid Project Cost (the **Digha STP ESHS Performance Security**);

- (d) an unconditional and irrevocable bank guarantee for an amount equal to INR [] (Rupees []), corresponding to 1% of the Kankarbagh STP Bid Project Cost (the **Kankarbagh STP ESHS Performance Security**),

The Digha STP Performance Security and the Kankarbagh STP Performance Security shall collectively be referred to as the **STP Performance Securities** and the Digha STP ESHS Performance Security and the Kankarbagh STP ESHS Performance Security shall collectively be referred to as the **STP ESHS Performance Securities**.

- 5.2 The STP Performance Securities shall remain valid until 25 months from the Effective Date or 1 month from the COD.
- 5.3 The STP Performance Securities shall be returned within 30 days of the COD.
- 5.4 The STP ESHS Performance Securities shall be valid until the expiry of the O&M Period.
- 5.5 Within 60 days of the respective STP Construction Completion Date, the Concessionaire shall submit:
- (a) an unconditional and irrevocable bank guarantee to BUIDCO for an amount equal to INR [] (Rupees []), corresponding to 4% of the Digha STP Bid Project Cost (the **Digha STP O&M Security**); and
- (b) an unconditional and irrevocable bank guarantee to BUIDCO for an amount equal to INR [] (Rupees []), corresponding to 4% of the Kankarbagh STP Bid Project Cost (the **Kankarbagh STP O&M Security**);
- (collectively, **the STP O&M Securities**).
- 5.6 The Concessionaire shall furnish the STP O&M Securities in the same format as provided for the STP Performance Securities in the RFP, with necessary modifications. The Concessionaire shall maintain the STP O&M Securities in full force and effect until the expiry of the O&M Period. The STP O&M Securities shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the expiry of the O&M Period.
- 5.7 The STP ESHS Performance Securities shall secure the due performance of the Concessionaire's ESHS obligations during the Construction Period and the O&M Period, as set out in the approved ESHS Documents.
- 5.8 The STP Performance Securities shall secure the due performance of all the Concessionaire's obligations during the Construction Period and the STP O&M Securities shall secure the due performance of all the Concessionaire's obligations during the O&M Period.
- 5.9 The cost of procuring the STP Performance Securities, the STP ESHS Performance Securities

and the STP O&M Securities shall be borne solely by the Concessionaire.

- 5.10 If any STP Performance Security is scheduled to expire before the COD, then the Concessionaire shall arrange for an extension of such STP Performance Security at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, BUIDCO shall be entitled to drawdown the total amount available under such STP Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of such STP Performance Security.
- 5.11 If any STP ESHS Performance Security is scheduled to expire before the End of Concession, the Concessionaire shall replace or arrange for an extension of such STP ESHS Performance Security at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, BUIDCO shall be entitled to drawdown the total amount available under such STP ESHS Performance Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of such STP ESHS Performance Security.
- 5.12 If any STP O&M Security is not renewed by the expiry of the 11th month of the relevant year of the O&M Period, then BUIDCO shall be entitled to drawdown the total amount available under such STP O&M Security, and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of such STP O&M Security.
- 5.13 BUIDCO shall be entitled to utilize such retained amount in the same manner as it would utilise the STP Performance Security, the STP ESHS Performance Security or the STP O&M Security, as the case may be.

Upon receipt of a renewed or replacement STP Performance Security or within 30 days of the COD, BUIDCO shall return the unutilized cash security amount for the STP Performance Security to the Concessionaire.

Upon receipt of a renewed or replacement STP ESHS Performance Security or within 30 days from End of Concession, BUIDCO shall return the unutilized cash security amount for the STP ESHS Performance Security to the Concessionaire.

Upon receipt of a renewed or replacement STP O&M Security or within 30 days from End of Concession, BUIDCO shall return the unutilized cash security amount for the STP O&M Security to the Concessionaire.

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

- 5.14 BUIDCO shall have the right to draw on the STP Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Construction Period, or any amount due and payable by the Concessionaire to BUIDCO (including any Delay Liquidated Damages and Termination Compensation), in accordance with this Concession Agreement.
- 5.15 BUIDCO shall have the right to draw on the STP O&M Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities

or commitments during the O&M Period, or any amount due and payable by the Concessionaire to BUIDCO (including any Availability Liquidated Damages, Performance Liquidated Damages, Termination Compensation and any amounts the Concessionaire is liable to pay under Clause 19.2), in accordance with this Concession Agreement.

- 5.16 Without prejudice to its right to draw on the STP Performance Securities or, as the case may be, the STP O&M Securities, BUIDCO shall have the right to draw on the STP ESHS Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its ESHS related obligations, responsibilities or commitments during the Construction Period or the O&M Period, as set out in the approved ESHS Documents, in accordance with this Concession Agreement.
- 5.17 BUIDCO shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the STP Performance Securities, the STP ESHS Performance Securities or the STP O&M Securities, as the case may be. However, BUIDCO shall provide the Concessionaire with a copy of any demand notice issued by BUIDCO under the STP Performance Securities, the STP ESHS Performance Securities or the STP O&M Securities, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant STP Performance Security, STP ESHS Performance Security or the STP O&M Security.
- 5.18 If BUIDCO makes a demand under any STP Performance Security, STP ESHS Performance Security or STP O&M Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 days of such demand, restore the value of such STP Performance Security, STP ESHS Performance Security or STP O&M Security to the amount stated in Clause 5.1 or Clause 5.5.
- 5.19 Within 30 days from the COD or the termination of this Concession Agreement, whichever is earlier, the STP Performance Securities or, as the case may be, the amount retained by BUIDCO as cash security under Clause 5.10, shall be released to the Concessionaire after the expiry of 30 days from the COD or termination of this Concession Agreement, subject to BUIDCO's right to receive any amounts from the Concessionaire before or upon COD or termination of this Concession Agreement.
- 5.20 Upon the End of Concession or the termination of this Agreement, whichever is earlier, the STP O&M Securities, the STP ESHS Performance Securities or, as the case may be, the amount retained by BUIDCO as cash security under Clause 5.11 or Clause 5.12, shall be released to the Concessionaire after the expiry of 30 days from the date of expiry or termination of this Agreement, subject to BUIDCO's right to receive any amounts from the Concessionaire before or upon such expiry or termination of this Agreement whichever is later.
- 5.21 **Mobilization Advance Guarantee**

This Clause 5.21 is applicable, should the Concessionaire opt to avail the Mobilization Advance as set out in Clause 9.3(d).

- (a) Within 30 days of the Effective Date, the Concessionaire shall submit to BUIDCO: (i) an unconditional and irrevocable bank guarantee for an amount equal to 110% of the Digha STP Mobilization Advance for the Digha STP

Facilities in the form set out at Schedule 4 (the **Digha STP Mobilization Advance Guarantee**); and (ii) an unconditional and irrevocable bank guarantee for an amount equal to 110% of the Kankarbagh STP Mobilization Advance for the Kankarbagh STP Facilities in the form set out at Schedule 5 (the **Kankarbagh STP Mobilization Advance Guarantee**), collectively, the **Mobilization Advance Guarantees**. The Mobilization Advance Guarantees shall secure the Mobilization Advance paid to the Concessionaire in accordance with Clause 9.3(d). The cost of procuring the Mobilization Advance Guarantees shall be borne solely by the Concessionaire.

- (b) Each Mobilization Advance Guarantee shall remain valid until the entire Mobilization Advance secured by such Mobilization Advance Guarantee has been adjusted against the Construction Payments. However, the Concessionaire may, at its discretion, progressively reduce the value of the relevant Mobilization Advance Guarantee by the amount of the Mobilization Advance adjusted against each of the 5 (Five) instalments of the Construction Payments, in accordance with Clause 9.3(d). For this purpose, the Concessionaire shall be required to furnish a replacement Mobilization Advance Guarantee of the reduced amount within 15 days of receipt of a STP Payment Certificate from BUIDCO on successful completion of the relevant STP Payment Milestone. BUIDCO shall return the relevant existing Mobilization Advance Guarantee upon receipt of a replacement Mobilization Advance Guarantee from the Concessionaire.
- (c) If any Mobilization Advance Guarantee is scheduled to expire before the entire Mobilization Advance has been adjusted, then the Concessionaire shall arrange for an extension of the relevant Mobilization Advance Guarantee at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, BUIDCO shall be entitled to drawdown the total amount available under such Mobilization Advance Guarantee and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of such Mobilization Advance Guarantee.
- (d) BUIDCO shall be entitled to utilize such retained amount in the same manner as it would utilize the Mobilization Advance Guarantee. Upon receipt of an extension or replacement Mobilization Advance Guarantee or on adjustment of the entire Mobilization Advance, BUIDCO shall return the unutilized cash security amount to the Concessionaire.

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

- (e) BUIDCO shall have the right to draw on the Mobilization Advance Guarantees in the event of the inadequate adjustment of the Mobilization Advance in accordance with Clause 9.3(d), prior to the Construction Completion Date.
- (f) BUIDCO shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under any Mobilization Advance Guarantee. However, BUIDCO shall provide the Concessionaire with a copy of any demand notice issued by BUIDCO under a Mobilization Advance Guarantee,

simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the Mobilization Advance Guarantee.

5.22 Additional Performance Security:

(a) In the event of the Selected Bidder having submitted Additional Performance Security in accordance with the Clause 16.5 of the RFP document, then such Additional Performance Security shall be in force till the end of Construction period if the Bid Project Cost is found to be unreasonable and till the End of the Concession if O & M Charges are found to be unreasonable. Notwithstanding to anything contained herein, the Additional Performance Security shall be liable to be forfeited either fully or partially by the BUIDCO as it deems fit for the reasons mentioned in Clause 16.1 of the Concession agreement. The Additional Performance Security for the unreasonable Bid Project Cost shall be returned 30 days after later COD and the Additional Performance Security for O & M Charges shall be returned at the End of Concession.

(b) Change in Ownership in accordance with Clause 12 of the Concession Agreement shall be subject to the fulfillment of the requirements of Additional Performance Security as per the clause 5.22(a) above, by the incoming Consortium Partner/Single Entity.

6. PROJECT ENGINEER

6.1 NMCG shall appoint a third-party engineering firm with requisite technical expertise, knowledge and experience in the design, engineering and construction of STPs and Sewerage Networks as the engineer for the Project (the Project Engineer). The Project Engineer shall have two separate teams, one for the STP Facilities and one for the Sewerage Network Facilities. The Project Engineer shall assist BUIDCO in supervising the construction, operation and maintenance of the STP Facilities and shall support BUIDCO to monitor compliance with the KPIs. The Project Engineer and his team for the STP Facilities, shall assist BUIDCO in approving the STP Construction Plan. The detailed scope of work of the Project Engineer and his team for the STP Facilities, is set out in Schedule 6.

6.2 All fees, costs, charges and expenses payable to the Project Engineer and his team, shall be borne by NMCG.

6.3 The Concessionaire may request NMCG to replace the Project Engineer or any member of his team for the STP Facilities, if the Concessionaire believes that the Project Engineer or any member of his team for the STP Facilities, are not performing their duties in accordance with this Concession Agreement or is otherwise impeding the performance of the Concessionaire's obligations under this Concession Agreement.

NMCG may replace the Project Engineer or any member of his team for the STP Facilities, in any of the following circumstances:

(a) if it has reason to believe that the Project Engineer or any member of his team for the STP Facilities, has not discharged its duties in accordance with this Article 6 or Schedule 6; or

- (b) has received a formal complaint from the Concessionaire that the Project Engineer or any member of his team for the STP Facilities, has not discharged its duties in accordance with this Article 6 or Schedule 6; or
 - (c) if the Project Engineer or any member of his team for the STP Facilities, submits its resignation.
- 6.4 In appointing any replacement of the Project Engineer or any member of his team for the STP Facilities, NMCG shall comply with this Article 6 and Schedule 6.
- 6.5 The Project Engineer and his team for the STP Facilities, shall be required to act independently, reasonably, fairly and expeditiously to ensure: (a) the timely completion of construction of the STP Facilities on or before the Scheduled STP Construction Completion Date; and (b) compliance with the KPIs during the O&M Period.
- 6.6 During the Construction Period, the Project Engineer and his team for the STP Facilities, shall inspect the STP Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the STP Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Technical Specifications and Designs and Drawings. The Project Engineer shall send the report to BUIDCO and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer.
- 6.7 During the O&M Period, the Project Engineer and his team for the STP Facilities, shall inspect the STP Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs (including specifically, the Influent Standards and the Discharge Standards, and flow and quality records of the influent and the treated effluent). The Project Engineer shall send the report to BUIDCO and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer. The Project Engineer or his team for the STP Facilities, shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period at the Inlet Point and the Outlet Point to determine the standard of the Sewage, the STP By-Products and the Treated Effluent.
- 6.8 Except as specifically provided in this Concession Agreement, the Project Engineer and his team for the STP Facilities, shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 6.9 The Project Engineer and his team for the STP Facilities, shall at all times during the Term have the right to enter upon and access the STP Site. The Concessionaire shall have the right to accompany the Project Engineer and/or his team for the STP Facilities, during its inspection of the STP Facilities.
- 6.10 The Project Engineer and his team for the STP Facilities, shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or O&M of the STP Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works or O&M services is being undertaken. Neither any comments/suggestions provided by the Project Engineer or his team for the STP Facilities, nor any failure to provide comments/suggestions shall be deemed to be an

acceptance of the construction works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Concession Agreement, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.

- 6.11 The Concessionaire agrees that notwithstanding any review by the Project Engineer or his team for the STP Facilities, of any or all of the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the STP Facilities.

7. CONSTRUCTION PERIOD

7.1 Commencement and Duration

The period for construction of the Facilities shall commence on and from the Effective Date, and shall continue until the Construction Completion Date (the **Construction Period**).

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

- (a) soil or geophysical investigation or testing at the STP Site; and
- (b) appointment of Subcontractors for the construction works for the STP Facilities, with the prior approval of BUIDCO.

7.2 Designs and Drawings

(a) Phase I Designs and Drawings

(i) *Basic Engineering Designs*

- (A) The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. If the Concessionaire proposes to set up the Power Plant, the Concessionaire shall also submit the Basic Engineering Designs for the Power Plant. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth construction of the STP Facilities. The STP Facilities should be designed in a manner such that the Concessionaire can obtain a consent to operate from the Bihar State Pollution Control Board for the operation of the STP Facilities. The Basic Engineering Designs should also specify the Proposed Technology for the Digha STP and the Kankarbagh STP.

- (B) Within 30 days from the Appointed Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft Basic Engineering Designs to BUIDCO for its review

and approval.

- (C) BUIDCO shall forward the Basic Engineering Designs to the Project Engineer and the Engineering Institute for their review and comments.
- (D) BUIDCO shall provide comments if any, on the draft Basic Engineering Designs (including any comments from the Engineering Institute and the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft Basic Engineering Designs within 20 days from the date of receipt of the draft Basic Engineering Designs. BUIDCO may require the Concessionaire to amend or modify the draft Basic Engineering Designs if BUIDCO, the Engineering Institute or the Project Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from BUIDCO, then the Concessionaire shall modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, BUIDCO's/the Engineering Institute's/the Project Engineer's comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to BUIDCO for its approval within 10 days of receipt of comments. The process set out in this Clause 7.2(a)(iv) shall continue until the Basic Engineering Designs are certified by the Engineering Institute and are approved by BUIDCO in accordance with this Clause 7.2(a)(iv).

(ii) *Screening Report*

- (A) The Concessionaire shall prepare the Screening Report in accordance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF and as per the format set out in Schedule 9.
- (B)
- (C) Within 30 days from the Appointed Date, the Concessionaire shall submit 4 hard copies and 1 soft copy of the draft Screening Report on a compact disc to BUIDCO for its review and approval.
- (D) BUIDCO shall forward the draft Screening Report to the Bank for its review and comments.
- (E) BUIDCO shall provide comments if any, on the draft Screening Report (including any comments from the Bank) to the Concessionaire or notify the Concessionaire of its approval of the draft Screening Report within 20 days from the date of receipt of the draft Screening Report. BUIDCO may require the Concessionaire to amend or modify the draft Screening Report if BUIDCO or the Bank identifies any deficiencies, inaccuracies or

shortcomings in the draft Screening Report. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Screening Report from BUIDCO, then the Concessionaire shall modify the draft Screening Report to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, BUIDCO's/Bank's comments on the draft Screening Report and submit the revised Screening Report to BUIDCO for its approval within 10 days of receipt of comments. The process set out in this Clause 7.2(a)(ii)(D) shall continue until the Screening Report is approved by BUIDCO in accordance with this Clause 7.2(a)(ii)(D).

- (iii) Within 30 days from the approval of the Basic Engineering Designs, the Concessionaire shall prepare the balance Phase I Designs and Drawings based on the approved Basic Engineering Designs and submit 4 hard copies and 1 soft copy on a compact disc of the balance Phase I Designs and Drawings to BUIDCO for its review and approval. The process set out in Clause 7.2(a)(i)(C) and Clause 7.2(a)(i)(D) will apply for approval of the balance Phase I Designs and Drawings.

(b) Phase II Designs and Drawings

- (i) At least 2 months prior to the commencement of work for the second STP Payment Milestone for the STP Facilities, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the Phase II Designs and Drawings for the works corresponding to the second STP Payment Milestone for the STP Facilities. The process set out in Clause 7.2(a)(iii) will apply for approval of the Phase II Designs and Drawings for the works corresponding to the second STP Payment Milestone.
 - (ii) The process set out in Clause 7.2(a)(iii) above shall apply to the submission and approval of the Phase II Designs and Drawings for the work corresponding to the third STP Payment Milestone, the fourth STP Payment Milestone, and the fifth STP Payment Milestone for the STP Facilities.
- (c) The Concessionaire shall construct the STP Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of BUIDCO. The Concessionaire shall not commence construction of any part of the STP Facilities prior to approval of the Designs and Drawings in accordance with this Clause 7.2. If the Concessionaire undertakes any construction work for the STP Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and BUIDCO shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.
- (d) Notwithstanding any approval of the Designs and Drawings by BUIDCO, the

Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Clause 3.5 and Clause 7.11(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 7.2.

7.3 **Construction Plan**

- (a) Within 30 days from the Appointed Date, the Concessionaire shall prepare and submit to BUIDCO a detailed Construction Plan. The Construction Plan shall set out:
 - (i) the detailed plan for completing the construction of the Digha STP Facilities and the Kankarbagh STP Facilities by the Scheduled STP Construction Completion Date;
 - (ii) specific activities and extent of construction work to be performed by the Concessionaire to achieve each of the 5 Digha STP Payment Milestones and the 5 Kankarbagh STP Payment Milestones; and
 - (iii) the order in which the Concessionaire proposes to execute the construction of the STP Facilities.
- (b) BUIDCO shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 days from the date of receipt of the draft Construction Plan from the Concessionaire. BUIDCO may require the Concessionaire to amend or modify the draft Construction Plan if BUIDCO identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan from BUIDCO, then the Concessionaire shall incorporate the suggestions made by BUIDCO and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by BUIDCO. Thereafter, the Concessionaire shall submit the revised Construction Plan to BUIDCO for its approval. The process set out in this Clause 7.3(b) shall continue until the Construction Plan is approved by BUIDCO in accordance with this Clause 7.3(b).
- (c) The Concessionaire shall construct the STP Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of BUIDCO. The Concessionaire shall not commence construction of any part of the STP Facilities prior to approval of the Construction Plan in accordance with this Clause 7.3.
- (d) Notwithstanding any approval of the Construction Plan by BUIDCO, the Concessionaire shall, subject to Clause 7.11(b), be solely liable for completing the construction of the STP Facilities by the Scheduled STP Construction Completion Date.
- (e) The Concessionaire shall submit separate Construction Plans for the Digha STP

Facilities and the Kankarbagh STP Facilities.

7.4 ESHS Documents

- (a) Within 30 days from the Appointed Date, the Concessionaire shall prepare and submit 4 hard copies and 1 soft copy on a compact disc of the ESHS Documents to BUIDCO.
- (b) The ESHS Documents shall collectively set out the health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project, developed in accordance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF, this Concession Agreement (including, specifically, Schedule 9), Applicable Laws, Applicable Permits, and Good Industry Practices.
- (c) The ESHS Documents shall comprise the following:

- (i) *Safeguard Documents*

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

- (A) submit an update of the environment and social impact assessment report (ESIA), which has been prepared by BUIDCO and shall be provided to the Concessionaire along with the RFP; and
 - (B) prepare the environmental management plan (EMP).

- (ii) *Safety Documents*

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

- (A) environment, social, health and safety management plan (ESHSMMP);
 - (B)
 - (C) environmental, social, health and safety management strategies and implementation plan (ESHS-MSIP) – The ESHS-MSIP shall be prepared on the basis of the requirements set out in Schedule 9. The ESHS-MSIP shall include the following, for the purposes of managing the key ESHS risks in relation to the Project:
 - (I) traffic management plan to ensure safety of local communities from construction traffic;
 - (II) water resource protection plan to prevent contamination of drinking water;
 - (III) boundary marking and protection strategy for mobilization and construction to prevent offsite adverse impacts; and

- (IV) strategy for obtaining Concessionaire Applicable Permits prior to the start of relevant works [such as opening a quarry or borrow pit].
- (D)
- (E) Code of conduct – The code of conduct shall be prepared on the basis of the requirements set out in Schedule 9. The Code of Conduct shall apply to the Concessionaire's employees and subcontractors and shall set out the ESHS obligations of the Concessionaire under the Concession Agreement relating to risks associated with labor influx, spread of communicable diseases, sexual harassment, gender based violence, illicit behaviour and crime, and maintaining a safe environment etc. The Code of Conduct shall also set out the manner in which the Code of Conduct will be implemented, including how it will be introduced into conditions of employment/engagement, what training will be provided, how it will be monitored and how the Concessionaire proposes to deal with any breaches.
- (F)
- (iii) In the ESHS, the Concessionaire shall also be required to provide details of the core team of 3 people for implementation of the Concessionaire's ESHS obligations, comprising: (A) health expert and safety specialist; (B) an environmental specialist; and (C) social specialist, who meet the minimum qualification requirements specified in Schedule 9.
- (iv) Within 30 days from the appointed date, the Concessionaire shall prepare and submit 4 hard copies and 1 soft copy of Labour Influx and Workers Camp Management Plan to [Executing Agency] that addresses specific activities that will be undertaken to minimize the impact on the local community, including elements such as worker codes of conduct, training programs on HIV/AIDS, etc. A Workers' Camp Management Plan addresses specific aspects of the establishment and operation of workers' camps .

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

- (i) mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community members, specifically women;
- (ii) informing workers about national laws that make sexual harassment and gender-based violence a punishable offence which is prosecuted;
- (iii) introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination), manual scavenging, engagement with local residents, child labor, nondiscrimination, harassment of coworkers including women and those belonging to SC and STs and other minority social groups,
- (iv) contractors adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.
- (v) training programs on HIV/AIDS and other communicable diseases,
- (vi) workers' Camp Management Plan addressing specific aspects of the establishment and operation of workers' camps provided the ULB/ Executing Agency is unable to cater to the demand for affordable housing for this additional workforce in terms of rentals, hostels, apartments etc. ; and

- (vii) compliant handling Mechanism at the project level

- (d) BUIDCO shall forward a copy of the draft ESHS Documents to the Bank, and/or Project Engineer for its review and comments.
- (e) BUIDCO shall provide comments, if any, on the draft ESHS Documents (including any comments from the Bank and/or Project Engineer), to the Concessionaire or notify the Concessionaire of its approval of the draft ESHS Documents within 30 days from the date of receipt of the draft ESHS Documents from the Concessionaire. BUIDCO may require the Concessionaire to amend or modify the draft ESHS Documents if BUIDCO, the Bank, and/or Project Engineer, identifies any deficiencies or shortcomings in the draft ESHS Documents. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESHS Documents from BUIDCO, then the Concessionaire shall modify the draft ESHS Documents to address any such comments, shortcomings or deficiencies identified by BUIDCO. Thereafter, the Concessionaire shall submit the revised ESHS Documents to BUIDCO for its approval. The process set out in this Clause 7.4(e) shall continue until the ESHS Documents are approved by BUIDCO in accordance with this Clause 7.4(e).
- (f) The Concessionaire shall and shall ensure that its Subcontractors comply with and conform in all aspects of the ESHS Documents, approved in accordance with this Clause 7.4, in executing the Project. Any failure of the Concessionaire or the Subcontractors to comply with the ESHS Documents shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify BUIDCO and NMCG against all costs, expenses, penalties and liabilities incurred/suffered by BUIDCO and NMCG due to the Concessionaire's or any Subcontractor's failure to comply with the ESHS Documents in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved ESHS Documents without the prior written approval of BUIDCO.
- (g) Neither any approval of the ESHS Documents by BUIDCO, nor any failure to review and provide comments on the ESHS Documents shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final ESHS Documents in ensuring compliance with the World Bank Group Safeguard Policies and Performance Standards, the ESMF, this Concession Agreement (including specifically, Schedule 9), Applicable Laws, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the ESHS Documents and complying with the requirements of this Clause 7.4.

7.5 **Subcontracting**

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the Construction Period, with the prior written consent of BUIDCO.

- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to BUIDCO for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Concession Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 7.5(b) above, BUIDCO shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by BUIDCO shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the Construction Period;
 - (ii) the Subcontract is on terms consistent with this Concession Agreement;
 - (iii) the Subcontract contains provisions that provide, at BUIDCO's option, for the subcontract to be novated or assigned to BUIDCO or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle BUIDCO or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Concession Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of BUIDCO shall always be subject to the substitution rights of the Lenders under this Concession Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.
- (e) If BUIDCO does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by BUIDCO.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to BUIDCO for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of BUIDCO and the process set out in this Clause 7.5 shall apply in such case.
- (h) Notwithstanding the approval of any Subcontractor by BUIDCO, the Concessionaire shall be and remain liable under this Concession Agreement for all work and services subcontracted under this Concession Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract

shall excuse the Concessionaire from its obligations or liabilities under this Concession Agreement. All references in this Concession Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

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

7.6 Concessionaire's Construction Obligations

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

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

- (a) complete the work corresponding to each STP Payment Milestone by the respective Scheduled STP Payment Milestone Completion Date and complete the construction of the STP Facilities by the respective Scheduled STP Construction Completion Date, in a manner that:
 - (i) is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the ESHS Documents, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
 - (ii) the STP Facilities are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;
 - (iii) the STP Facilities are free from all defects in design, materials, and workmanship;
 - (iv) the STP Facilities are safe, reliable and fit for purpose; and
 - (v) the Patna STPs shall be capable of treating Sewage up to their respective Design Capacity.
- (b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the STP Facilities, and make reasonable endeavours to assist BUIDCO in obtaining the Applicable Permits from the relevant Government Authorities;
- (c) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction of the STP Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's

Representative shall monitor, coordinate and supervise the completion of the STP Facilities, and liaise with BUIDCO's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, the Concessionaire may replace the Concessionaire's Representative with prior written notice to BUIDCO and NMCG;

- (d) provide all necessary assistance to the Project Engineer and BUIDCO in undertaking inspection of the STP Facilities, and in performing its other obligations and duties under this Concession Agreement;
- (e) provide all necessary assistance to the Bank to inspect the STP Site and/or all accounts, records, and other documents relating to the submission of proposals and contract performance of the Concessionaire, as well as its Subcontractors, agents, personnel, consultants, service providers or suppliers relating to the Project and have them audited by auditors appointed by the Bank;
- (f) ensure that none of its employees, consultants, service providers, suppliers, or sub-contractors, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Clause 23.18;
- (g) reasonably consider and act upon the comments/suggestions made by the Project Engineer and BUIDCO during any meetings with the Concessionaire;
- (h) rectify any defects and/or deficiencies in the STP Facilities, including any defects and/or deficiencies identified by the Project Engineer or BUIDCO;
- (i) take all necessary measures to maintain the safety and security of personnel, material and property at the STP Site and the Adjoining Properties, in accordance with the approved ESHS Documents and all Applicable Laws;
- (j) ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits;
- (k) submit monthly reports to the Project Engineer (with a copy to BUIDCO), no later than 10 days after the end of each month, which should set out the following:
 - (i) extent of progress of construction activities performed by the Concessionaire for the STP Facilities;
 - (ii) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
 - (iii) details of any accident or hazardous incident at the STP Site and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
 - (iv) status of rectification of defects and/or deficiencies discovered by the Project Engineer or BUIDCO;

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

Preferred Bidder, then the Concessionaire shall pay to BUIDCO, a sum of equivalent to (a) one hundred and fifty percentage of the Land Rate for each additional acres of Land and part there of; OR (b) the difference between Bid Price of Second Preferred Bidder and the revised Bid Price of the Selected Bidder/Concessionaire; whichever is higher.

7.7 Power Plant

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

7.8 BUIDCO's rights and obligations

During the Construction Period, BUIDCO shall:

- (a) comply with all its obligations under Applicable Laws and BUIDCO Applicable Permits;
- (b) make reasonable endeavours to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;

- (c) maintain the Supporting Infrastructure to enable the delivery of Sewage at the Patna STPs and disposal of the Treated Effluent from the Patna STPs during the Trial Operations;
- (d) within 30 days of the Effective Date, whichever is earlier, and in any event, prior to the commencement of any construction for the STP Facilities, appoint a Person with sufficient skill and expertise to act as BUIDCO's Representative. BUIDCO's Representative shall liaise with the Concessionaire's Representative, NMCG's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, BUIDCO may replace BUIDCO's Representative with prior written notice to the Concessionaire and NMCG;
- (e) cause the Project Engineer to carry out timely inspection of the STP Facilities, and perform its other obligations and duties under this Concession Agreement;
- (f) upon progressive completion of construction works for the STP Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Concession Agreement, as certified by the Project Engineer, issue the STP Milestone Completion Certificates and the STP Construction Completion Certificate to the Concessionaire; and
- (g) ensure that the Concessionaire enjoys peaceful access to the STP Site, including the I&D Works and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the STP Site or create any Encumbrance over any part of the STP Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Concession Agreement.

7.9 **NMCG's rights and obligations**

During the Construction Period, NMCG shall:

- (a) comply with all its obligations under the Applicable Laws (including specifically, the Ganga 2016 Order);
- (b) make the Construction Payments , on satisfactory completion of the relevant STP Payment Milestone, and satisfactory completion of relevant milestones for Sewerage Network Facilities, in accordance with Clause 9.3;
- (c) within 7 days of the Appointed Date, appoint a Person with sufficient skill and expertise to act as the NMCG's Representative. NMCG's Representative shall liaise with the Concessionaire's Representative, BUIDCO's Representative and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, NMCG may replace the NMCG Representative with prior written notice to BUIDCO and the Concessionaire; and
- (d) ensure that the Escrow Account is funded with the Minimum Escrow Balance.

7.10 **Utilities**

Utilities related to the Project shall be as below:

- (a) The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the Project, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site.
- (b) The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clause 7.10(a) above.
- (c) BUIDCO shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for undertaking the Project. .

7.11 Construction Timelines

- (a) The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the STP Facilities on or before the Scheduled STP Construction Completion Date.
- (b) Subject to Clause 7.11(c) below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled STP Payment Milestone Completion Date or as the case may be, the Scheduled STP Construction Completion Date, if the completion of construction of the Digha STP Facilities or the Kankarbagh STP Facilities is delayed due to any of the following reasons (each such event, termed as **Delay Event**, as the context may require):
 - (i) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
 - (ii) a Qualifying Change in Law;
 - (iii) undue delay by the relevant Government Authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (iv) undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (v) any delay attributable to unforeseen site conditions in accordance with Clause 4.4;
 - (vi) delay by BUIDCO in approval of the Phase II Designs and Drawings in accordance with Clause 7.2;
 - (vii) delay by BUIDCO in approval of the O&M Manual in accordance with Clause 8.2;
 - (viii) delay by BUIDCO in issuance of a STP Milestone Completion Certificate in accordance with Clause 7.13(a);

- (ix) any variation proposed by BUIDCO in the Technical Specifications or the Designs and Drawings in accordance with Article 20; or
- (x) delay caused in complying with any instructions of BUIDCO or the Project Engineer, which instructions are not attributable to any default of the Concessionaire.

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

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

- (c) Without prejudice to the Concessionaire's obligations to notify BUIDCO regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 7.11(b); and (ii) give BUIDCO and the Project Engineer access to such records and documents or provide BUIDCO and the Project Engineer with copies, if so requested.
- (d) If the Concessionaire claims an extension of time in accordance with Clause 7.11(b) and BUIDCO is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 7.11(b), then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- (e) If two or more of the Delay Events listed in Clause 7.11(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 7.11(b).
- (f) Except as provided in Clause 7.11(b), the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of BUIDCO or the Project Engineer which are attributable to any act or omission of the Concessionaire;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines;
 - (iii) unavailability or shortage of equipment, materials, or any other resources;
 - (iv) any delay in approving the drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or any other document submitted

by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or other documents, as the case may be; or

- (v) the Concessionaire's decision to construct the Power Plant at the STP Site.
- (g) If any Delay Event affects the construction of the Digha STP Facilities or the Kankarbagh STP Facilities, but not both the STP Facilities, then the Concessionaire shall only be entitled to an extension of time to complete the STP Facility affected by such Delay Event.
- (h) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 21 (*Dispute Resolution*).

7.12 Delay Liquidated Damages and Bonus

- (a) Subject to Clause 7.11(b), if the Concessionaire fails to complete the work corresponding to any STP Payment Milestone by the relevant Scheduled STP Payment Milestone Completion Date or fails to complete the construction of the STP Facilities by the Scheduled STP Construction Completion Date, then BUIDCO shall be entitled to liquidated damages for each day of delay beyond the Scheduled STP Payment Milestone Completion Date, or, as the case may be, the Scheduled STP Construction Completion Date, at the rate of 0.1% of the Digha STP Performance Security (in case of a delay in achieving a Digha STP Payment Milestone or completing the Digha STP Facilities by the Scheduled STP Construction Completion Date) and/or at the rate of 0.1% of the Kankarbagh STP Performance Security (in case of a delay in achieving a Kankarbagh STP Payment Milestone or completing the Kankarbagh STP Facilities by the Scheduled STP Construction Completion Date) for each day of delay up to 6 months from the relevant Scheduled STP Payment Milestone Completion Date, or, as the case may be, the Scheduled STP Construction Completion Date (collectively, the **Delay Liquidated Damages**).

The Delay Liquidated Damages will be payable until the work for the relevant STP Payment Milestone is completed or, as the case may be, the construction of the STP Facilities is completed, as certified by BUIDCO in accordance with Clause 7.13.

If the Concessionaire completes the construction of the respective STP Facilities by the respective Scheduled STP Construction Completion Date, the respective aggregate Delay Liquidated Damages recovered by BUIDCO under this Clause 7.12(a) for a delay in achieving any respective STP Payment Milestone shall be refunded by BUIDCO to the Concessionaire, without any interest. Provided that, if the Concessionaire completes the construction of only one Facility (and not both the Facilities) by the Scheduled Construction Completion Date, then BUIDCO shall only refund the Delay Liquidated Damages recovered by BUIDCO under this Clause 7.12(a) for the Facility that is completed by the Scheduled Construction Completion Date.

- (b) BUIDCO shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any STP Payment Milestone, and if such amounts are insufficient, BUIDCO shall have a right to invoke the STP Performance Securities to the extent of the Delay Liquidated Damages.
- (c) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by BUIDCO as a result of the delay in the completion of the STP Facilities, and not as penalty.
- (d) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle BUIDCO from claiming any Delay Liquidated Damages, then BUIDCO will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant STP Payment Milestone by the Scheduled STP Payment Milestone Completion Date, or for the delay in completing the construction of the STP Facilities by the Scheduled STP Construction Completion Date.
- (e) If the Concessionaire fails to complete the works for a STP Payment Milestone within 6 months of the Scheduled STP Payment Milestone Completion Date or if the Concessionaire fails to complete the construction of the STP Facilities within 6 months from the Scheduled STP Construction Completion Date, other than on account of any Delay Event (**Grace Period**), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 16.1.
- (f) The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the STP Facilities, or from any of its other duties, obligations or responsibilities under the Concession Agreement. The Concessionaire shall use and continue to use its best endeavours to avoid or reduce further delay in completing the STP Facilities.
- (g) Bonus on early completion

If the Construction Completion Date for any STP Facility occurs prior to the respective Scheduled STP Construction Completion Date, the Concessionaire shall be entitled to a bonus equal to 0.05% of the relevant STP Performance Security for each day by which the Construction Completion Date precedes the Scheduled STP Construction Completion Date.

7.13 **Completion of Construction**

- (a) Completion of STP Payment Milestones
 - (i) Upon completion of the works corresponding to each STP Payment Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to BUIDCO, with a copy to the Project Engineer and NMCG, requiring BUIDCO to inspect (or cause the Project Engineer to inspect) the completed works covered by the relevant STP Payment Milestone. The purpose of such inspection shall be to determine whether

the works corresponding to the relevant STP Payment Milestone have been completed in accordance with the requirements of Clause 7.6.

- (ii) If BUIDCO is satisfied that the works for the relevant STP Payment Milestone have been completed in accordance with the requirements of Clause 7.6, BUIDCO shall issue a STP Milestone Completion Certificate to the Concessionaire for such completed STP Payment Milestone, with a copy to NMCG, within 7 days from the date of inspection of the works covered by such STP Payment Milestone.
- (iii) If BUIDCO is of the view that the works for the relevant STP Payment Milestone do not satisfy the requirements of Clause 7.6, then BUIDCO shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 7.6. Upon receipt of such comments, suggestions or instructions from BUIDCO, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to BUIDCO. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until BUIDCO is satisfied that the works for the relevant STP Payment Milestone have been completed in accordance with the requirements of Clause 7.6 and issues a STP Milestone Completion Certificate in accordance with this Clause 7.13(a).
- (iv) If BUIDCO fails to:
 - (A) inspect the completed portion of the works covered by the relevant STP Payment Milestone, within 7 days from the date of receipt of a notice from the Concessionaire under Clause 7.13(a)(i) above;
 - (B) provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant STP Payment Milestone, within 7 days from the date of inspection of such completed portion of the works; or
 - (C) issue the STP Milestone Completion Certificate, within 7 days from the date of inspection of the completed portion of the works covered by the relevant STP Payment Milestone,

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

- (v) BUIDCO may exercise its rights to review and certify the completion of works for any STP Payment Milestone either itself or through the Project

Engineer. If BUIDCO instructs the Project Engineer to undertake a review of the works, then the Concessionaire shall co-operate with the Project Engineer to facilitate such review and rectify any defects or deficiencies identified by the Project Engineer in the works. Provided that, in all instances, BUIDCO shall finally approve the works and issue the STP Milestone Completion Certificates.

(b) Testing and Commissioning

- (i) Upon completion of construction of each STP Facility, in accordance with the requirements set out in this Concession Agreement, the Concessionaire shall issue a notice to BUIDCO, with a copy to NMCG, requiring it to be present at the STP Site on the date specified in such notice to undertake a final inspection of the completed STP Facility and conduct any tests required to ensure that the STP Facility complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.
- (ii) Within 5 days from the date of receipt of a notice under Clause 7.13(b)(i) above, BUIDCO may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 days from the date specified in the notice received from the Concessionaire under Clause 7.13(b)(i) above.
- (iii) The Concessionaire shall, on the date specified in the notice issued under Clause 7.13(b)(i) or on such other date as may be agreed with BUIDCO, carry out the tests in accordance with the instructions and under the supervision of BUIDCO, to demonstrate that the STP Facility complies with the requirements of Clause 7.6.
- (iv) If BUIDCO is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the STP Facility, identified by BUIDCO or revealed through the tests and the STP Facility shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that BUIDCO is satisfied that the STP Facility has been completed in accordance with Clause 7.6 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the STP Facility and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the STP Facility.
- (v) If BUIDCO is satisfied with the results of the tests and inspection of the STP Facility, BUIDCO shall issue the STP Milestone Completion Certificate in respect of the last STP Payment Milestone to the Concessionaire, with a copy to NMCG, within 7 days from the date of inspection and testing of the completed STP Facility. The issue of the STP Milestone Completion Certificate for the last STP Payment Milestone shall certify that the STP Facility has been completed in accordance with this Concession Agreement, the Technical Specifications, the Designs

and Drawings, Applicable Laws and Applicable Permits and the STP Facility is safe and fit for purpose.

- (vi) If BUIDCO fails to:
- (A) inspect or witness the testing of the STP Facility on the date specified in the notice issued under Clause 7.13(b)(i) or such other date as may be agreed with the Concessionaire;
 - (B) notify the Concessionaire of any defects or deficiencies in the STP Facility within 7 days from the date of inspection and testing of the STP Facility; or
 - (C) issue the STP Milestone Completion Certificate for the last STP Payment Milestone within 7 days from the date of inspection and testing of the STP Facility,

then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day for day extension in the Scheduled STP Payment Milestone Completion Date and the Scheduled STP Construction Completion Date.

(c) Issue of STP Construction Completion Certificate

- (i) Within 7 days from the date of issuance of the respective STP Milestone Completion Certificate for the last STP Payment Milestone, BUIDCO shall issue the STP Construction Completion Certificate for the relevant STP Facility to the Concessionaire, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:
- (A) the submission of 4 hard copies and 1 soft copy on a compact disc of complete sets of the "as-built" drawings of the respective STP Facility;
 - (B) the Concessionaire having obtained all Applicable Permits necessary for commencement of the respective O&M services (including specifically, the consent to operate from the Bihar State Pollution Control Board for the operation of the respective STP Facilities);
 - (C) the Concessionaire having obtained adequate insurance for the O&M Period in accordance with Clause 11.2;
 - (D) the Concessionaire having engaged sufficient number of adequately skilled O&M personnel to perform the services during the O&M Period; and
 - (E) the O&M Manual having been approved by BUIDCO; and
 - (F) the Concessionaire having cleared the STP Site and removed all

debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the STP Site.

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

(iii) The date of the issuance or deemed issuance of the STP Construction Completion Certificate shall be the Construction Completion Date for the relevant STP Facility.

7.14 **Trial Operations**

- (a) Subject to Clause 7.14(c) below, within 1 day of the issuance or deemed issuance of the STP Construction Completion Certificate for the relevant STP Facility to the Concessionaire, the Concessionaire shall commence the Trial Operations of the relevant STP Facility in accordance with the Trial Operation Procedures to determine whether the STP Facility meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations for treatment and disposal of Sewage in accordance with this Concession Agreement.
- (b) BUIDCO and Concessionaire shall ensure that adequate quantity of Sewage is delivered to the STP Facilities during the Trial Operations to enable the Concessionaire to demonstrate that the Facility meets the Technical Specifications and the KPIs.
- (c) If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the Sewage delivered to the relevant STP Facility, and the reason for inadequate quantity or quality is not attributable to the Concessionaire, then the Concessionaire shall promptly notify BUIDCO. If in the opinion of BUIDCO, the quantity or quality of Sewage is not adequate to undertake Trial Operations for reasons not attributable to the Concessionaire, then BUIDCO shall extend the time period for the Trial Operations. In such case, the Trial Operations period will also be extended on a day-for-day basis, up till the relevant Scheduled COD.
- (d) During the Trial Operations, BUIDCO shall, or shall cause the Project Engineer to, monitor the performance of the STP Facility on a regular basis and shall have the right to test the compliance of the incoming Sewage with the Influent Standards and test the compliance of the STP By-Products and the Treated Effluent with the Discharge Standards every 7 days to ensure that the STP Facility meets the KPIs. If BUIDCO, or, as the case may be, the Project Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the

Trial Operations Procedure; or (ii) there are any defects or deficiencies in the STP Facility, BUIDCO shall instruct the Concessionaire to follow the Trial Operation Procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs.

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

- (e) If the Concessionaire has been able to consistently achieve the KPIs for 20 consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to BUIDCO requiring BUIDCO to undertake a final inspection of the STP Facility. BUIDCO shall have the right to undertake such final inspection within 5 days of a notice being issued by the Concessionaire.
- (f) If, upon final inspection, BUIDCO is satisfied that the STP Facility meets the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, BUIDCO shall issue the Trial Operations Completion Certificate for the relevant STP Facility to the Concessionaire within 7 days of BUIDCO undertaking a final inspection of the STP Facility pursuant to Clause 7.14(e) above.
- (g) If, upon final inspection, BUIDCO believes that the relevant STP Facility does not comply with the KPIs and/or Technical Specifications, other than due to: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) the quality or characteristics of the Sewage being beyond the Influent Standards; due to reasons attributable to the Concessionaire then BUIDCO shall reject the STP Facility and terminate this Concession Agreement. Upon termination of this Concession Agreement, in accordance with this Clause 7.14(g), the consequences set out in Article 16 shall follow.
- (h) If BUIDCO: (i) does not undertake a final inspection of the relevant STP Facility within 5 days of receipt of a notice from the Concessionaire under Clause 7.14(e); or (ii) fails to notify the Concessionaire of any defects in the relevant STP Facility within 7 days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within 7 days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for such STP Facility and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the 5 days period (in case of (i)) and upon the expiry of the 7 day period (in case of (ii) and (iii)).

- (i) If the Trial Operations are not successfully completed and/or the Concessionaire fails to issue a notice to BUIDCO under Clause 7.14(e) above on or prior to the Scheduled COD, as may be extended in accordance with Clause 7.14(c), for any Facility, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.
- (j) Notwithstanding anything contained in Clause 7.14(h), if the Concessionaire fails to successfully complete the Trial Operations for the relevant STP Facility within the Trial Operations period as may have been extended in accordance with Clause 7.14(c), due to the: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) quality or characteristics of the Sewage being beyond the Influent Standards, for any STP Facility, then such failure will be treated as a BUIDCO Event of Default, and the consequences set out at Article 16 shall follow.
- (k) The Concessionaire will not be entitled to any O&M Payments or any other payment for conducting the Trial Operations, which shall be carried out solely at the cost and risk of the Concessionaire.

7.15 Commercial Operations Date

- (a) Within 7 days from the date of issuance or deemed issuance of the Trial Operations Completion Certificates for the Digha STP Facilities and the Kankarbagh STP Facilities, BUIDCO shall issue the COD Certificate, with a copy to NMCG, subject to the following conditions having been fulfilled by the Concessionaire:
 - (i) the Concessionaire having submitted to BUIDCO the Scheduled Maintenance Programme for the first year post COD; and
 - (ii) the Concessionaire having submitted the Digha O&M Security and the Kankarbagh O&M Security to BUIDCO.
 - (iii) the Concessionaire having completed, tested and commissioned the Digha SPS B of the Digha Sewerage Network Facilities and the Kankarbagh SPS B of the Kankarbagh Sewerage Network Facilities, along with their rising mains as described in Annexure 12 of the RFP.

[In case Concessionaire has selected *Digha I&D Option 2* in their Financial Proposal, in addition to above the Concessionaire having completed, tested and commissioned the Digha SPS A of the Digha Sewerage Network Facilities, along with the associated trunk sewer, rising mains as described in Annexure 12 of the RFP.]
 - (iv) the Concessionaire having achieved and certified by the Project Engineer, that at least 60% of the length of the network has been laid completely, in each of the Digha Sewerage Network Facilities and the Kankarbagh Sewerage Network Facilities
- (b) If BUIDCO fails to issue the COD Certificate to the Concessionaire within 7 days from the date of satisfaction of the conditions set out in Clause 7.15 (a) above and fails to notify the Concessionaire of any reasons for the failure to issue the COD

Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 7 day period.

- (c) The date on which the COD Certificate is issued or deemed to have been issued to the Concessionaire shall be the Commercial Operations Date of the STP Facilities.

8. OPERATIONS AND MAINTENANCE PERIOD

8.1 Commencement and Duration

The period for the operation and maintenance of the respective STP Facility shall commence on and from the COD, and shall continue until the End of Concession (the **O&M Period**). The period for operation and maintenance of the respective I&D Works shall commence from the COD and shall continue for a mandated O&M Period of two years from the COD. After such term, the I&D works shall be made available only upon issue of relevant notice from BUIDCO within 24 hours from receipt of such notice, as per Clause 8.4 and 8.5 of this Concession Agreement and all such days of operation shall also be considered part of the O&M Period of the I&D Works.

8.2 O&M Manual

- (a) The Concessionaire shall prepare a detailed O&M Manual for the STP Facilities based on the Proposed Technology and in accordance with the Technical Specifications, the ESHS Documents, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of the STP Facilities) and maintenance procedures. If there any errors or deficiencies in the Technical Specifications, the O&M Manual shall take in account, address or rectify such errors or deficiencies. The Language for O &M Manual shall be English.
- (b) At least 30 days prior to the Scheduled STP Construction Completion Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O&M Manual to BUIDCO for its review and approval.
- (c) BUIDCO shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M Manual within 20 days from the date of receipt of the draft O&M Manual from the Concessionaire. BUIDCO may require the Concessionaire to amend or modify the draft O&M Manual if BUIDCO identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from BUIDCO, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by BUIDCO and/or address, in writing, BUIDCO's comments on the draft O&M Manual and submit the revised O&M Manual to BUIDCO for its approval. The process set out in this Clause 8.2(c) shall continue until the O&M Manual is approved by BUIDCO in accordance with this Clause 8.2(c).
- (d) The Concessionaire shall revise the O&M Manual as and when the Concessionaire

thinks it necessary to do so and in such case the provisions of Clause 8.2(c) will apply as is to the approval of the revised manual.

- (e) The Concessionaire shall undertake the O&M of the STP Facilities strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the approved O&M Manual without the prior written approval of BUIDCO. The Concessionaire shall not commence operation of the STP Facilities prior to approval of the O&M Manual in accordance with this Clause 8.2.
- (f) Notwithstanding any approval of the O&M Manual by BUIDCO, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of this Clause 8.2.
- (g) The Concessionaire shall submit separate O&M Manuals for the Digha STP Facilities and the Kankarbagh STP Facilities.

8.3 **Subcontracting**

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the O&M Period, with the prior written consent of BUIDCO.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to BUIDCO for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Concession Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 8.3(b) above, BUIDCO shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by BUIDCO shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the O&M Period;
 - (ii) the Subcontract is on terms consistent with this Concession Agreement;
 - (iii) the Subcontract contains provisions that provide, at BUIDCO's option, for the Subcontract to be novated or assigned to BUIDCO or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle BUIDCO or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Concession Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of BUIDCO shall always be subject to the

substitution rights of the Lenders under this Concession Agreement or the Substitution Agreement; and

- (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractors.
- (e) If BUIDCO does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by BUIDCO.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to BUIDCO for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of BUIDCO and the process set out in this Clause 8.3 shall apply in such case.
- (h) Notwithstanding the approval of any Subcontractor by BUIDCO, the Concessionaire shall be and remain liable under this Concession Agreement for all work and services subcontracted under this Concession Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Concession Agreement. All references in this Concession Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.
- (i) The Bank has right to access of information and audit the sub-contractor files with regards to the Concession Agreement.

8.4 **Concessionaire's rights and obligations**

- (a) The Concessionaire shall operate and maintain the STP Facilities in a manner that:
 - (i) is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;
 - (ii) results in the STP Facilities achieving the KPIs;
 - (iii) ensures that each Patna STP is capable of treating Sewage up to its Design Capacity on a daily basis;
 - (iv) ensures efficient treatment of Sewage and handling and disposal of STP By-Products and the Treated Effluent;
 - (v) is safe and reliable, subject to normal wear and tear of the STP Facilities;

- (vi) is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the STP Facilities;
 - (vii) maintains the safety and security of personnel, material and property at the STP Site, in accordance with the approved ESHS Documents, Applicable Laws and Applicable Permits; and
 - (viii) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits.
- (b) The Concessionaire shall provide adequate power backup at the STP Site (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the STP Facilities during the O&M Period.
 - (c) The Concessionaire shall provide all necessary assistance to the Project Engineer and BUIDCO in undertaking inspection and monitoring of the operation and maintenance of the STP Facilities.
 - (d) The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Project Engineer and BUIDCO during any meetings of the Concessionaire with its Subcontractors.
 - (e) The Concessionaire shall provide BUIDCO and the Project Engineer with reasonable access to the STP Site during office hours to monitor and inspect the STP Facilities.
 - (f) The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the STP Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the STP Site, does not interfere with local traffic in the vicinity of the STP Site.
 - (g) The Concessionaire shall develop and implement a safety and surveillance programme for the STP Facilities and for handling and disposal of the STP By-Products and the Treated Effluent, and adopt appropriate measures and safeguards for security of the environment, life, and property at the STP Site.
 - (h) The Concessionaire shall ensure that none of its employees, consultants, service providers, suppliers, or Subcontractors, including any O&M contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Clause 23.18.
 - (i) The Concessionaire shall ensure that, beyond 2 years from the COD and within the End of the Concession, the relevant I&D works are made available for operations and maintenance, within 24 hours of issue of notice from BUIDCO ("**I&D Requirement Notice**") for the relevant I&D Works and shall continue to be available for the period set out in such I&D Requirement Notice. Accordingly,

all obligations set out in Clause 8.4 shall be applicable for that I&D works during all such days of operation.

After 2 years from the COD, the I&D is not required to be operated on regular basis but needs to be maintained for purpose as indicated in this clause.

8.5 **BUIDCO's rights and obligations**

During the O&M Period, BUIDCO shall:

- (a) comply with all its obligations under Applicable Laws including, specifically the Companies Act 1956 and amendments thereof and BUIDCO Applicable Permits;
- (b) monitor and review the operations and performance of the STP Facilities, including the I&D works, disposal of the STP By-Products and the Treated Effluent. This includes the right to access the STP Facilities, and review the records and reports that the Concessionaire is required to maintain, during normal working hours;
- (c) review the Scheduled Maintenance Programme and all other plans and documents submitted by the Concessionaire in an expeditious manner, in accordance with this Concession Agreement; and
- (d) ensure that the Concessionaire continues to enjoy peaceful access to the STP Site and shall not assign, transfer, or otherwise dispose of its rights, title, and interest in the STP Site or create any Encumbrance over any part of the STP Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Concession Agreement.
- (e) ensure that the Concessionaire is issued an "I&D Requirement Notice", whenever there is necessity for O&M of the relevant I&D Works beyond its mandated O&M Period(as per Clause 8.1). The notice shall include the details of number of days the I&D Works shall be made available, from the date of issue of such notice and may be extended, as per the requirement.

8.6 **NMCG's rights and obligations**

NMCG's rights and obligations related to the STP Facilities, during the O&M Period, shall be as below:

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

8.7 Utilities

Utilities related to the Project shall be as below:

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

8.8 Monitoring and Reporting

(a) Online Monitoring and Meters

- (i) At each Patna STP, the Concessionaire shall install and maintain an online monitoring system, in accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming Sewage and the Treated Effluent.

The online monitoring devices should be capable of measuring and analyzing the flow rate and characteristics of the Sewage at the Inlet Point and of the Treated Effluent at the Outlet Point. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.

- (ii) As part of the online monitoring system, the Concessionaire shall also install flow measurement meters in accordance with Applicable Laws and Technical Specifications, at the Inlet Point, the Outlet Point and at any other point set out in the Technical Specifications or required as per Applicable Laws, to measure the flow of sewage over the weir and the volume and concentration of Sewage delivered to each of the STP Facilities, and the Treated Effluent discharged from each of the STP Facilities.
- (iii) The Concessionaire shall record and transmit all data collected from the

online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming Sewage and the Treated Effluent. The Concessionaire shall furnish a summary report for each Patna STP to BUIDCO (with a copy to the Project Engineer) on a daily basis, which shall indicate the periods during which: (A) the volume of the Sewage received at the relevant Patna STP and the volume of the Treated Effluent discharged from the relevant Patna STP during each hour of the relevant day; (B) the periods during which the volume of Sewage received at the relevant Patna STP exceeded its Design Capacity; (C) the quality of the incoming Sewage was beyond the Influent Standards; and (D) the quality of the Treated Effluent was beyond the Discharge Standards.

- (iv) The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Board's website.
- (v) The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire O&M Period.
- (vi) At each Patna STP and the I&D works, the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.
- (vii) If the Concessionaire sets up a Power Plant, then the Concessionaire shall install meters at the Power Plant to measure the total number of energy units (in kWh) generated from the Power Plant in each month of the O&M Period.
- (viii) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by BUIDCO and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

(b) Records and Reporting Requirements

- (i) The Concessionaire shall maintain:
 - (A) records of the volume and characteristics of the Sewage received at, and the STP By-Products and the Treated Effluent discharged from the Patna STPs; and
 - (B) books of accounts recording all payments received from NMCG and other revenues derived/collected by it from the STP Facilities or resulting from its use,separately for each Patna STP.
- (ii) The Concessionaire shall provide to BUIDCO 2 copies of its audited financial statements along with a report from its statutory auditors, within

90 days of the close of each Financial Year.

- (iii) For each Patna STP, the Concessionaire shall deliver to BUIDCO, with a copy to the Project Engineer, the following during the O&M Period within the specified timelines:
- (A) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the STP Facilities, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 hours after the occurrence of such event or circumstance;
 - (B)
 - (C) reports on any critical breakdowns or failures in the STP Facilities, within 12 hours of such occurrence;
 - (D)
 - (E) reports on accidents or other incidents in relation to the O&M personnel or any third party, along with statements on actions taken to minimise recurrence, within 2 days of such occurrence;
 - (F)
 - (G) daily reports with the data collected from the monitoring and metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Clause 8.10 on the characteristics and volume of Sewage treated at the STP Facilities, the STP By-Products and the Treated Effluent discharged from the STP Facilities, at the end of each day (i.e., on or before 1500 hours every day);
 - (H) monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale, as the case may be, of the STP By-Products and the Treated Effluent, and details of any Emergency during the relevant month), on or before the 7th day of the following month. The monthly progress report must be certified by the Project Engineer before it is submitted to BUIDCO;
 - (I) copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws or Applicable Permits, within 2 days of making such submissions to the relevant Government Authority; and
 - (J) reports on any material litigation, including any winding-up proceedings or notice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

- (c) It is clarified that the reports set out in this Clause 8.8 will be separately prepared and furnished for each Patna STP.
- (d) It is expressly agreed between the Parties that the Bank shall be permitted to inspect the STP Site and/or all accounts, records, and other documents relating to contract performance of the Concessionaire, as well as its Subcontractors, agents, personnel, consultants, service providers or suppliers, including O&M contractors for the Project and have them audited by auditors appointed by the Bank.

8.9 **Design Capacity Utilization**

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

8.10 **Testing**

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

Inlet Point, the Outlet Point or at any other point at the Patna STPs (for the Digested Sludge) and the test results shall be verified by the Project Engineer. Separately, the Project Engineer shall also have the right to take random samples of the incoming Sewage, the Digested Sludge and the Treated Effluent at any time during the O&M Period to test compliance with the Influent Standards and the Discharge Standards.

- (f) For each Patna STP, the Concessionaire shall prepare separate daily reports compiling the test reports for each day, which shall be submitted to BUIDCO, after being duly certified by the Project Engineer.

8.11 Maintenance and Repair of the STP Facilities

- (a) During the O&M Period, the Concessionaire shall undertake the maintenance of the STP Facilities and repair any damage to the STP Facilities either by itself, or through an approved Subcontractor, such that the STP Facilities shall be:
 - (i) in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
 - (ii) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers; and
 - (iii) capable of meeting the KPIs.
- (b) For the first year of the O&M Period, the Concessionaire shall submit its Scheduled Maintenance Programme for the Patna STPs, specifying the Scheduled Maintenance periods for each Patna STP and the impact of such Scheduled Maintenance periods on the Availability of each Patna STP (**Scheduled Maintenance Programme**) to BUIDCO at least 1 month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs. It is clarified that the Concessionaire shall submit separate Scheduled Maintenance Programmes for both the STP Facilities.
- (c) Within 15 days of receipt of the Scheduled Maintenance Programme, BUIDCO shall notify the Concessionaire of its approval of such schedule.

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

fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

- (d) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 8.11, BUIDCO may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:
 - (i) BUIDCO has given the Concessionaire at least 30 days' prior written notice of such re-scheduling;
 - (ii) BUIDCO shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;
 - (iii) BUIDCO shall not require that a single Scheduled Maintenance period be split into two or more periods; and
 - (iv) BUIDCO shall not require that a Scheduled Maintenance be brought forward any earlier than 15 days from the date of such notice without the consent of the Concessionaire.
- (e) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 8.11, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 days' prior written notice to BUIDCO. BUIDCO shall respond to such request within 10 days and shall not unreasonably withhold its permission for such re-scheduling.
- (f) Within 5 days of any re-scheduling of a Scheduled Maintenance in accordance with Clause 8.11(d) or Clause 8.11(e) above, the Concessionaire shall provide to BUIDCO, the amended Scheduled Maintenance Programme, which shall then be the "**Scheduled Maintenance Programme**".
- (g) During the O&M Period, the Concessionaire shall, at its own cost, replace any component or part of the STP Facilities that is damaged or worn out or in the Concessionaire's judgement becomes no longer practicable to repair as a result of normal wear and tear.
- (h) If at any time during the O&M Period, a STP Facility is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim with insurance providers and repair, replace, and restore the damaged portion of the STP Facility to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.
- (i) If at any time during the O&M Period, a STP Facility is damaged by a Total Casualty, then this Concession Agreement shall be terminable at the option of the Concessionaire. If a Total Casualty affects only 1 STP Facility but not both the STP Facilities, then, it is clarified that a partial termination of this Concession

Agreement to exclude the STP Facility affected by a Total Casualty shall not be permitted and any termination of this Concession Agreement will be for both the STP Facilities and Sewerage Network Facilities. If the Concessionaire elects to terminate the Concession Agreement, then the consequences set out at Clause 14.7 will follow. If, however, the Concessionaire elects not to terminate the Concession Agreement, then the Concessionaire shall repair, replace and restore the damaged STP Facility to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

8.12 Key Performance Indicators

(a) Availability

- (i) The Concessionaire shall ensure that the Availability of each STP Facility on every day during the O&M Period shall be 100% (the **Guaranteed Availability**). Provided that during the period of a Scheduled Maintenance that is undertaken as per the approved Scheduled Maintenance Programme or as notified and approved in accordance with Clause 8.11 for the relevant STP Facility, the Concessionaire shall ensure that the Guaranteed Availability of such STP Facility is at least 95%. For clarification purposes, the Guaranteed Availability of the I&D Works shall be 100% during the mandated O&M Period and on the days of operation of the relevant I&D Works as per the I&D Requirement Notice issued by BUIDCO.

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

- (ii) In computing the Availability of each STP Facility, the Concessionaire agrees that the STP Facility will be deemed to be Available at all times, other than during the period of:
- (A) an Unscheduled Outage affecting such STP Facility;
 - (B)
 - (C) a Power Outage affecting such STP Facility;
 - (D)
 - (E) suspension of the O&M services for such STP Facility, for reasons attributable to the Concessionaire (in accordance with Clause 15.1 and 15.2); or
 - (F)
 - (G) an Emergency affecting such STP Facility, attributable to the Concessionaire,
 - (H)
 - (I) during which the STP Facility will be deemed to be not Available.
- (iii) Notwithstanding anything to the contrary contained in this Concession

Agreement, during the period of a Forced Unavailability or a Force Majeure, the STP Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.

- (iv) If the Availability for a STP Facility on any given day is less than the Guaranteed Availability, BUIDCO shall issue a notice to the Concessionaire requiring the Concessionaire to cure the default causing the reduction in Availability in 3 days. Any failure to cure the default and achieve the Guaranteed Availability within 3 days of receipt of the notice from BUIDCO shall constitute a Concessionaire Event of Default.
- (v) **Availability Liquidated Damages**

Without prejudice to Clause 8.12(a)(iv), if the Availability of any STP Facility on any given day is less than the Guaranteed Availability, then the Concessionaire shall pay the liquidated damages set out in Schedule 7 (the **Availability Liquidated Damages**) for each STP Facility.

The aggregate Availability Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Availability Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of BUIDCO, either be adjusted against the O&M Payments for the subsequent quarter or recovered from the STP O&M Securities.

(b) Influent Standards and Discharge Standards

- (i) The Concessionaire is required to receive, treat, and dispose all Sewage delivered to the Patna STPs. If, however the Sewage is beyond the Influent Standards as set out in Schedule 10 (*KPIs*), then the Concessionaire shall be required to treat such Sewage but will not be liable for any Performance Liquidated Damages (*defined below*) if the Treated Effluent and/or the Digested Sludge fails to meet the Discharge Standards
- (ii) Subject to Clause 8.12(b)(i) above, the Concessionaire shall ensure that the Treated Effluent and Digested Sludge comply with the Discharge Standards set out in the Technical Specifications.
- (iii) Subject to Clause 8.12(b)(iv) below, for each STP Facility, if the Treated Effluent or the Digested Sludge does not comply with the Discharge Standards, then the process set out below shall follow:
 - (A) In the first instance of non-compliance of the Treated Effluent or the Digested Sludge with the Discharge Standards (**First Breach**), BUIDCO shall issue a notice to the Concessionaire on the first day of such non-compliance (**First Breach Notice**) requiring the Concessionaire to cure the First Breach within 20 days from the date of the First Breach Notice. If the First Breach

is cured within 2 days of the First Breach Notice, then the Concessionaire shall not be liable to pay any Performance Liquidated Damages. If, however, the First Breach continues beyond 2 days of the First Breach Notice, then, the Concessionaire shall be liable to pay the Performance Liquidated Damages specified in Schedule 7, from the 3rd day of the First Breach.

(B)

(C) If: (I) the First Breach continues for 20 days from the date of the First Breach Notice; or (II) another instance of non-compliance with the Discharge Standards occurs within 6 months of the First Breach, then such breach shall constitute the **Second Breach**. Upon occurrence of the Second Breach, BUIDCO shall issue a notice to the Concessionaire on the first day of the Second Breach (**Second Breach Notice**) requiring the Concessionaire to cure the Second Breach within 20 days from the date of the Second Breach Notice. If the Second Breach continues beyond 2 days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the amount of the Performance Liquidated Damages specified in Schedule 7, from the 1st day of the Second Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified in Schedule 7, for the first 2 days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the 3rd day of a continuing Second Breach.

(D)

(E) If: (I) the Second Breach continues for 20 days from the date of the Second Breach Notice; or (II) another instance of non-compliance with the Discharge Standards occurs within 6 months of the Second Breach, then such breach shall constitute the **Third Breach**. Upon occurrence of the Third Breach, BUIDCO shall issue a notice to the Concessionaire on the first day of the Third Breach (**Third Breach Notice**) requiring the Concessionaire to cure the Third Breach within 20 days from the date of the Third Breach Notice. If the Third Breach continues beyond 2 days of the Third Breach Notice, then: (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages specified in Schedule 7, from the 1st day of the Third Breach; and (Y) the Capex Annuity for the relevant quarter(s) will be reduced by an amount equal to the Capex Annuity for the relevant quarter/90 for each day that the Third Breach continues beyond the 1st day of the Third Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay twice the Performance Liquidated Damages specified in Schedule 7, for the first 2 days of a continuing breach from the date of the Third Breach Notice and thrice the specified Performance Liquidated Damages from the 3rd day of the Third Breach, in addition to the reduction in the Capex Annuity.

- (F) If: (I) the Third Breach is not cured within 20 days from the Third Breach Notice; or (II) a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall apply.
 - (G) The Parties acknowledge that the Performance Liquidated Damages (including any escalation contemplated in this Clause 8.12(b)(iii)) are a genuine pre-estimation of and reasonable compensation for the environmental damage that may be caused by the Concessionaire's continuing failure to comply with the Discharge Standards, and not as penalty. The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to comply with the Discharge Standards and/or Applicable Law.
- (iv) If the Treated Effluent and/or the Digested Sludge does not meet the Discharge Standards on account of: (A) the characteristics of the Sewage being beyond the permissible Influent Standards; or (B) the volume of the Sewage being more than the Design Capacity of the relevant Patna STP, then, the Concessionaire shall not be liable to pay any Performance Liquidated Damages for a failure to meet the Discharge Standards.
 - (v) The Performance Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Performance Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of BUIDCO, either be adjusted against the O&M Payments for the subsequent quarter or recovered from the STP O&M Securities.
- (c) Within 7 days from the end of each month, the Concessionaire shall be required to provide the monthly progress report for each STP Facility (prepared in accordance with Clause 8.8(c)(iii)(E) above) on compliance of such STP Facility with the KPIs, which should indicate the periods during which such STP Facility did not meet the Guaranteed Availability or the Treated Effluent and/or the Digested Sludge did not meet the Discharge Standards and the reasons for such failure. The Project Engineer shall be required to certify each such monthly report before it is provided to BUIDCO. Such certified report on compliance with KPIs shall be referred to as the **KPI Adherence Report**, and shall form the basis for O&M Payments being made to the Concessionaire during the O&M Period.

8.13 Disposal of By-Products and the Treated Effluent

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

(a) Waste Disposal Site

- (i) Within 30 days from the Effective Date, BUIDCO shall inform the Concessionaire, of each Waste Disposal Site at which the Concessionaire shall be required to dispose the STP By-Products, resulting from the treatment of the Sewage at the Patna STPs, and any other waste materials resulting from the construction of the relevant STP Facility during the Construction Period (including silt).
- (ii) BUIDCO may shift any Waste Disposal Site from time to time during the O&M Period provided that, the Waste Disposal Sites will always be within a radius of 15 km from the boundary of the relevant STP Site and any shifting of a Waste Disposal Site will be with at least 30 days' prior written notice to the Concessionaire.
- (iii) If, at any time during the O&M Period, BUIDCO shifts a Waste Disposal Site to a location beyond a radius of 15 km from the boundary of the relevant STP Site, then, BUIDCO shall compensate the Concessionaire for any additional transportation costs incurred by the Concessionaire in transporting the STP By-Products, to such Waste Disposal Site.
- (iv) Any approval for disposal of the STP By-Products at the Waste Disposal Sites will be obtained by BUIDCO at its cost. Further, all costs and charges in connection with the setting up and maintaining the Waste Disposal Sites (including any tipping fee for the disposal of the STP By-Products) will be borne by BUIDCO. The Concessionaire shall only be responsible for transporting the STP By-Products to the Waste Disposal Sites and bearing the costs for transportation and unloading of the STP By-Products at the Waste Disposal Sites.

(b) Disposal of Residual Grit and Screenings

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

(c) Disposal of Digested Sludge

- (i) As part of each STP Facility, the Concessionaire shall be required to set up a sludge handling facility at the relevant STP Site, where the Concessionaire can dry the Digested Sludge during the O&M Period.

- (ii) The Concessionaire shall, at its cost and expense, provide for a storage facility within the STP Site to temporarily store the dried Digested Sludge until such Digested Sludge is sold or disposed in accordance with this Concession Agreement.
 - (iii) The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to sell the Digested Sludge, at such price and to such Persons as it may deem fit or dispose the Digested Sludge at the Waste Disposal Sites. Provided that if the Concessionaire sells the Digested Sludge to any third party, the Concessionaire shall be required to share 50% of the revenues from such sale with BUIDCO.
 - (iv) The Concessionaire shall maintain proper records of sale of any Digested Sludge generated from the STP Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to BUIDCO for its review.
 - (v) The Concessionaire shall ensure that the Digested Sludge is neither disposed at any place on or about the STP Site, except the Waste Disposal Sites, nor discharged into the river Ganga. The Concessionaire shall indemnify BUIDCO against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Clause 8.13(c) and all Applicable Laws in disposal of the Digested Sludge.
- (d) Disposal of Treated Effluent
- (i) The Concessionaire is required to transfer the Treated Effluent through the Supporting Infrastructure to any discharge point(s) indicated by BUIDCO.
 - (ii) The Concessionaire is not permitted to divert, transfer or sell the Treated Effluent generated from the STPs to any third party.
- (e) Rights and interest in the STP By-Products and the Treated Effluent
- (i) All rights and interest in the STP By-Products discharged from the Patna STPs shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to a third party buyer/offtaker in accordance with this Concession Agreement.
 - (ii) All rights and interest in the Treated Effluent discharged from the Patna STPs shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to BUIDCO in accordance with this Concession Agreement.

8.14 Remedial Measures

If after the COD, the Concessionaire ceases to operate and maintain the Project for a period of 48 consecutive hours other than due to a Forced Unavailability, Scheduled

Maintenance, or a suspension pursuant to Clause 15.1 or Clause 15.2, which is not attributable to the Concessionaire, or a Force Majeure Event, without the prior written consent of BUIDCO, then BUIDCO shall be entitled to step-in and undertake O&M of the Project until the Concessionaire demonstrates to the satisfaction of BUIDCO that it can and will resume normal operation and maintenance of the Project. The exercise of BUIDCO's rights under this Clause 8.14 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall not be entitled to receive any O&M Charges for the duration that BUIDCO steps-in to operate and maintain the Project.

8.15 O&M Personnel

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

9. PAYMENT AND INVOICING

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

9.2 The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the Construction Payments and the O&M Payments. Except for any adjustment in accordance with Clause 7.12, Clause 8.12 and Clause 13.2, or any permitted Variation, the Construction Payments and the O&M Payments are the total consideration payable to the Concessionaire for undertaking the Project.

9.3 Construction Payments

- (a) NMCG shall deposit an amount equivalent to the first 2 Digha STP Payment Milestones and the first 2 Kankarbagh STP Payment Milestones in the Escrow Account in accordance with Clause 9.5 and the Escrow Agreement, prior to the Effective Date. From the Effective Date and during the Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next 2 Digha STP Payment Milestones and the next 2 Kankarbagh STP Payment Milestones for both the Digha STP Facilities and the Kankarbagh STP Facilities.
- (b) 10% of the Bid Project Cost for the relevant STP Facility may be given to the Concessionaire as a Mobilization Advance in accordance with Clause 9.3(d), which will be adjusted against the Construction Payments to the Concessionaire in five instalments, in accordance with Clause 9.3(e). The Construction Payments will be paid to the Concessionaire upon completion of the work corresponding to the STP Payment Milestones and certification of completion of such STP Payment Milestones by BUIDCO in accordance with Clause 7.13.
- (c) Adjustment in Construction Payments
- (i) The Construction Payments shall be adjusted during the Construction Period to reflect the variation in the Construction Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
- (ii) All Invoices to be submitted by the Concessionaire to BUIDCO for any instalment of the Construction Payments shall be the product of the relevant percentage of the Bid Project Cost and the Price Index Multiple applicable on the date of the Invoice.
- (d) Mobilization Advance
- (i) 10 % of the Digha STP Bid Project Cost and 10% of the Kankarbagh STP Bid Project Cost shall be payable to the Concessionaire as the Mobilization Advance at the request of the Concessionaire, prior to 30 days from the relevant Effective Date, subject to the Concessionaire having submitted a Mobilization Advance Guarantee in accordance with Clause 5.21.
- (ii) The Mobilization Advance shall be deducted in equal instalments from the five instalments of the Construction Payments to be made to the Concessionaire upon progressive completion of the STP Payment Milestones.
- (iii) However the Concessionaire is liable to pay a simple interest at the rate of 8% on the Mobilization Advance, if the STP Payment Milestones are not achieved by the Concessionaire in accordance with the agreed Construction Plan and for the reasons attributed to the Concessionaire. The interest shall be payable for the period between the actual STP Payment Milestone and agreed STP Payment Milestone. The interest amount shall be deducted along with the Mobilization Advance from the Construction Payments.

(e) Milestone Construction Payments

- (i) Subject to this Clause 9.3(e), for each STP Facility, the Construction Payments will be paid by NMCG to the Concessionaire in the following five equal instalments (**STP Payment Milestones**) (after adjusting the Mobilization Advance (and the interest payable, if any as per clause 9.3(d)(iii) on the Mobilization Advance):
- (A) 1st instalment of 8% of the relevant Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice to be raised by the Concessionaire after the issuance of the first STP Milestone Completion Certificate. First STP Milestone Completion Certificate shall be achievement of 20% physical progress;
 - (B) 2nd instalment of 8% of the relevant Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice to be raised by the Concessionaire after the issuance of the second STP Milestone Completion Certificate. Second STP Milestone Completion Certificate shall be achievement of 40% physical progress;
 - (C) 3rd instalment of 8% of the relevant Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice to be raised by the Concessionaire after the issuance of the third STP Milestone Completion Certificate. Third STP Milestone Completion Certificate shall be achievement of 60% physical progress;
 - (D) 4th instalment of 8% of the relevant Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice to be raised by the Concessionaire after, the issuance of the fourth STP Milestone Completion Certificate. Fourth STP Milestone Completion Certificate shall be achievement of 80% physical progress;
 - (E) 5th instalment of 8% of the relevant Bid Project Cost, as adjusted for the Price Index Multiple applicable on the date of the relevant Invoice to be raised by the Concessionaire after the issuance of the Fifth STP Milestone Completion Certificate. Fifth STP Milestone Completion Certificate shall correspond to the relevant STP Construction Completion Certificate.
- (ii) For each STP Facility, within 7 days of issuance of the STP Milestone Completion Certificate for a STP Payment Milestone, the Concessionaire shall submit an Invoice to BUIDCO for the amount of the Construction Payment linked to such STP Payment Milestone. Any Invoice raised by the Concessionaire for the Construction Payments shall be accompanied by a copy of the relevant STP Milestone Completion Certificate issued by BUIDCO.
- (iii) Within 10 days of receipt of an Invoice from the Concessionaire pursuant

to Clause 9.3(e)(ii) above, BUIDCO shall verify and certify the amounts due and payable to the Concessionaire, and either:

- (A) approve the Invoice and issue a certificate to the Escrow Bank (with a copy to NMCG and the Concessionaire), conveying its approval for the release of the amount specified in the Invoice, less any necessary deductions or adjustments in accordance with this Concession Agreement and/or Applicable Laws (including for payments to be made by the Concessionaire under applicable labour laws); or
- (B) issue a notice to the Concessionaire disputing the Invoice and directing the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by BUIDCO.

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

- (iv) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 21 (*Dispute Resolution*).
- (v) A certificate issued by BUIDCO in accordance with Clause 9.3(e)(iii) shall be referred to as a **STP Payment Certificate**.
- (vi) If, within 10 days from the date of receipt of an Invoice, BUIDCO does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by BUIDCO, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to BUIDCO and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.
- (vii) Immediately upon receipt of a STP Payment Certificate from BUIDCO in accordance with Clause 9.3(e)(iii) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.3(e)(vi), the Escrow Bank shall release the amount specified in the STP Payment Certificate or if no STP Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (viii) Notwithstanding anything to the contrary in this Concession Agreement, BUIDCO shall have no obligation to issue a STP Payment Certificate unless:
 - (A) the Performance Securities remain valid and in effect;
 - (B) the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;

- (C) the Concessionaire Applicable Permits for construction of the STP Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (D) the Concessionaire has complied with the ESHS Documents in undertaking the construction of the STP Facilities; and
 - (E) there is no subsisting Concessionaire Event of Default.
- (f) The Concessionaire shall be paid the Construction Payments in Rupees. However, if, in the Financial Proposal, the Selected Bidder specified any percentage of the Bid Project Cost which it would want to receive in a foreign currency during the Construction Period, then the Construction Payments corresponding to such percentage of the Bid Project Cost shall be paid to the Concessionaire in the relevant foreign currency. For the purpose of payment in a foreign currency, the exchange rate shall be []. It is clarified that the aggregate Construction Payments due to the Concessionaire shall not exceed 40% of the Bid Project Cost, as quoted by the Selected Bidder in Rupees and adjusted for inflation as per Clause 9.3(c), on account of a percentage of the Bid Project Cost being paid to the Concessionaire in foreign currencies.

9.4 O&M Payments

- (a) During the O&M Period, NMCG shall be required to make the O&M Payments in Rupees to the Concessionaire for each STP Facility comprising the Capex Annuity, the interest on the reducing balance of 60% of the STP Completion Cost, the STP O&M Charges and the Power Charges, in accordance with this Clause 9.4.
- (b) Calculation of STP Completion Cost
 - (i) The Digha STP Completion Cost for the Digha STP Facilities and the Kankarbagh STP Completion Cost for the Kankarbagh STP Facilities will be the aggregate of (A) – (E) below, for the relevant STP Facility:
 - (A) 20% of the relevant Bid Project Cost for the relevant STP Facility adjusted for the Price Index Multiple (using Construction Price Index) as applicable on the Reference Index Date preceding the date of the Invoice for the relevant first STP Payment Milestone;
 - (B)
 - (C) 20% of the relevant Bid Project Cost for the relevant STP Facility adjusted for the Price Index Multiple (using Construction Price Index) as applicable on the Reference Index Date preceding the date of the Invoice for the relevant second STP Payment Milestone;
 - (D)
 - (E) 20% of the relevant Bid Project Cost for the relevant STP Facility adjusted for the Price Index Multiple (using Construction Price

Index) as applicable on the Reference Index Date preceding the date of the Invoice for the relevant third STP Payment Milestone; and

- (F)
 - (G) 20% of the relevant Bid Project Cost for the relevant STP Facility adjusted for the Price Index Multiple (using Construction Price Index) as applicable on the Reference Index Date preceding the date of the Invoice for the relevant fourth STP Payment Milestone.
 - (H) 20% of the relevant Bid Project Cost for the relevant STP Facility adjusted for the Price Index Multiple (using Construction Price Index) as applicable on the Reference Index Date preceding the date of the Invoice for the relevant fifth STP Payment Milestone.
 - (I)
 - (ii) 60% of the Digha STP Completion Cost and 60% of the Kankarbagh STP Completion Cost will be paid in equal quarterly instalments during the O&M Period as Capex Annuity.
- (c) On and from the COD and during the O&M Period, NMCG shall deposit the O&M Payments for each STP Facility in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuity (along with interest), the STP O&M Charges and the estimated Power Charges for the next 2 years for each STP Facility.
- (d) Adjustment in STP O&M Charges
- (i) The STP O&M Charges shall be adjusted during the O&M Period to reflect the variation in the O&M Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date.
 - (ii) All Invoices to be submitted by the Concessionaire to BUIDCO for the quarterly STP O&M Charges shall be the product of the applicable STP O&M Charges for the relevant quarter and the Price Index Multiple applicable on the date of the Invoice.
- (e) Capex Annuity
- (i) The Capex Annuity shall be payable in 60 equal quarterly instalments during the O&M Period.
 - (ii) Interest shall be payable on the reducing balance of 60% of the STP Completion Cost for the relevant STP Facility, at the rate of the SBI MCLR Rate plus 3 % per annum. Such interest shall be due and payable quarterly along with each instalment of the Capex Annuity. The Parties agree that such interest shall be calculated on the basis of the number of days for which the relevant rate of the SBI MCLR Rate was applicable during the period of calculation.

By way of illustration, assuming that the balance STP Completion Cost to be paid to the Concessionaire on the date of payment of the 1st Capex Annuity instalment is INR 50,00,00,000 (Rupees fifty crores), the applicable SBI MCLR for the first 50 days is 8% and thereafter it is revised to 7.5% and remains unchanged till the date of payment of the 2nd Capex Annuity, the interest would be calculated as $((50*11%*50)/365)+((50*10.5%*40)/365)$. For the avoidance of doubt, the interest shall be calculated on simple interest basis and the interest shall not be compounded for the purpose of payment.

(f) O&M Charges

- (i) The O&M Charges for the first quarter after COD will be calculated on the basis of the STP O&M Charges and I&D O&M Charges quoted by the Selected Bidder in the Financial Proposal for the first month from the COD, based on the number of days of operation of the relevant facility in that quarter, which amount shall be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the first Invoice for the O&M Payments.
- (ii) For each subsequent quarter of the O&M Period, the O&M Charges will be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the relevant Invoice for the O&M Payments.

(g) Power Charges

- (i) The Power Charges for the STP Facilities including the I&D Works shall initially be borne by the Concessionaire, which shall be reimbursed by NMCG to the Concessionaire, subject to a quarterly cap of: (A) the Power Charges based on the Digha Guaranteed Energy Consumption separately for both STP Facilities and I&D Works; and (B) the Power Charges based on the Kankarbagh Guaranteed Energy Consumption, separately for both STP Facilities and I&D Works.
- (ii) The Power Charges for any given quarter of the O&M Period will be calculated as follows:
 - (A) For the units of energy consumed from the grid (as evidenced by a copy of the bill issued by the distribution licensee), the Power Charges will be calculated by multiplying the number of units consumed in such quarter (subject to the Guaranteed Energy Consumption for the energy consumed by the relevant STP Facility) with the Power Unit Rate.
 - (B) If the Concessionaire procures power from outside Bihar, then, the Power Unit Rate will be the prevalent power unit rate in Bihar or the tariff at which the Concessionaire procures power from outside Bihar, whichever is lower.
 - (C) If there is any interruption in the supply of power from the grid, and the Concessionaire uses backup power supply from the DG Sets, then,

- (I) the Concessionaire's Representative and BUIDCO shall jointly take readings from the meters installed at the DG Sets to determine the number of units of energy consumed from the DG Sets for O&M of the relevant STP Facility;
 - (II) the number of units of energy consumed from the DG Sets (determined as per (I) above) shall be adjusted such that the aggregate of the total number of units consumed from the grid and the total number of units consumed from the DG Sets shall not exceed the Guaranteed Energy Consumption for the relevant STP Facility (**Adjusted DG Set Units**);
 - (III) the quantity of diesel consumed to generate the Adjusted DG Set Units in the relevant quarter shall be calculated by BUIDCO based on the rated specific fuel consumption of the DG Sets specified by the manufacturers of the DG Sets; and
 - (IV) the Power Charges for the Adjusted DG Set Units will be calculated by multiplying the quantity of diesel consumed (determined as per (III) above) with the Fuel Price.
- (D) For each STP Facility, the Concessionaire shall be liable to pay liquidated damages to BUIDCO for any units of energy consumed beyond the Guaranteed Energy Consumption (whether from the grid or from the DG Sets) for such STP Facility (**Power Consumption Liquidated Damages**), which will be calculated as follows:
- (I) For excess power consumption up to 5% of the Guaranteed Energy Consumption of the relevant STP Facility:

Power Consumption Liquidated Damages: (Number of power units consumed in the relevant quarter – Guaranteed Energy Consumption for such quarter) * [Power Unit Rate] * 0.25
 - (II) For excess power consumption between 5% and 10% of the Guaranteed Energy Consumption of the relevant STP Facility:

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

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

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

- (E) The Power Consumption Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Charges for the relevant STP Facility payable to the Concessionaire for such quarter. If the Power Consumption Liquidated Damages for a quarter exceed the O&M Charges for the relevant STP Facility for such quarter, then the excess amounts shall, at the discretion of BUIDCO, either be adjusted against the O&M Charges for the relevant STP Facility for the subsequent quarter or recovered from the relevant O&M Security.
- (h) The O&M Payments shall be paid by NMCG to the Concessionaire on a quarterly basis. For each STP Facility, the Concessionaire shall submit an Invoice to BUIDCO for each quarter on or before the 7th day of the first month of the following quarter, which should set out: (i) the Capex Annuity due to the Concessionaire in such quarter, along with interest in accordance with Clause 9.4(d)(ii) above; (ii) the STP O&M Charges due to the Concessionaire in such quarter; and (iii) the Power Charges for STP facilities including I&D Works incurred by the Concessionaire during such quarter for power drawn from the grid or the DG Sets, subject to the cap of the Power Charges based on the Guaranteed Energy Consumption for the relevant STP Facility. Any Invoice raised by the Concessionaire for O&M Payments shall be accompanied with a copy of the: (A) KPI Adherence Report for each month of the relevant quarter, duly certified by the Project Engineer; and (B) copy of the bill(s) issued by the state distribution utility for the Power Charges, and if relevant, copy of the joint meter reading for consumption of power from the DG Sets.

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

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

the Concessionaire to issue a revised Invoice, after rectifying the errors or discrepancies identified by BUIDCO.

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

- (j) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 21 (*Dispute Resolution*).
- (k) A certificate issued by BUIDCO in accordance with Clause 9.4(i) shall be referred to as a **STP Payment Certificate**.
- (l) If, within 10 days from the date of receipt of an Invoice, BUIDCO does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by BUIDCO, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to BUIDCO and NMCG) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.
- (m) Immediately upon receipt of a STP Payment Certificate in accordance with Clause 9.4(i)(A) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.4(l), the Escrow Bank shall release the amount specified in the STP Payment Certificate or if no STP Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (n) Notwithstanding anything to the contrary in this Concession Agreement, BUIDCO shall have no obligation to issue a STP Payment Certificate unless:
 - (i) the STP O&M Securities remain valid and in effect;
 - (ii) the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;
 - (iii) the Concessionaire Applicable Permits for O&M of the STP Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
 - (iv) the Concessionaire has complied with the ESHS Documents in undertaking the O&M of the STP Facilities; and
 - (v) there is no subsisting Concessionaire Event of Default.

9.5 Escrow Account

- (a) Within 10 days from the Appointed Date, the Concessionaire, NMCG, BUIDCO and the Escrow Bank shall enter into the Escrow Agreement and NMCG shall open the Escrow Account with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the End of Concession. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, NMCG's obligation to deposit the Construction Payments (including the Mobilization Advance, in any), and the O&M Payments (for respective STP Facilities and Sewerage Network Facilities) in accordance with this Concession Agreement with the Escrow Bank and terms of withdrawal of amounts from the Escrow Account.
- (b) Minimum Escrow Balance
- (i) NMCG shall deposit an amount equivalent to the first 2 Digha STP Payment Milestones, the first 2 Kankarbagh STP Payment Milestones, the first 2 instalments for Digha Sewerage Network Facilities and the first 2 instalments for Kankarbagh Sewerage Network Facilities prior to the Effective Date. From the Effective Date and during the Construction Period, NMCG shall ensure that the Escrow Account is funded with an amount equivalent to the next 2 Digha STP Payment Milestones, the next 2 Kankarbagh STP Payment Milestones, the next 2 instalments for Digha Sewerage Network Facilities and the next 2 instalments for Kankarbagh Sewerage Network Facilities.
- (ii) on and from the CODs and during the O&M Period of the STP Facilities, NMCG shall deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuity (along with interest), the STP O&M Charges and the estimated Power Charges for the next 2 years for both the Digha STP Facilities and the Kankarbagh STP Facilities. On and from the Operations Start Date (as defined in the Conditions of Contract) of the Sewerage Network Facilities NMCG shall deposit the next 2 quarterly Sewerage Network O&M Charges for both the Digha Sewerage Network Facilities and the Kankarbagh Sewerage Network Facilities.

(the **Minimum Escrow Balance**).

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

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

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

9.6 **Taxes and Royalties**

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

9.7 **Default Interest**

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

9.8 **Right of Set-Off**

The Concessionaire shall not be entitled to retain or set off any amount due to NMCG or BUIDCO by it, but NMCG or BUIDCO may retain or set off any amount owed to it by the Concessionaire under this Concession Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Concession Agreement. NMCG shall notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

10. FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

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

10.2 Security Creation

Security Creation related to the STP Facilities shall be as described below:

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

11. INSURANCE AND INDEMNITIES

11.1 Indemnity and Limitation of Liability

- (a) Subject to Clause 11.1(b) below, the Concessionaire shall be responsible for,

release, hold harmless and indemnify BUIDCO, NMCG, BUIDCO Related Parties and the NMCG Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:

- (i) death or personal injury of any person;
- (ii) loss of or damage to property;
- (iii) non-compliance with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents);
- (iv) any damage caused to the environment by the Concessionaire (including specifically, due to the Concessionaire's failure to meet the Discharge Standards); and
- (v) any third party losses or claims;

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

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

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

- (d) BUIDCO shall be responsible for, release, hold harmless and indemnify the

Concessionaire and the Concessionaire Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or any other liability incurred or suffered by the Concessionaire under Applicable Laws, or pursuant to the law of torts, principles of absolute liability or strict liability or polluter pays principle, as a result of any environmental pollution or health hazard caused by the quality of raw Sewage which is delivered at the STP Facilities.

(e) Limitation of liability

(i) Notwithstanding anything to the contrary contained in this Contract, the maximum overall liability of any Party under this Concession Agreement shall not exceed INR 240,00,00,000 (Rupees Two hundred and forty crores).

(ii) Provided that the limitation of liability set out in Clause 11.1(e) above shall not apply to the following:

- (A) breach of Applicable Law and Applicable Permits;
- (B) breach of any third party Intellectual Property Rights;
- (C) fraud and Wilful Misconduct;
- (D) gross negligence;
- (E) damages to or loss of third party property;
- (F) damage caused to the environment;
- (G) misrepresentation by the Concessionaire; and
- (H) health hazard, bodily injury or loss of life.

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

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

11.2 Insurance

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

Insurances during the Construction Period

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

Insurances during the O&M Period

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

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

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

12. CHANGE IN OWNERSHIP

12.1 Ownership Information

Ownership Information related to the Project shall be as described below:

The Selected Bidder has informed BUIDCO that it has incorporated a special purpose company to implement the Project and undertake other obligations of the Concessionaire under and in accordance with this Concession Agreement. The shareholding pattern of the [Selected Bidder/Members]⁹ in the Concessionaire on the date of signing of this Concession Agreement as follows:

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

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

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

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

12.2 Change in Ownership Restrictions

Change in Ownership Restrictions related to the Project shall be as described below:

- (a) [The Concessionaire shall ensure that the Selected Bidder holds at least 51% of the total Capital and voting rights of the Concessionaire until the COD, and at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD.

After the expiry of 3 years from the COD, whichever is later, the Selected Bidder can exit the Concessionaire, subject to: (i) the entity acquiring the shareholding of the Selected Bidder in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (ii) the Concessionaire appointing an O&M contractor who complies with the technical qualification criteria set out in the RFP.]¹⁰

OR

- (a) [The Concessionaire shall ensure that Members of the Selected Bidder, being the shareholders of the Concessionaire, comply with the following ownership restrictions:
- (i) the Lead Member shall hold at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD; and
 - (ii) each Member of the Consortium, other than the Lead Member, whose
 - a. Development/ Design and Construction Experience for the STP Facilities or Financial Capacity is being assessed shall hold at least 26% of the total Capital and voting rights of the Concessionaire until 3 years after the COD.
 - b. Development/ Design and Construction Experience for the Sewerage Network Facilities is being assessed shall hold a minimum of 10% of the total Capital of the Concessionaire until 3 years after the Digha OSD or the Kankarbagh OSD, whichever is later.

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

With respect to 12.2 (a) (ii) a. above, After after the expiry of 3 years from the COD, the Lead Member and other Members can exit the Concessionaire, subject to: (A) the Member who demonstrated the O&M experience for the purposes of qualification continuing to be part of the Concessionaire; or (B) the entity acquiring the shareholding of the Lead Member/any other Member in the Concessionaire meeting the O&M qualification criteria set out in the RFP; or (C) the Concessionaire appointing an O&M contractor who complies with the O&M qualification criteria set out in the RFP.]¹¹

- (b) The Concessionaire shall ensure that the Change in Ownership restrictions set out in Clause 12.2(a) are incorporated in the articles of association of the Concessionaire.
- (c) If, any Associate, whose credentials were taken into consideration for determining Technical Capacity, ceases or will cease to be an Associate of the [Selected Bidder/Member]¹², then, the Concessionaire shall seek the approval of BUIDCO for such occurrence along with all relevant details. While BUIDCO shall not unreasonably withhold or delay such approval, the decision of BUIDCO will be final in this regard. If BUIDCO is of the view that such occurrence is likely to affect the Technical Capacity of the Concessionaire to undertake the Project, then BUIDCO may treat such occurrence as a Concessionaire Event of Default, in which case the consequences set out in Article 16 shall follow.
- (d) If, at any time after the expiry of 3 years from the COD, the [Selected Bidder/any Member]¹³ is proposed to be replaced by an entity that meets the O&M qualification criteria set out in the RFP or the Concessionaire proposes to appoint an O&M contractor to meet the change in ownership condition set out in Clause 12.2(a), then the Concessionaire shall submit a proposal to BUIDCO with details of the proposed shareholder/O&M contractor, for its approval. The proposal should demonstrate to the satisfaction of BUIDCO that the Concessionaire or the proposed O&M contractor meets the O&M qualification criteria specified in the RFP.

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

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

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

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

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

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

13. CHANGE IN LAW

13.1 Change in Law

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

13.2 Consequences of Change in Law

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

- (d) If the Parties fail to agree on the consequences of the Qualifying Change in Law within 30 days from the receipt of any notice from the Concessionaire under Clause 13.2(b) above, the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 21.
- (e) If the Concessionaire has complied with Clause 13.2 (c) above and the Parties mutually agree or it is determined in accordance with Article 21 that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:
 - (i) the Concessionaire shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to an aggregate amount equivalent to 0.5% of the relevant Bid Project Cost (**Threshold Limit**); and
 - (ii) for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,
 - (A) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold Limit; or
 - (B) an appropriate adjustment in the STP O&M Charges.
- (f) If the Concessionaire has complied with Clause 13.2(c) above and the Parties mutually agree or it is determined in accordance with Article 21 that the Concessionaire will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Concessionaire shall be entitled to an extension of time in accordance with Clause 7.11(b).
- (g) The quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under this Clause 13.2 shall be as agreed by the Parties or as determined in accordance with Article 21, provided always that:
 - (i) the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and
 - (ii) the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.
- (h) Notwithstanding anything to the contrary in this Concession Agreement, the Concessionaire shall not be entitled to any schedule relief and/or compensation or adjustment in the Bid Project Cost or the STP O&M Charges due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which is not attributable to a Delay Event.
- (i) If a Fundamental Change in Law occurs, then,

- (i) **the affected Party may notify the other Parties** of the effects of such Fundamental Change in Law on the validity and enforceability of this Concession Agreement or on the rights of the Concessionaire under this Concession Agreement; and
- (ii) any Party may propose amendments to the Concession Agreement, which would make the Concession Agreement compliant with Applicable Laws, while enabling the Parties to achieve their commercial objectives.

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

14. FORCE MAJEURE

14.1 Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Concession Agreement, which is/are:
 - (i) beyond the reasonable control of the Affected Party;
 - (ii) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
 - (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.
- (b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 14.1(a):
 - (i) Non-Political Force Majeure Events
 - (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
 - (B) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (C) chemical or radioactive contamination or ionising radiation;

- (D) epidemic, plague or quarantine;
- (E) the discovery of geological conditions, toxic contamination or archaeological remains on the STP Site that could not reasonably have been expected to be discovered through a site inspection; and
- (F) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the STP Facilities.

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

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

(ii) Indirect Political Force Majeure Events

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

Applicable Permits; and

- (E) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

(iii) Direct Political Force Majeure Events

- (A) occurrence of a Fundamental Change in Law in accordance with Clause 13.2(i);
- (B) compulsory acquisition in national interest or expropriation of the STP Site; and
- (C) any order, notification or judgement issued or passed by any Government Authority which restricts the Concessionaire from constructing or operating the STP Facilities as contemplated in this Concession Agreement on the STP Site, unless such restriction is, in any manner, attributable to the Concessionaire.

(c) Without prejudice to the provisions of Clauses 14.1(a) or 14.1(b) above,

- (i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Clause 14.1; and
- (ii) any act, event or circumstance which primarily affects any of BUIDCO Related Parties or the NMCG Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected BUIDCO or NMCG, it would have come within the definition of Force Majeure Event under this Clause 14.1.

(d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 21, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

14.2 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the **FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 3 days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Concession Agreement, the actions being

taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 14.2.

14.3 **Excuse of Performance**

The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Concession Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations.

The Parties may mutually agree to extend the period of excuse from performance due to a Force Majeure Event.

If a Force Majeure Event affects only one Facility, and not the other Facility, then the Affected Party shall only be excused from the performance of its obligations in relation to the affected Facility.

Provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

14.4 **No Liability for Other Losses**

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

14.5 **Resumption of Performance**

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

14.6 **Allocation of costs during a Force Majeure Event**

- (a) Upon occurrence of a Force Majeure Event prior to the COD, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.

- (b) Upon occurrence of a Force Majeure Event post the COD, the Concessionaire shall be entitled to continue receiving the Capex Annuity (along with interest) and the STP O&M Charges during the subsistence of the Force Majeure Event.

14.7 **Termination due to Force Majeure Event**

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

If a Non-Political Force Majeure Event continues for a period of 120 days after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Clause 14.3, any Party shall, after the expiry of the period of 120-day period or any other mutually extended period, be entitled to forthwith terminate this Concession Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Clause 14.7:

- (i) if a STP Facility is affected by a Total Casualty, then the Concessionaire may terminate this Concession Agreement without having to wait for the expiry of the 120 days' period stipulated for a Non-Political Force Majeure Event;
- (ii) if a STP Facility is affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the STP Facility to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Concession Agreement on the grounds of a continuing Non-Political Force Majeure Event.

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

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

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

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

If a Force Majeure affects only 1 Facility but not both the Facilities, then, it is clarified

that a partial termination of this Agreement to exclude the Facility affected by the Force Majeure Event shall not be permitted and any termination of this Agreement will be for both the Facilities.

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

15. SUSPENSION

15.1 Suspension by the Concessionaire

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

- (i) At any time during the Term, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of any STP Facility, in case of an Emergency.
- (ii) The Concessionaire acknowledges that suspension of the construction of any STP Facility during the Construction Period pursuant to Clause 15.1(a)(i) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire.
- (iii) In case of suspension of the performance of the O&M services of any STP Facility pursuant to Clause 15.1(a)(i) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, but not the STP O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Clause 15.1(a)(i).
- (iv) In case of suspension of the performance of the O&M services pursuant to Clause 15.1(a)(i) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, and the STP O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Clause 15.1(a)(i).
- (v) Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than 3 days after such occurrence, notify BUIDCO of such occurrence.
- (vi) If, upon notification, BUIDCO does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the STP Facility, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 21, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

(b) Mitigation, Resumption and Termination

- (i) The Concessionaire shall make best endeavours to:
- (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 15.1(a)(i) above. Notwithstanding anything to the contrary contained in this Concession Agreement, if BUIDCO, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, BUIDCO shall have the right to step-in to this Concession Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and
 - (B) resume the construction or O&M services of the STP Facility within 24 hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 15.1(a)(i) or such longer period as may be approved by BUIDCO, and notify BUIDCO of the resumption of the works or services.
- (ii) Without prejudice to Clause 15.1(b)(i):
- (A) if suspension of the construction or O&M of a STP Facility pursuant to Clause 15.1(a)(i) continues for a period of 60 days, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 16.1; and
 - (B) if suspension of the construction or O&M of a STP Facility pursuant to Clause 15.1(a)(i) continues for a period of 60 days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 14 shall apply.

15.2 Suspension by BUIDCO

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

- (i) At any time during the Term, BUIDCO may suspend, whether partially or wholly, the construction or O&M of a STP Facility, in any of the following events or circumstances:
- (A) upon the occurrence of an Emergency; or
 - (B) if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the ESHS Documents, the O&M Manual or otherwise fails to perform its obligations in accordance with this Concession Agreement (including the Technical Specifications).

- (ii) The Concessionaire acknowledges that suspension of the construction of the STP Facilities during the Construction Period pursuant to Clause 15.2(a)(i) shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire.
 - (iii) In case of suspension of the performance of the O&M services pursuant to Clause 15.2(a)(i) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, less the Liquidated Damages payable by the Concessionaire for failure to operate the relevant STP Facility pursuant to Clause 15.2(a)(i). The Concessionaire shall not be entitled to the STP O&M Charges for the period during which it suspends the performance of the O&M services pursuant to Clause 15.2(a)(i).
 - (iv) In case of suspension of the performance of the O&M services pursuant to Clause 15.2(a)(i) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, and the STP O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Clause 15.2(a)(i).
- (b) Mitigation, Resumption and Termination
- (i) The Concessionaire shall make best endeavours to:
 - (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 15.2(a) above. Notwithstanding anything to the contrary contained in this Concession Agreement, if BUIDCO, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, BUIDCO shall have the right to step-in to this Concession Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and
 - (B) resume the construction or O&M services of the relevant STP Facility within 24 hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 15.2(a) or such longer period as may be agreed between the Parties, and notify BUIDCO of the resumption of the works or services.
 - (ii) Without prejudice to Clause 15.2(b)(i):
 - (A) if suspension of the construction or O&M of the relevant STP Facility pursuant to Clause 15.2(a)(i)(A) and the Emergency is attributable to the Concessionaire, or a suspension pursuant to Clause 15.2(a)(i)(B), continues for a period of 60 days then such suspension shall amount to a Concessionaire Event of Default in

accordance with Clause 16.1; and

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

16. EVENTS OF DEFAULT

16.1 Concessionaire Events of Default

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

- (a) failure of the Concessionaire to complete the construction of a STP Facility by the expiry of the Grace Period;
- (b) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Concession Agreement;
- (c) failure of the Concessionaire to achieve successful completion of Trial Operations of a STP Facility in accordance with Clause 7.14;
- (d) failure of the Concessionaire to remedy any reduction in Availability within 3 days of receipt of a notice from BUIDCO in accordance with Clause 8.12(a)(iv);
- (e) for any STP Facility, failure of the Concessionaire to cure a Third Breach within 20 days from the Third Breach Notice or a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, in accordance with Clause 8.12(b)(iii)(D);
- (f) for any STP Facility, failure of the Concessionaire to achieve the KPIs for 2 consecutive days, 15 times in a continuous 12 month period;
- (g) for any STP Facility, failure of the Concessionaire to achieve the KPIs for 1 day, 30 times in a continuous 12 month period;
- (h) suspension of the construction or O&M of a STP Facility pursuant to Clause 15.1(a)(i) (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 days;
- (i) suspension of construction or O&M of a STP Facility pursuant to Clause 15.2(a)(i)(A) (to the extent the Emergency is attributable to the Concessionaire)

or a suspension pursuant to Clause 15.2(a)(i)(B), for a continuous period of 60 days;

- (j) a breach by the Concessionaire of its obligations under this Concession Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the STP Facilities and such breach, if capable of being remedied, is not remedied within 30 days of issuance of written notice from BUIDCO specifying such breach and requiring the Concessionaire to remedy the same;
- (k) any representation made or warranties given by the Concessionaire under this Concession Agreement being found to be false or misleading in any material respect;
- (l) failure of the Concessionaire to submit and maintain a valid STP Performance Security in accordance with Clause 5.1 or a valid STP ESHS Performance Security in accordance with Clause 5.1 or a valid STP O&M Security in accordance with Clause 5.4 or a valid Additional Performance Security in accordance with Clause 5.22;
- (m) failure of the Concessionaire to maintain a valid Mobilization Advance Guarantee in accordance with Clause 5.21;
- (n) breach by the Concessionaire of its obligations under Article 4 (*Site and Asset Ownership*), 10.2 (*Security Creation*) or 23.12 (*Assignment*);
- (o) breach of the Concessionaire's obligations under Article 12 (*Change in Ownership*);
- (p) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- (q) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA);
- (r) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Clause 11.2;
- (s) failure of the Concessionaire or the Subcontractors to comply with the ESHS Documents in accordance with Clause 7.4;
- (t) the Concessionaire entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any restructuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Concession Agreement or that otherwise has or may have a Material Adverse Effect; or
- (u) the breach of the Concessionaire's obligations under or the occurrence of an 'event

of default' or analogous event under the Financing Documents or the Escrow Agreement, or termination of the Financing Documents, or the Escrow Agreement (for reasons attributable to the Concessionaire).

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

- (a) Without prejudice to the other provisions of this Concession Agreement, upon the occurrence of a Concessionaire Event of Default, BUIDCO may initiate termination by delivering a Notice of Intent to Terminate to the Concessionaire, with a copy to NMCG. The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 60 days from the date of the Notice of Intent to Terminate, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of BUIDCO or BUIDCO is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, BUIDCO shall withdraw the Notice of Intent to Terminate, in writing.
- (c) If, within 60 days from the date of the Notice of Intent to Terminate, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of BUIDCO or BUIDCO is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, BUIDCO shall issue a notice to the Lenders to exercise their substitution rights.
- (d) If, within 60 days from the date of receipt of the Notice of Intent to Terminate pursuant to Clause 16.2(c) or such longer period as may be mutually agreed between BUIDCO and the Lenders, the Lenders have notified their intent to substitute the defaulting Concessionaire, then:
 - (i) BUIDCO shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Lenders; and
 - (ii) the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.
- (e) If, within 60 days from the date of receipt of the Notice of Intent to Terminate pursuant to Clause 16.2(c) or such longer period as may be mutually agreed between BUIDCO and the Lenders, the Lenders have not notified their intent to substitute the defaulting Concessionaire, then, BUIDCO shall terminate the Concession Agreement and the consequences set out in Article 17 shall apply.
- (f) Notwithstanding anything contained in this Clause 16.2, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform such of their respective obligations under this Concession Agreement, which are capable of being performed in accordance with this Concession Agreement.

16.3 BUIDCO's Events of Default

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

- (a) a breach by BUIDCO of Clause 22.12(b) (*Assignment*);
- (b) a breach by BUIDCO of its obligations under this Concession Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain a STP Facility and such breach, if capable of being remedied, is not remedied within 30 days of a notice being given by the Concessionaire;
- (c) failure to achieve successful completion of Trial Operations due to the reasons set out in Clause 7.14(i) within the Trial Operations period as may have been extended under Clause 7.14(c);
- (d) a breach by BUIDCO of its obligations under Clause 7.8(g) or Clause 8.5(d), in relation to its rights, title and interest in the STP Site; or
- (e) any representation made or warranties given by BUIDCO under this Concession Agreement being found to be false or misleading in any material respect.

16.4 **NMCG's Events of Default**

NMCG's Events of Default related to the STP Facilities and the Sewerage Network Facilities shall be as described below:

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

- (a) a failure by NMCG to pay any undisputed amounts due and payable for 90 consecutive days, notwithstanding service of a formal written demand by the Concessionaire;
- (b) a failure by NMCG to maintain the Minimum Escrow Balance for a period of 90 days;
- (c) a breach by NMCG of Clause 22.12(b) (*Assignment*); or
- (d) any representation made or warranties given by NMCG under this Concession Agreement being found to be false or misleading in any material respect.

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

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

the occurrence of a BUIDCO Event of Default or an NMCG Event of Default, the Concessionaire may initiate termination of this Concession Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.

- (b) If, within 60 days from the date of the Notice of Intent to Terminate, BUIDCO or NMCG, as the case may be, rectifies or remedies BUIDCO Event of Default or the NMCG Event of Default, to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by BUIDCO or NMCG or BUIDCO Event of Default or the NMCG Event of Default, as the case may be, has ceased to exist, the Concessionaire shall withdraw the Notice of Intent to Terminate.
- (c) If, within 60 days from the date of the Notice of Intent to Terminate, BUIDCO Event of Default or the NMCG Event of Default has not been remedied or BUIDCO or NMCG, as the case may be, has not taken steps or proposed to take steps to remedy BUIDCO Event of Default or the NMCG Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate the Concession Agreement and the consequences set out in Article 17 shall follow.
- (d) During the subsistence of a BUIDCO Event of Default or an NMCG Event of Default, the Parties shall continue to perform such of their respective obligations under this Concession Agreement, which are capable of being performed in accordance with this Concession Agreement.

Sewerage Network Facilities:

Notice of Intent to Terminate upon occurrence of a BUIDCO Events of Default or an NMCG Event of Default related to the Sewerage Network Facilities shall be as described in Article 11.2.5 (1) and Article 11.2.5 (2) of the **Supporting Volume 1, and Article 11.2.5 (1) and Article 11.2.5 (2) of the Supporting Volume 2.**

- 16.6 If an Event of Default affects only 1 Facility but not both the Facilities, then, it is clarified that a partial termination of this Agreement to exclude the Facility affected by the Event of Default shall not be permitted and any termination of this Agreement will be for both the Facilities.

17. CONSEQUENCES OF TERMINATION

All the Clauses of this Article 17 and reasons thereof, should be read in conjunction as and when applicable to the respective STP Facilities .

- 17.1 **Consequences of termination of the Concession Agreement post the Effective Date but**

prior to the Construction Completion Date

In case of termination of the Concession Agreement prior to the Construction Completion Date:

- (a) the Concessionaire shall cease all work in relation to construction of the STP Facilities, and the Power Plant, if any;
- (b) the Concessionaire shall take all necessary steps to safeguard and protect the STP Facilities and the Power Plant (at whatever stage of completion) and all other equipment, materials and goods on the STP Site;
- (c) BUIDCO shall require the Project Engineer to assess the Cost of the construction works undertaken by the Concessionaire in relation to the STP Facilities as on the date of the Notice of Intent to Terminate and based on such assessment, NMCG shall pay the Termination Compensation in accordance with Article 18;
- (d) in case of termination of this Concession Agreement due to a BUIDCO Event of Default or an NMCG Event of Default, BUIDCO shall return the Performance Securities, , within 30 days from the date of the Notice of Intent to Terminate; and
- (e) the Concessionaire shall hand over the STP Site, the STP Facilities and the Power Plant, if any, to BUIDCO or its nominee in accordance with the Hand-back Requirements set out in Clause 19.3, to the extent applicable.

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

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

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

17.3 **Consequences of termination of the Concession Agreement after the COD**

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

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

17.4 **Consequences of termination due to a Force Majeure Event**

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

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

17.5 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Concession Agreement, any termination of this Concession Agreement shall be without

prejudice to the accrued rights of a Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of a Party under this Concession Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Concession Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.

- (b) Nothing in Article 16 or this Article 17 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

18. TERMINATION COMPENSATION

All the Clauses of this Article 18 and reasons thereof, should be read in conjunction as and when applicable to the respective STP Facilities and

18.1 Termination Compensation for Termination post the Effective Date but prior to the Construction Completion Date

- (a) For a BUIDCO Event of Default or an NMCG Event of Default

If the Concession Agreement is terminated prior to the Construction Completion Date for a BUIDCO Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) Construction Payments due to the Concessionaire for STP Payment Milestones completed and certified by BUIDCO as on the date of the Notice of Intent to Terminate;
- (ii) Debt Due as on the date of Notice of Intent to Terminate;
- (iii) Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR Rate + 3% per annum;

LESS

- (iv) any unadjusted Mobilization Advance (and interest if any);
- (v) any amounts due and payable by the Concessionaire under this Concession Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

- (b) For a Concessionaire Event of Default

If the Concession Agreement is terminated prior to the Construction Completion Date for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) Construction Payments due to the Concessionaire for STP Payment Milestones completed and certified by BUIDCO as on the date of the Notice of Intent to Terminate;
- (ii) 85% of Debt Due;

LESS

- (iii) any unadjusted Mobilization Advance (and interest if any);
- (iv) any amounts due and payable by the Concessionaire under this Concession Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.2 Termination Compensation for Termination post the Construction Completion Date but prior to the COD

(a) For a BUIDCO Event of Default or an NMCG Event of Default

If the Concession Agreement is terminated post the Construction Completion Date but prior to the COD for a BUIDCO Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) Construction Payments, if not already paid as on the date of the Notice of Intent to Terminate;
- (ii) Debt Due;
- (iii) Equity infused in the Concessionaire as on the date of Notice of Intent to Terminate along with interest on the Equity at the rate of the prevailing SBI MCLR Rate + 3 % per annum;

LESS

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

(b) For a Concessionaire Event of Default

If the Concession Agreement is terminated post the Construction Completion Date but prior to the COD for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) Construction Payments, if not already paid as on the date of the Notice of Intent to Terminate;
- (ii) 85% of Debt Due;

LESS

- (iii) any amounts due and payable by the Concessionaire under this Concession Agreement (including Liquidated Damages and any amount payable under Clause 19.2).

18.3 Termination Compensation for Termination post the COD

(a) For a BUIDCO Event of Default or an NMCG Event of Default

If the Concession Agreement is terminated post the COD for a BUIDCO Event of Default or an NMCG Event of Default, NMCG shall be liable to pay to the Concessionaire the aggregate of:

- (i) Construction Payments that remain outstanding on the date of the Notice of Intent to Terminate;
- (ii) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (iii) Capex Annuity for the unexpired portion of the O&M Period;

LESS

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

(b) For a Concessionaire Event of Default

If the Concession Agreement is terminated post the COD for a Concessionaire Event of Default, NMCG shall pay to the Concessionaire, the aggregate of:

- (i) Construction Payments that remain outstanding on the date of the Notice of Intent to Terminate;
- (ii) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (iii) 85% percentage of the Capex Annuity for the unexpired portion of the O&M Period;

LESS

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

18.4 Termination Compensation for Termination due to a Force Majeure Event

(a) Non-Political Force Majeure Event

In the event of a termination of this Concession Agreement as a result of a Non-Political Force Majeure Event in accordance with Clause 14.7(a), the Parties agree that the Concessionaire shall be entitled to retain all proceeds received under any insurance policies maintained by it in relation to the STP Site and the STP Facilities (subject to the Lenders' rights in respect of such insurance proceeds) and the Concessionaire shall not be entitled to any Termination Compensation (other than payment of any outstanding Construction Payments and/or O&M Payments due as on the date of the notice of termination under Clause 14.7).

(b) Indirect Political Force Majeure

(i) If the Concession Agreement is terminated due to an Indirect Political Force Majeure Event, prior to the COD, NMCG shall be liable to pay to the Concessionaire:

(A) Construction Payments due to the Concessionaire for STP Payment Milestones completed and certified by BUIDCO as on the date of the notice of termination under Clause 14.7;

(B) Debt Due;

(C) LESS

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

(ii) If the Concession Agreement is terminated due to an Indirect Political Force Majeure Event post the COD, NMCG shall be liable to pay to the Concessionaire:

(A) Construction Payments that remain outstanding on the date of the notice of termination under Clause 14.7;

(B) O&M Payments due to the Concessionaire as on the date of the notice of termination under Clause 14.7;

(C) Debt Due;

(D) LESS

(E) any insurance proceeds received and retained by the Concessionaire.

(c) Direct Political Force Majeure

(i) If the Concession Agreement is terminated due to a Direct Political

Force Majeure Event, prior to the COD, NMCG shall be liable to pay to the Concessionaire:

- (A) Construction Payments due to the Concessionaire for STP Payment Milestones completed and certified by BUIDCO as on the date of the notice of termination under Clause 14.7;
- (B) Debt Due;
- (C) Equity infused in the Concessionaire as on the date of the notice of termination under Clause 14.7 along with interest on the Equity at the rate of the prevailing SBI MCLR Rate + 3% per annum;

LESS

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

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

18.6 **Full and Final Settlement**

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

18.7 **Validity of this Article 18**

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

18.8 **Forfeiture of Additional Performance Security.**

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

19. **TRANSFER ON TERMINATION**

19.1 **Transfer of the Site, the STP Facilities, and the Sewerage Network Facilities**

Transfer of the Site, the STP Facilities and the Sewerage Network Facilities shall be as described below:

Upon the expiry or early termination of this Concession Agreement, the Concessionaire shall hand over the STP Site, the STP Facilities, and the Power Plant, if any, to BUIDCO or any other entity nominated by BUIDCO in accordance with this Article 19.

19.2 **Inspection of the Site, STP Facilities, and the Sewerage Network Facilities**

- (a) No later than 30 days from the end of the 14th year of the O&M Period or 30 days from the date of termination of the Concession Agreement, as the case may be, BUIDCO shall or shall cause the Project Engineer to carry out a survey of the Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any, to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Concession Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- (b) BUIDCO shall notify the Concessionaire at least 7 days prior to the date on which it wishes to carry out the survey of the Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any.
- (c) If the survey carried out by BUIDCO or the Project Engineer shows that the Concessionaire has not or is not complying with its obligations under this Concession Agreement, then BUIDCO shall notify the Concessionaire of the rectification and/or maintenance work which is required to ensure that the

condition of the STP Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any, is restored to the Hand-back Conditions.

- (d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within 30 days from the receipt of a notice from BUIDCO in accordance with Clause 19.2(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request BUIDCO to carry out a final survey and inspection of the Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any. BUIDCO shall carry out the final survey within 7 days of receipt of a notice from the Concessionaire pursuant to this Clause 19.2(d).

If BUIDCO is satisfied with the results of the final survey, then BUIDCO shall notify the Concessionaire within 7 days of carrying out the final survey that the Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any, comply with the Hand-back Conditions. If BUIDCO is not satisfied with the results of the final survey, then BUIDCO shall or shall cause the Project Engineer to estimate the cost of restoring the Site, the STP Facilities, the Sewerage Network Facilities, and the Power Plant, if any, to the Hand-back Conditions and recover such cost from the Concessionaire.

19.3 Hand-back Requirements

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

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

- (g) remove from the STP Site all employees and workmen, and assets, equipment and materials that are not required to be taken over by BUIDCO or its nominee.

19.4 **Validity of this Article 19**

The provisions of this Article 19 shall survive the termination of this Concession Agreement.

20. **VARIATION**

20.1 Both BUIDCO and the Concessionaire may, at any time during the Term, propose a Variation to the Scope of Work, Technical Specifications, and/or the Designs and Drawings. However, the final approval of such variations will rest with NMCG.

20.2 **BUIDCO Proposed Variation**

BUIDCO Proposed Variation related to the STP Facilities and the Sewerage Network Facilities shall be as described below:

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

on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the proposal submitted by the Concessionaire and withdraw the proposed Variation, within 15 days from the date of receipt of the Concessionaire's proposal under Clause 20.2(b) above.

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

20.3 **Concessionaire Proposed Variation**

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

Variation and any other comments that BUIDCO may have on the implications of the proposed Variation. To the extent BUIDCO seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, BUIDCO's comments.

- (d) On the Concessionaire's acceptance of the costs determined by BUIDCO for the proposed Variation and any other amendments sought by BUIDCO to the Concessionaire's proposal, BUIDCO shall issue a Variation Order and Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (e) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the Construction Plan and/or additional costs, as set out in the Variation Order.

20.4 Notwithstanding anything to the contrary in this Article 20, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the Construction Plan and additional Costs shall be determined in accordance with Article 13.

20.5 Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Subcontractor in the performance of the Concessionaire's obligations under this Concession Agreement shall not entitle the Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.

20.6 No Variation shall invalidate this Concession Agreement.

21. DISPUTE RESOLUTION

21.1 Amicable Settlement

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

21.2 Dispute Resolution by Arbitration

21.2.1 If a Dispute is not resolved within 30 days after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, any Party to the Dispute shall be entitled to refer the Dispute to arbitration to be finally resolved in the manner set out in this Clause 21.2 by issuing a notice to the other Party (**Notice of Arbitration**).

- 21.2.2 (a) The Arbitration Panel shall be constituted with three Arbitrators; each Party shall select one Arbitrator, and the third Arbitrator shall be appointed by the two Arbitrators so selected.
- (b) The Arbitration Panel may retain the services of financial and technical consultants, if it so deemed appropriate.
- (c) The Arbitration Panel shall endeavour to make an award on any Dispute referred to it within a period of ninety (90) Days from the date of its first meeting. However, such period may be extended by mutual agreement of the parties to the dispute or as the Arbitration Panel deems fit.
- (d) The costs and expenses of the Arbitration Panel shall be shared equally between the Parties; provided however that the Arbitration Panel shall be entitled to decide on the costs of the arbitration procedure.
- 21.2.3 (a) Where the Concessionaire is controlled by shareholder(s) incorporated outside India, arbitration shall be International Commercial Arbitration with proceedings administered by the Singapore International Arbitration Centre (SIAC) in accordance with UNCITRAL Arbitration Rules, the place of arbitration shall be Singapore and the arbitration shall be conducted in English.
- (b) Where the Concessionaire is controlled by shareholder(s) incorporated in India, arbitration shall be with conducted in accordance with the Arbitration and Conciliation Act, 1996, as amended from time to time. For arbitration proceedings under article 21.2.3 (b), the venue of arbitration shall be the place where the Executing Agency's office is located and the arbitration proceedings shall be conducted in English language. The Arbitration Panel shall have the powers to pass such interim orders to the extent permissible under the Arbitration and Conciliation Act, 1996.
- 21.2.4 Arbitration may be commenced at any time during the Concession Period. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 21.2.5 The Arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 21.2 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Executing Agency agree and undertake to carry out such Award without delay.
- 21.2.6 The Concessionaire and the Executing Agency agree that an Award may be enforced against the Concessionaire and/or the Executing Agency, as the case may be, and their respective assets wherever situated.
- 21.2.7 This Concession Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

21.3 **Survival**

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

22. **REPRESENTATIONS AND WARRANTIES**

22.1 **Mutual Representations and Warranties**

Each Party represents and warrants to the other Parties that:

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

22.2 **Concessionaire's Representations and Warranties**

The Concessionaire represents and warrants to BUIDCO and NMCG that:

- (a) it is duly organized, validly existing and of good standing under the laws of India;
- (b) it has the financial standing and capacity to design, develop, finance, construct, complete, operate and maintain the STP Facilities on the STP Site and design, develop, build, operate and maintain the Sewerage Network Facilities on the Sewerage Network Site in accordance with this Concession Agreement;
- (c) this Concession Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Concession Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Concession Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (e) the information furnished in the Bid of the Selected Bidder, and as updated on

or before the date of this Concession Agreement is true and accurate in all respects as on the Appointed Date;

- (f) the execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its memorandum and articles of association/charter documents or any Applicable Laws or Applicable Permits or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (g) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of the GoI or the GoB which may result in any Material Adverse Effect on its ability to perform its obligations under this Concession Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Concession Agreement;
- (h) it has complied with all Applicable Laws and Applicable Permits in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Concession Agreement;
- (i) none of its employees, consultants, service providers, suppliers, or Subcontractors, including any O&M contractor, as of this day, have been engaged in any corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Clause 23.18; and
- (j) no representation or warranty by it contained in this Concession Agreement or in any other document furnished by it to BUIDCO, NMCG, the GoI or the GoB in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty.

22.3 BUIDCO's Representations and Warranties

BUIDCO represents and warrants to the Concessionaire and NMCG that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and legal capacity to execute this Concession Agreement and perform its obligations under this Concession Agreement;
- (c) it has taken all necessary approvals to execute this Concession Agreement including any approval required under the Companies Act and amendments thereof and perform its obligations under this Concession Agreement;
- (d) this Concession Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;

- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of the GoI or the GoB, which may result in any Material Adverse Effect on its ability to perform its obligations under this Concession Agreement;
- (f) it has complied with all Applicable Laws and Applicable Permits in all material respects;
- (g) the Site is not subject to any mortgage, lien, charge or any other Encumbrance;
- (h) it does not have any liability for any Taxes, or any interest or penalty in respect thereof, of any nature, that may constitute a lien against the Site; and
- (i) all information provided by it in the RFP and this Concession Agreement (including the Technical Specifications) in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects.

22.4 **NMCG's Representations and Warranties**

NMCG represents and warrants to the Concessionaire and BUIDCO that:

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

22.5 **Acknowledgement**

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

effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a Party under this Concession Agreement.

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

23. MISCELLANEOUS

23.1 Survival

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

23.2 Entire Concession Agreement

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

23.3 Non-exhaustive Remedies

- (a) Save and except as provided in this Concession Agreement, the remedies available to the Concessionaire under this Concession Agreement are not exhaustive and the Concessionaire and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (b) Save and except as provided in this Concession Agreement, the exercise of any

rights by any Party under this Concession Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Concession Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

23.4 Notices

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

BUIDCO : Attention: [●]
Address: Second Floor, Khadya Bhawan, Road No-2, Daroga Prasad Rai Path,
R. Block, Patna – 800 001
Tel: +91
Fax: [●]
Email:

NMCG : Attention: Executive Director (Projects)

Address: 1st Floor, Major Dhyanchand National Stadium, India Gate, New Delhi
- 110002
Tel: +91(11) 23049442
Fax: +91(11) 23049566
Email: ed.projects@nmcg.nic.in

Concessionaire : Attention: [●]
Address: [●]
Tel: [●]
Fax: [●]
Email: [●]

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

23.5 Governing Law and Jurisdiction

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

23.6 Counterparts

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

23.7 Language

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

23.8 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 years after the expiry or termination of this Concession Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including BUIDCO Related Parties, the NMCG Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Concession Agreement.
- (b) This Clause 23.8 shall not apply to Confidential Information, which:
 - (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Concession Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;
 - (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
 - (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any

Government Authority, or the rules of any applicable stock exchange;

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

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

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 23.8(a) shall,
 - (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Concession Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Associates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 23.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable

efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

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

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

23.9 Amendments

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

23.10 Waivers and Consents

- (a) Unless otherwise specified, any provision or breach of any provision of this Concession Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Concession Agreement must also be in writing and given prior to the event, action or omission for which it is sought.

- (c) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

23.11 Severability

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

23.12 Assignment

- (a) Except as expressly permitted in this Concession Agreement, the Concessionaire shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Concession Agreement, without the prior written consent of BUIDCO and NMCG.
- (b) The rights and obligations of BUIDCO or NMCG under this Concession Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (i) is a single entity;
 - (ii) acquires the whole of the Concession Agreement;
 - (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of BUIDCO or NMCG under this Concession Agreement, as the case may be; and
 - (iv) has sufficient financial standing or financial resources to perform the obligations of BUIDCO or NMCG under this Concession Agreement, as the case may be.

23.13 No Agency or Partnership

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

23.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred

in connection with the negotiation, preparation and execution of this Concession Agreement, the Substitution Agreement and the Escrow Agreement.

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

23.15 Reservation of Rights

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

23.16 Third Parties

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

23.17 Waiver of sovereign immunity

BUIDCO and NMCG unconditionally and irrevocably:

- (a) agree that the execution, delivery and performance by it of this Concession Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agree that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Concession Agreement or any transaction contemplated by this Concession Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of BUIDCO and NMCG with respect to its assets; and
- (c) consent to the enforcement of any judgment or award against them in any such proceedings.

23.18 Fraud and Corruption

It is the Bank's policy to require that Borrowers (including beneficiaries of Bank loans), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the

highest standard of ethics during the procurement and execution of Bank-financed contracts.¹⁴ In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;¹⁵;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;¹⁶
- (iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;¹⁷
- (iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;¹⁸
- (v) “obstructive practice” is
 - (aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 23.18(e) below.

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the loan allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive, or obstructive

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

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

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

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

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

practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures,¹⁹ including by publicly declaring such firm or individual ineligible, either indefinitely or for a stated period of time: (i) to be awarded a Bank-financed contract; and (ii) to be a nominated²⁰;

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

23.18.1 Inspection and Audit

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

In witness whereof the Parties hereto have signed this Concession Agreement on this _____ day of _____ 2018.

BIHAR URBAN INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
(BUIDCO)

By:

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

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

Name:

Title:

NATIONAL MISSION FOR CLEAN GANGA (NMCG)

By:

Name:

Title:

[Insert name of the Concessionaire] (CONCESSIONAIRE)

By:

Name:

Title:

