

SWACHHA ANDHRA CORPORATION

DRAFT CONCESSION AGREEMENT

FOR

**SETTING UP OF FAECAL SLUDGE AND SEPTAGE TREATMENT PLANTS
(FSTPs) IN URBAN LOCAL BODIES OF ANDHRA PRADESH ON DESIGN,
BUILD, OPERATE & TRANSFER (DBOT HYBRID ANNUITY) BASIS.**

{PACKAGE 1/2/3/4/5/6/7}

Table of Contents

ARTICLE 1: DEFINITIONS AND INTERPRETATION.....	7
1.1. Definitions	7
1.2. Interpretation	7
1.3. Priority of Agreements and errors/discrepancies	9
ARTICLE 2: SCOPE OF THE PROJECT	10
2.1. Scope of the Project	10
ARTICLE 3: GRANT OF CONCESSION	10
3.1. The Concession	10
ARTICLE 4: CONDITIONS PRECEDENT	11
4.1. Conditions Precedent	11
4.2. Damages for delay by the Authority	13
4.3. Damages for delay by the Concessionaire	13
4.4. Commencement of Concession Period	14
4.5. Deemed Termination upon delay	14
ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE	14
5.1. Obligations of the Concessionaire	14
5.2. Role & responsibilities of the Concessionaire	15
5.3. Obligations relating to Project Agreements.....	18
5.4. Obligations relating to Change in Ownership.....	19
5.5. Sole purpose of the Concessionaire	19
ARTICLE 6: OBLIGATIONS OF THE AUTHORITY.....	19
6.1. Obligations of the Authority	19
ARTICLE 7: REPRESENTATIONS AND WARRANTIES	20
7.1. Representations and Warranties of the Concessionaire	20
7.2. Representations and Warranties of the Authority	21
7.3. Disclosure	22
ARTICLE 8: DISCLAIMER	22
8.1. Disclaimer	22
ARTICLE 9: PERFORMANCE SECURITY	23
9.1. Performance Security.....	23
9.2. Appropriation of Performance Security.....	23
9.3. Release of Performance Security	23
ARTICLE 10: ACCESS TO SERVICE AREA	24
10.1. The Site	24
10.2. License and access to the Site	24
10.3. Procurement of the Site	25
10.4. Site to be free from Encumbrances	26
10.5. Access to the Authority and Independent Engineer	26
ARTICLE 11: UTILITIES AND ASSOCIATED ROADS.....	26
11.1. Existing utilities and roads	26
11.2. Shifting of obstructing utilities	27
11.3. New utilities and roads	27
ARTICLE 12: CONSTRUCTION OF THE PROJECT	27
12.1 Obligations prior to commencement of Construction Works	27
12.2. Drawings	28
12.3 Environment, Health and Safety(EHS) plan.....	28
12.4. Construction of the Project	29
12.5. Monitoring of construction	29
12.6. Suspension of unsafe Construction Works	30
ARTICLE 13: COMPLETION CERTIFICATE	30
13.1. Tests	30

13.2. Completion Certificate	31
13.3. Provisional Certificate	31
13.4. Completion of Punch List items	32
ARTICLE 14: ENTRY INTO COMMERCIAL SERVICE	32
14.1. Commercial Operation Date	32
14.2. Damages for delay	33
ARTICLE 15: CHANGE OF SCOPE	33
15.1. Change of Scope	33
15.2. Effect of change of scope on the O & M Costs	33
ARTICLE 16: OPERATION AND MAINTENANCE	33
16.1.O & M obligations of the Concessionaire	33
16.2. Key Performance Indicators (KPIs).....	34
16.3. Authority's rights to take remedial measures	35
16.4. Overriding powers of the Authority.....	35
16.4. Monitoring of Operations and Maintenance.....	36
ARTICLE 17: SAFETY REQUIREMENTS	36
17.1. Safety Requirements	36
17.2. Expenditure on Safety Requirements	36
ARTICLE 18: INDEPENDENT ENGINEER	36
18.1. Appointment of Independent engineer	36
18.2. Duties and functions	37
18.3. Remuneration	37
18.4. Termination of appointment	37
ARTICLE 19: FINANCIAL CLOSE	38
18.1. Financial Close	38
18.2. Termination due to failure to achieve Financial Close	38
ARTICLE 20: LEASE RENTAL	38
19.1. Lease Rental	38
ARTICLE 21: PAYMENT OF BID PROJECT COST	38
21.1. Bid Project Cost	38
21.2. Payment of Bid Project Cost	39
21.3. Payment during Construction Period	39
21.4. Annuity Payments during Operation Period	40
21.5. O & M Payments	40
21.6. Revolving Fund	41
21.7. Mobilization Advance	41
21.8. Treatment of incomplete works	41
ARTICLE 22: ESCROW ACCOUNT	42
22.1. Escrow Account	42
22.2 Deposits into Escrow Account	42
22.3. Withdrawals during Concession Period	42
22.4. Withdrawals upon Termination	43
ARTICLE 23: INSURANCE	44
23.1. Insurance during Concession Period.....	44
23.2. Insurance Cover	44
23.3. Notices to Authority	45
23.4. Evidence of Insurance Cover	45
23.5. Remedy for failure to insure	45
23.6. Waiver of subrogation	45
23.7. Concessionaire's waiver	45
23.8. Application of insurance proceeds.....	46
23.9. Compliance with conditions of insurance policies	46

ARTICLES 24: ACCOUNTS AND AUDIT	46
24.1. Audited Accounts	46
ARTICLE 24: FORCE MAJEURE.....	46
25.1. Force Majeure	46
25.2. Non-Political Event	47
25.3. Indirect Political Event	47
25.4. Political Event	48
25.5. Duty to report Force Majeure Event	48
25.6. Effect of Force Majeure Event on Concession	48
25.7. Allocation of costs arising out of Force Majeure	49
25.8. Termination Notice for Force Majeure Event	50
25.9. Termination Payment for Force Majeure Event	50
25.10. Dispute resolution	51
25.11. Excuse from performance of obligations	51
ARTICLE 26: COMPENSATION FOR BREACH OF AGREEMENT.....	51
26.1. Compensation for default by the Concessionaire	51
26.2. Compensation for default by the Authority	52
26.4. Mitigation of costs and damages	52
ARTICLE 27: SUSPENSION OF CONCESSIONAIRE's RIGHTS	52
27.1. Suspension upon Concessionaire Default	52
27.2. Authority to act on behalf of Concessionaire	52
27.3. Revocation of Suspension	53
27.4. Substitution of Concessionaire	53
27.5. Termination	53
ARTICLE 28: TERMINATION.....	54
28.1. Termination for Concessionaire Default	54
28.2. Termination for Authority Default	56
28.3. Termination Payment	57
28.4. Certain limitations on Termination Payment	58
28.5. Other rights and obligations of the Authority	58
28.6. Survival of rights	59
ARTICLE 29: DIVESTMENT OF RIGHTS AND INTEREST	59
29.1. Divestment Requirements	59
29.2. Inspection and cure	60
29.3. Vesting Certificate	61
29.4. Divestment costs	61
ARTICLE 30: DEFECTS LIABILITY AFTER TERMINATION	61
30.1. Liability for defects after Termination	61
30.2. Retention in Escrow Account	61
ARTICLE 31: ASSIGNMENT AND CHARGES	62
31.1. Restrictions on assignment and charges	62
31.2. Permitted assignment and charges	62
31.3. Substitution Agreement	62
31.4. Assignment by the Authority	63
ARTICLE 32: LIABILITY AND INDEMNITY.....	63
32.1. General indemnity	63
32.2. Indemnity by the Concessionaire.....	63
32.3. Notice and contests of claims	64
32.4. No consequential claims	64
32.5. Survival on Termination	64
ARTICLE 33: RIGHTS AND TITLE OVER THE SITE	64
33.1. Licensee rights	64

33.2. Access rights of the Authority and others	64
33.3. Property taxes	65
33.4. Restriction on sub-letting	65
ARTICLE 34: DISPUTE RESOLUTION.....	65
34.1. Dispute resolution	65
34.2. Conciliation	65
34.3. Arbitration	66
34.4. Adjudication by a tribunal	66
ARTICLE 35: DISCLOSURE	67
35.1. Disclosure of Specified Documents	67
35.2. Disclosure of Documents relating to safety	67
ARTICLE 36: REDRESSAL OF PUBLIC GRIEVANCES	67
36.1. Complaints Box	67
36.2. Redressal of complaints	67
ARTICLE 37: MISCELLANEOUS.....	67
37.1. Governing law and jurisdiction	67
37.2. Depreciation	68
37.3. Delayed payments	68
37.4. Waiver	68
37.5. Liability for review of Documents and Drawings	68
37.6. Survival	69
37.7. Entire Agreement	69
37.8. Severability	69
37.9. No partnership	69
37.10. Third Parties	70
37.11. Successors and Assigns	70
37.12. Notices	70
37.13. Language	70
37.14. Counterparts	70
ARTICLE 38: DEFINITIONS.....	70
38.1. Definitions	70
SCHEDULES	84

CONCESSION AGREEMENT

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

BETWEEN

1. SWACHHA ANDHRA CORPORATION, represented by its ----- and having its principal offices at Flat NO 303, Vijayalakshmi Residency, ESI Road, Gunadala, Vijayawada-520004 (hereinafter referred to as the "AUTHORITY" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of ONE PART;

AND

2. -----, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at -----, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof, include its successors, and permitted assigns and substitutes) of the SECOND PART;

WHEREAS:

- A. Swachha Andhra Corporation has the mandate to fulfil the Mahatma Gandhi's dream of "Swachh Bharat" by eliminating open defecation, eradication of manual scavenging, solid and liquid waste management, information, education, and communication and capacity building activities to maintain the cleanliness and hygiene in urban and rural areas of Andhra Pradesh. Accordingly, Swachha Andhra Corporation has decided to establish and operate/maintain the Faecal Sludge and Septage Treatment Plants (the "Project") in Urban Local Bodies of Andhra Pradesh under Public Private Partnership (PPP) framework by engaging private entity on Design, Build, Operate & Transfer (the "DBOT Hybrid Annuity") basis, which shall be partly financed by the Concessionaire who shall recover its investment and costs through payments to be made by the Authority, in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into. The objective of the Project is to tackle the health and environmental hazard caused when human excreta is disposed in open areas and water bodies due to lack of treatment facilities.
- B. The Authority had accordingly invited proposals by its Request for Proposals dated **** (the "Request for Proposals" or "RFP") for shortlisting of bidders for construction, operation and maintenance of the above referred Project on DBOT Hybrid Annuity basis and had shortlisted certain bidders for Package No: {1/2/3/4/5/6/7} including, inter alia, {(the selected bidder/consortium comprising -----and ----- (collectively the "Consortium") with ----- as lead member (the "Lead Member")}.}
- C. The Authority had prescribed the technical and commercial terms and conditions, and invited bids meeting the eligibility and qualification criteria

as set forth in the Request for Proposals for the above referred Project on DBOT Hybrid Annuity basis for undertaking the Project.

- D. After evaluation of the bids received, the Authority had accepted the bid of the ----- (selected bidder/Consortium) and issued its Letter of Award No. *** dated *** (hereinafter called the "LOA") to the ----{selected bidder/Consortium} requiring, inter alia, the execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof.
- E. {the selected bidder/Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- F. {By its letter dated ----- the Concessionaire has also joined in the said request of the selected bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/Consortium for the purposes hereof and has delivered to the Authority a legal opinion with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof}.
- G. The Authority has {agreed to the said request of the selected bidder/Consortium and the Concessionaire and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for development of the Project on DBOT Hybrid Annuity basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 38) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

- 1.2.1. In this Agreement, unless the context otherwise requires,

- a. references to a statutory provision shall include such provisions as modified or re-enacted or consolidated from time to time;
- b. references to laws of India/Andhra Pradesh or Indian/Andhra Pradesh law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India/Andhra Pradesh and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c. references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- f. references to “construction” or “build” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
- g. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- h. any reference to day shall mean a reference to a calendar day;
- i. references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Vijayawada are generally open for business;
- j. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- k. references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- l. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- m. "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - n. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - o. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
 - p. the Schedules and Recitals to this Agreement and the Request for Proposals ("RFP") form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - q. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
 - r. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages").
- 1.2.2. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3. Priority of Agreements and errors/discrepancies

- 1.3.1. This agreement, and all other agreements and documents forming part of this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this agreement, the priority of

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

a. this Agreement; and

b. all other agreements and documents forming part hereof;

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

1.3.2. Subject to provisions of Clause 1.3.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

a. between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

b. between the Clauses of this agreement and the Schedules, the Clauses shall prevail;

c. between any two Schedules, the Schedule relevant to the issue shall prevail; and

d. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: SCOPE OF THE PROJECT

2.1. Scope of the Project

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

a. construction of the Project at the Sites as provided by the Authority/ULB for the respective Urban Local Bodies as set forth in Schedule A {Package 1/2/3/4/5/6/7} in accordance with the Scope of Work as specified in Schedule B and in conformity with the Specifications and Standards submitted by the Concessionaire and as approved by the Authority;

b. The construction includes the design, the civil works along with development of all support infrastructure, electromechanical, instrumentation and such other activities that are required to be carried out for putting the Project in to safe operations;

c. operate and maintain the Project in accordance with the provisions of this Agreement; and

d. perform and fulfill all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3: GRANT OF CONCESSION

Setting up of Faecal Sludge and Septage Treatment Plants (FSTPs) in Urban Local Bodies of Andhra Pradesh on Design, Build, Operate & Transfer (DBOT Hybrid Annuity) basis

3.1. The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession for a period of 10 (ten) years, set forth herein including the exclusive right, license and authority to construct, operate and maintain the Project (the “Concession”) during the Construction Period of 6 (six) months and thereafter Operation Period of 9 (nine) years and 6 (six) months, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- a. access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - b. finance as required and construct the Project;
 - c. manage, operate and maintain the Project;
 - d. perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;
 - e. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - f. neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

ARTICLE 4: CONDITIONS PRECEDENT**4.1. Conditions Precedent**

- 4.1.1. Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 19, 25, 34 and 37, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).
- 4.1.2. The Concessionaire, upon providing the Performance Security to the Authority in accordance with Article 9, by notice require the Authority to satisfy the Condition Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days. The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- a. handed over to the Concessionaire the Sites in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
 - b. provided motorable road and electricity supply up to the Project Site;
 - c. Appointed the Independent Engineer in accordance with the provisions of Article 18;
 - d. reviewed and approved the Project Completion schedule submitted by the Concessionaire; and
 - e. reviewed and approved the proposed Specifications and Standards and the Basic Engineering Designs by the Concessionaire.
- 4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within a period of 120 (one hundred twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire has:
- a. provided Performance Security to the Authority in accordance with Article 9. For the avoidance of doubt, the Concessionaire is required to provide the Performance Security within 30 (thirty) days of signing of this Agreement;
 - b. submitted to the Authority's Chief Engineer and the Independent Engineer the Project Completion Schedule, subject to the provisions of Clause 12.3.1 and in line with the Payment Milestones as set forth in the Clause 21.3.1, for Authority's approval. For the avoidance of doubt, the Concessionaire is required to submit the Project Completion Schedule within 45 (forty five) days of signing of this Agreement;
 - c. submitted to the Chief Engineer and the Independent Engineer, the Specifications and Standards for Project development and operations based on the proposed technology and in accordance with the provisions of Schedule B and the basic engineering designs (the "Basic Engineering Designs"), which shall include the following design documents:
 - i. process description, process calculations and hydraulic calculations;
 - ii. list of design codes and standards;
 - iii. master drawing schedule;
 - iv. drainage design;
 - v. FSTP facilities layout;
 - vi. Process flow diagram;
 - vii. Hydraulic flow diagram;
 - viii. Mass balance diagram;
 - ix. Process and instrumentation diagram;
 - x. Single line diagram;
 - xi. Electrical load list; and
 - xii. General arrangement diagrams of all units of the facilities.

For the avoidance of doubt, the Concessionaire is required to submit the Specifications and Standards and the Basic Engineering Designs within 45 (forty five) days of signing of this Agreement.

- d. procured all Applicable Permits and such Permits shall be in full force and effect;
- e. executed and procured execution of the Escrow Agreement;
- f. executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- g. delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders; and
- h. delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in Sub-clauses (j), (k) and (l) of Clause 7.1 of this Agreement;

The Concessionaire on fulfilment of the above Conditions Precedent, shall notify the Authority the particulars thereof.

4.2. Damages for delay by the Authority

In the event that the Concessionaire has fulfilled its Conditions Precedent and (i) the Authority does not procure fulfilment of its Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security, and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

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

4.3. Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of

failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten per cent) of the Performance Security and upon reaching such limit, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4. Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied shall be the Appointed Date which shall be the date of commencement of Concession Period. The Authority shall convey by way of a letter for Appointed Date and thereupon the Concessionaire can commence construction of work on the Project.

4.5. Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before 240 (two hundred and forty) days of this Agreement or the extended period in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required in this regard) in the performance of its obligations under this Agreement.

- 5.1.3. Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4. The Concessionaire can enter into a contract with any firm / company for construction and/or for O & M of the Project. However, the Concessionaire is responsible to the Authority for the performance of its obligations as per the terms of the Agreement.
- 5.1.5. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- a. make necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - b. procure, as required, the appropriate property rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - c. perform and fulfill its obligations under the Financing Agreements;
 - d. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - e. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of the Agreement;
 - f. ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions;
 - g. ensure that no manpower below the age of eighteen years is employed on the work by the Concessionaire or its Contractors;
 - h. have to take sole responsibility on account of liability of any damage or loss in case of a death or injury to any personnel engaged in the Project and the Authority shall not, in any manner be a party to or responsible for such damages or losses;
 - i. be solely responsible for all associated expenses such as statutory dues such as Income Tax, GST, payment to employees' benefit funds, etc., arising out of the Agreement and the Authority shall not be liable for the same under any circumstances; and
 - j. transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions of this Agreement.

5.2. Role & responsibilities of the Concessionaire

The role and responsibilities of the Concessionaire during the Concession Period are as detailed hereunder:

- a. To use proven technologies only. The treatment and disposal of septage & faecal sludge shall be in compliance with CPHEEO standards, norms notified under Environment (Protection) Act, 1986, Pollution Control Board norms, the Solid Waste Management Rules, 2016 notified by Ministry of Environment, Forest and Climate Change (MoEF & CC) of GoI, all the rules and regulations specified in the Air (Prevention and Control) Pollution Act 1981, Water (Prevention and Control of Pollution) Act, 1974 and Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 and their amendments issued thereof from time to time and as applicable to the Project;
- b. The FSTPs shall be designed and operated to meet the norms notified by MoEF & CC of GoI vide Notification G.S.R.1265 (E) dated 13th October 2017 and also, as per the norms laid by the State Pollution Control Board (SPCB) of Andhra Pradesh through Consent to Establish/Consent to Operate.
- c. To monitor the quality of the treated wastewater / solid waste regularly for the parameters as stipulated in the consent order of the Andhra Pradesh SPCB and submit the report to the Authority.
- d. To take precautions of minimizing flies, rodents and bird menace and fire hazards and to take necessary steps and processes that would bring in control of odour at the Site;
- e. The liquid, solid and gaseous emissions emanating from the facility shall meet the Pollution Control Board norms and the good industry practices;
- f. shall take measures to comply with the provisions laid down under Noise pollution (Regulatory and Control) Amendment Rules, 2010 dated 11.01.2010 issued by MoEF & CC, GoI to control the noise to the prescribed levels;
- g. To comply with emission limits for DG sets of capacity up to 800 KW as per the Notification G.S.R.520 (E), dated 01.07.2003 and G.S.R.448(E), dated 12.07.2004 under the Environment (Protection) Act, 1986 Rules. In case of DG sets of capacity more than 800 KW, it shall comply with emission limits as per the Notification G.S.R.489 (E), dated 09.07.2002 at serial no.96, under the Environment (Protection) Act, 1986;
- h. The Concessionaire is encouraged to deploy clean technology to minimize emissions and reduce energy usage and accordingly, in order to meet its power consumption requirements, the Concessionaire is encouraged to use solar energy;
- i. The end product compost shall meet the standards prescribed under Fertilizer Control Order notified by GoI/GoAP from time to time;

- j. To maintain good housekeeping in the Project sites premises;
- k. To carry out necessary geotechnical surveys for considering the hydrological and flooding potential at the Project site and accordingly the FSTPs to be designed;
- l. The facility shall take appropriate measures to ensure that the ground level concentrations shall comply with revised National Ambient Quality Norms notified by MoEF & CC, GoI on 16.11.2009;
- m. To provide fire protection measures and safety equipment at the Project Site;
- n. To test input quality of the collected septage at the Project Site periodically and maintain records.
- o. Onsite sample testing at the decanting facility for pH, conductivity, etc., shall be performed to identify toxic loads if any, to ensure course correction;
- p. The emissions through the chimney for the parameters mentioned in the consent order shall be monitored and submit the report to the Authority;
- q. On or before COD, the Authority shall inform the Concessionaire the waste disposal site (the "Waste Disposal Site") either at the Project Site or elsewhere, within a radius of 5 (five) km from Project Site, where the Concessionaire shall be required to dispose of residual waste and the rejects such as by-products resulting from treatment, Digested Sludge, Residual Grit, the Screenings, etc., in accordance with Applicable Laws. Accordingly, the Concessionaire shall have to make the required transportation arrangements for this purpose. The Authority may shift the Waste Disposal Site from time to time and within a radius of 5 (five) km from the Project Site and any shifting of the Waste Disposal Site shall be informed with at least 30 (thirty) days prior written notice to the Concessionaire. In case, during the Concession Period, the Waste Disposal Site is shifted beyond a radius of 5 (five) km, the Authority shall compensate for any additional transportation costs incurred by the Concessionaire.
- r. To submit environment statement in Form V before 30th September every year as per Rule No. 14 of Environment (Protection) Act, 1986 & its amendments thereof from time to time;
- s. To install a separate energy meter for FSTPs to record energy consumed and to maintain daily log of the same;
- t. The receipt of Faecal Sludge through the tankers/trucks shall be during working hours only as approved by the Authority;
- u. A responsible person shall be appointed at the Project site to ensure that industrial waste is not unloaded at the treatment facilities;

- v. Trained manpower to be deployed to operate the systems and to ensure that they always wear personal protective equipment such as gloves, face masks to avoid injuries and health risks;
- w. Responsible for all Permissions & Clearances which includes Environment (Protection) Act, 1986, the Air (Prevention and Control) Pollution Act 1981 and Water (Prevention and Control of Pollution) Act, 1974, as amended from time to time and any other permits as applicable to the proposed Project.
- x. The Concessionaire to develop baseline data of the site and surrounding areas covering soil, groundwater, surface water, noise and ambient air through reputed universities/laboratories recognized under Quality Council of India; and
- y. To develop and maintain green belt of minimum three rows with tall growing with good leaf area native trees and water harvesting measures in the premises.

5.3. Obligations relating to Project Agreements

- 5.3.1. It is expressly agreed that the Concessionaire shall be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.3.2. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire and shall respond to the request for consent no later than 30 (thirty) days from the receipt of such request from the Concessionaire.
- 5.3.3. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an

acknowledgement and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.4. Obligations relating to Change in Ownership

The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval from the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be as per the provisions of this Concession Agreement and limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

5.5. Sole purpose of the Concessionaire

The Concessionaire with regards to this Project, shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any activity other than as envisaged herein.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

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

- a. To provide encumbrance free land for project development. The respective ULBs shall provide the land for setting up of FSTPs on entering into a land lease agreement with them;
- b. Provision of motorable road and electricity supply up to the Project Site;
- c. To regulate desludging operators and direct them to deliver Faecal Sludge and Septage at the Project Site for treatment. In this regard, the respective ULBs will provide an undertaking within 30 (thirty) days from the Appointed Date in the form as set forth in Schedule G to commit that the Septage gets delivered at the Project Site for treatment as per GO 134;
- d. support, cooperate and facilitate the Concessionaire in construction and operation of the Project in accordance with the provisions of this Agreement;

- e. shall support, cooperate and facilitate with the Concessionaire in procuring Applicable Permits and Approvals and their renewals, if any, from various Government Authorities and utilities, including for sourcing of water both potable and for treatment, and for environmental clearances;
- f. assist the Concessionaire in procuring police assistance for ensuring safety of the Project Facilities, removal of trespassers and security to the Project Assets, if so required during the Concession Period; and
- g. not do or omit to do any act, deed or thing which may in any manner is violating of any of the provisions of this Agreement.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a. it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c. {the selected bidder / Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with the terms of this Agreement;
- d. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e. it is subject to the laws of India/Andhra Pradesh, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- f. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement,

understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

- h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder / Consortium Members}, together with {its/their} Associate, hold not less than 51% (fifty one per cent) of its issued and paid up Equity during entire Concession Period; and that the Consortium Members whose technical and financial capacity was evaluated for the purposes of eligibility and qualification and short-listing in response to the Request for Proposals shall hold entire subscribed and paid up Equity for a period of 3 (three) years from the date of COD of the Project, along with its Associates.

Provided further that any such request made under this Clause 7.1(j) and / or Article 38, at the opinion of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders.

- k. {the selected bidder/each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- l. all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- m. all information provided by the {selected bidder / Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

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

7.2. Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- c. it shall procure good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.

7.3. Disclosure

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

ARTICLE 8: DISCLAIMER

8.1. Disclaimer

- 8.1.1. The Concessionaire acknowledges that prior to the execution of the Agreement, the Concessionaire has carefully examined and made an independent evaluation of the Request for Proposals, Scope of the Project, Site and local conditions, and such other information as provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of risks, challenges and hazards as are likely to arise or may be faced by it during the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2. The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their / its} Associates or any person claiming through or under any of them.

- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate the Agreement, or render it voidable.
- 8.1.4. Except as otherwise provided in the Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9: PERFORMANCE SECURITY

9.1. Performance Security

- 9.1.1. The Concessionaire shall for the performance of its obligations hereunder, provide the Authority no later than 30 (thirty) days from the date of signing of the Agreement, an irrevocable and unconditional guarantee from a Bank acceptable to the Authority for a sum equivalent to Rs. ---- (Rupees ----- only) {10% of the Bid Project Cost} and in the form set forth in Schedule D (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2. Notwithstanding anything contrary contained in the Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 30 (thirty) days from the date of signing of the Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and there upon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of the Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the parties.

9.2. Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, or failure to meet any Conditions Precedent, the Authority shall, without prejudice to its other rights and remedies in the Agreement or in law, be entitled to encash and appropriate from the Performance Security, the amounts due to it as Damages for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, as the case may be, the Concessionaire shall, within 30 (thirty) days thereof, replenish in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 28.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect for a period of 1 (one) year from COD; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement,

till such time the breach is cured. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10: ACCESS TO SERVICE AREA

10.1. The Site

The Site of the Project shall comprise the real estate provided by the respective ULBs for setting up of FSTPs as described in Schedule A {Package 1/2/3/4/5/6/7} as a licensee on entering into a land lease agreement with them under and in accordance with the Agreement (the "Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate provided for the Project as set forth in Schedule A {Package 1/2/3/4/5/6/7}.

10.2. License and access to the Site

10.2.1. The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey and investigations carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

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

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

10.2.4. It is expressly agreed that:

- a. geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement, any archaeological discoveries shall belong to and vest in the Authority or the concerned Government instrumentality and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and
- b. mining rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.3. Procurement of the Site

- 10.3.1. Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, structures, and any other immovable property attached to the Site. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Site to which vacant access has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid license to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For avoidance of doubt, it is agreed that valid license and with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2. Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access to the Site, such that the Appendix shall not include land which shall in any manner prevent the Concessionaire from undertaking construction of the Project to the extent of at least 7 (seven) FSTPs required and necessary for construction, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.
- 10.3.3. On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4. The Authority shall make best efforts to procure and grant to the Concessionaire in respect of all land included in the Appendix, no later than 90 (ninety) days from the Appointed Date. In the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs.100 (rupees one hundred) per day per FSTP, commencing from the 91st (ninety first) day of the Appointed Date and until such land is procured or 180 (one hundred and eighty) days from the Appointed Date, whichever is earlier. The Damages payable in terms of this Clause shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any consequential loss or damage to the Concessionaire. In the event, the Authority is unable to provide the remaining Site within 180 (one hundred and eighty) days from the Appointed Date the remaining Site of the Project shall be removed from the scope of the Project under the provisions of Change of Scope.

10.3.5. Upon receiving the land in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Authority in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay of handing over of land. For the avoidance of doubt, it is expressly agreed that Construction Works at all FSTPs for which land is provided within 30 (thirty) days of Appointed Date shall be completed before the Scheduled Completion Date.

10.4. Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the sake of clarity, the Concessionaire shall have to pay to the respective ULBs, the Lease Rental as per the provisions of Clause 20.1. For the avoidance of doubt, it is agreed that the easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5. Access to the Authority and Independent Engineer

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

ARTICLE 11: UTILITIES AND ASSOCIATED ROADS**11.1. Existing utilities and roads**

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that all utilities on, under or above the Site are kept in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2. Shifting of obstructing utilities

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

11.3. New utilities and roads

If so necessitated, the Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

ARTICLE 12: CONSTRUCTION OF THE PROJECT**12.1. Obligations prior to commencement of Construction Works**

Prior to commencement of Project works, the Concessionaire shall:

- a. appoint its representative duly authorized to deal with the Authority in respect of all matters or arising out of or relating to this Agreement;
- b. make its own arrangements for procurement of materials / equipment / tools, software programs, etc., needed for the Project development; and
- c. submit its proposed 'Quality Assurance Plan' which shall include the following:

- I. organization structure, duties and responsibilities of concerned staff, operating procedures, inspection methodology and Documentation;
 - II. quality control mechanism including sampling and testing of works executed, the list of Project Acceptance Tests and their interpretation of results, test frequencies, acceptance criteria, testing facilities and tie up if any, recording, reporting, interpretation of test results, checklist for the activities, standard formats for testing and calibration; and shall take approval of the Authority; and
 - III. internal quality audit system.
- g. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of work on the Project under and in accordance with this Agreement.

12.2. Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project, the following shall apply:

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence, as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Authority's Chief Engineer and the Independent Engineer for review;
- b. By submitting the Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice;
- c. Within 15 (fifteen) days of the receipt of the Drawings, the Authority's Chief Engineer in consultation with the Independent Engineer shall review the same and convey its observations to the Concessionaire regarding their conformity or otherwise with the Scope of Work and the Specifications and Standards;
- d. No review and/or observation of the Authority's Chief Engineer, and/or its failure to review and/or convey observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under the Agreement in any manner nor shall the Authority or the Independent Engineer be liable for the same in any manner; and
- e. Any change in the basic design and structure of the Project is subject to approval of the same by the Authority. The Authority shall permit the changes if it is satisfied that the changes are going to benefit the Project.

12.3. Environment, Health and Safety (EHS) Plan

Setting up of Faecal Sludge and Septage Treatment Plants (FSTPs) in Urban Local Bodies of Andhra Pradesh on Design, Build, Operate & Transfer (DBOT Hybrid Annuity) basis

Within 45 (forty five) days from the Appointed Date, the Concessionaire shall prepare and submit 3 (three) hard copies and a soft copy of the EHS Plan to the Authority. The EHS Plan shall set out the health, safety and environmental policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project and shall include a comprehensive Site safety assurance plan developed in accordance with Applicable Laws, Applicable Permits, the Specifications and Standards, the EHS Standards, (including the IFC Performance Standards) and Good Industry Practices. The Authority shall forward a copy of the Concessionaire's EHS Plan to the Independent Engineer for its review and comments.

Based on the review of the Independent Engineer, the Authority shall provide comments, if any on the submitted EHS Plan to the Concessionaire or notify its approval within 30 (thirty) days from the date of receipt of the EHS Plan from the Concessionaire. The Authority may require the Concessionaire to amend or modify the EHS Plan if it identifies any deficiencies or shortcomings in the EHS Plan. Thereafter, the Concessionaire shall submit the revised EHS Plan to the Authority for its approval.

The Concessionaire along with its Contractors, if any, shall ensure to comply in all aspects to the approved EHS Plan, during the operation of this Agreement. Any failure of the Concessionaire or its Contractors to comply with the EHS Plan shall constitute a Concessionaire Event of Default. The Concessionaire shall not deviate from or make any subsequent modifications or amendments to the approved EHS Plan without prior written approval of the Authority.

12.4. Construction of the Project

- 12.4.1. On or after the Appointed Date, the Concessionaire shall undertake construction of the Project at the Site for the respective ULBs as set forth in Schedule A {Package 1/2/3/4/5/6/7} as per the Scope of Work as specified in Schedule B and in conformity with the Specifications and Standards as approved by the Authority. The completion of 6 (six) months from the Appointed Date shall be the scheduled date for completion of the Project (the "Scheduled Completion Date") and the Concessionaire shall agree and undertake to complete the Project on or before the Scheduled Completion Date;
- 12.4.2. In the event the Project is not completed within 180 (one hundred and eighty) days from the Scheduled Project Completion Date, unless the delay is due to the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate the Agreement; and
- 12.4.3. Within 30 (thirty) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and to the Independent Engineer, a complete set of as-built Drawings, in 2 (two) hard copies and in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey

illustrating the layout of the FSTPs and setback lines, if any, of the structures forming part of Project Facilities.

12.5. Monitoring of construction

- 12.5.1. During construction of the Project, the Concessionaire shall furnish monthly progress reports to the Independent Engineer on the progress of Construction Works and shall also give such other relevant information as may be required by the Independent Engineer or by the Authority. The monthly progress reports shall be submitted no later than 7 (seven) days after the close of each month;
- 12.5.2. Samples of all products to be used shall be submitted to the Authority when so directed. Any damage during construction, to any part of the work, for any reasons, due to rain, storm, or neglect of the Concessionaire, shall be rectified by the Concessionaire, in an approved manner;
- 12.5.3. During the Construction Period, the Independent Engineer shall inspect the Project at least once in a month and make a report of such inspection the defects or deficiencies, if any, with particular reference to the Scope of the Project, the progress of construction, defects or deficiencies, if any, the status of compliance with the Construction Plan and Specifications and Standards. It shall send a report within 7 days of such inspection to the Concessionaire and upon receipt thereof, the Concessionaire shall rectify and remedy the defects and the deficiencies, if any, stated in the Inspection Report. However, such inspections or the submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities, as per the provisions of the Agreement, in any manner whatsoever;
- 12.5.4. All equipment/machinery/applications covered under the Project shall be subjected to inspection / testing by the Independent Engineer on completion & commissioning; and
- 12.5.5. If the Independent Engineer has reasonably determined that the rate of progress of works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite the progress and the period within which it shall achieve COD.

12.6. Suspension of unsafe Construction Works

- 12.6.1. The Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the passersby. Provided, however, that in case of an Emergency, the Authority may suo moto issue the notice referred to hereinabove.
- 12.6.2. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Authority's Chief Engineer shall determine any

extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled and shall extend such Project Completion Schedule dates. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 13: COMPLETION CERTIFICATE

13.1. Tests

- 13.1.1. At least 15 (fifteen) days prior to the likely completion of the Project, the Concessionaire shall notify the Authority's Chief Engineer and the Independent Engineer on likely completion and its intent to subject the works to Tests. The Tests shall be conducted in presence of Concessionaire's representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may require for conducting the Tests.
- 13.1.2. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Project with Specifications and Standards and if it is reasonably anticipated or determined in any of the Tests that the performance of the system or any part thereof does not meet the Specifications and Standards, the Authority has the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. For the avoidance of doubt, it is expressly agreed that the Concessionaire may have to carry out additional Tests, if required, in accordance with Good Industry Practice, for determining the compliance of the Project with Specifications and Standards.
- 13.1.3. After placement of all systems, components and equipment as described in the design submitted by the Concessionaire, it shall be tested to prove satisfactory performance and /or fulfillment of functional requirements. It shall not show any sign of defect at individual equipment level and also for the system as a whole.

13.2. Completion Certificate

Upon completion of works and the Independent Engineer determining the tests to be successful, it shall put the Project facilities to Trial Operations for 15 (fifteen) days or such longer period as may be deemed necessary to determine whether the Project Facilities meet the Specifications and Standards and KPIs on a continuous basis and is fit and ready to be placed for treatment and disposal of Faecal Sludge and Septage in accordance with this Agreement and accordingly for commercial operations. The Authority shall ensure that adequate quantity of Faecal Sludge and Septage is delivered at the Site during the Trial Operations to enable the Concessionaire to demonstrate that the Project Facilities meet the Specifications and Standards and the KPIs in accordance with this Agreement. During the Trial Operations, the Independent Engineer shall monitor the performance of the Project Facilities on a regular basis and test the compliance of Treated Effluent and by-products with the Discharge Standards. On successful completion of Trial Operations and the

Independent Engineer certifying successful completion of Trial Operations, the Chief Engineer forthwith issue a certificate about the Project completion (the "Completion Certificate"). The Project shall be deemed to be complete when the Completion Certificate is issued.

13.3. Provisional Certificate

- 13.3.1. Subject to the provisions of Clause 13.3.2, the Authority's Chief Engineer may, at the request of the Concessionaire and on the recommendations of the Independent Engineer, issue a provisional certificate of completion (the "Provisional Certificate"), if the Tests including the Trial Operations are successful and the Project can be safely and reliably placed in commercial operations though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Authority's Chief Engineer and the Concessionaire (the "Punch List"); provided that the Chief Engineer shall not withhold the Provisional Certificate for reason of any work remain incomplete if the delay in completion thereof is attributable to the Authority.
- 13.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 13.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if the Concessionaire has completed construction of 100% (hundred per cent) of the Site made available to the Concessionaire up to 30 days from the Appointed Date. Upon issuance of such Provisional Certificate, the provisions of Article 14 shall apply to such completed part, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly.

13.4. Completion of Punch List items

- 13.4.1. All works in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire for the delay, other than for reasons solely attributable to the Authority or due to Force Majeure, to be calculated and paid for each day of delay until all Punch List items are completed, at 0.1% (zero point one per cent) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any work is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Authority's Chief Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 13.4.1.
- 13.4.2. Upon completion of all Punch List items and the Independent Engineer certifying the same, the Authority's Chief Engineer shall issue the

Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 13.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

ARTICLE 14: ENTRY INTO COMMERCIAL SERVICE

14.1. Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to receive Annuity Payments in accordance with the provisions of this Agreement.

14.2. Damages for delay

Subject to the provisions of 12.4, if COD does not occur prior to the 30th (thirtieth) day after the Scheduled Project Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 15: CHANGE OF SCOPE

15.1. Change of Scope

If the Concessionaire is unable to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority, the Authority, in its discretion, reduce the Scope of the Project (the “Change of scope”).

It is agreed between the Parties that the Authority shall not issue such reduction in Scope of the Project by way of a Change of Scope Order if the number of FSTPs to be developed by the Concessionaire gets reduced to less than 7 (seven) of the number of FSTPs envisaged to be developed as per the provisions of this Agreement. For avoidance of doubt, it is agreed that upon Reduction of Scope of the Project, the Bid Project Cost shall be reduced in proportion to the reduction in Design Capacity of the Project as provided in Schedule A {Package 1/2/3/4/5/6/7}.

For the sake of clarity and by way of illustration; in case the original Design Capacity of the Project as provided in Schedule A {Package 1/2/3/4/5/6/7} is 100 KLD and on account of Reduction in Scope of the Project, the revised Design Capacity is 80 KLD; the revised Bid Project Cost shall be Bid Project Cost multiplied by (80/100).

15.2. Effect of Change of Scope on the O & M Costs

Pursuant to the provisions of this Article 15, in case of Change of Scope, the O & M Payments as provided in Clause 21.5 shall be reduced in proportion to the reduction in Design Capacity for the Project.

ARTICLE 16: OPERATION AND MAINTENANCE**16.1. O & M obligations of the Concessionaire**

16.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O & M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and confirm to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a. to ensure that the Project Facilities are capable of treating Faecal Sludge and Septage up to its Design Capacity on a daily basis;
- b. providing adequate power backup at the Site (including installation of DG Sets) to ensure continuous supply of power for uninterrupted operations of the Project Facilities;
- c. implementing a safety & security plan in consultation and in coordination with the Authority;
- d. carrying out required repairs and maintenance of all the civil, electrical, mechanical, hardware, systems, furniture, and any other accessories at periodic intervals at its own cost;
- e. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- f. preventing, with the assistance of concerned law enforcement agencies, any encroachments on to the Project;
- g. operation and maintenance of all Project Facilities, control and administrative systems necessary for efficient operation of the Project and for providing safe and smooth operation of the Project;
- h. to maintain sufficient stock of the consumables required for smooth and efficient operations;
- i. maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- j. comply with Safety Requirements in accordance with Article 17;

16.1.2. The Concessionaire shall in consultation with the Authority evolve a maintenance manual (the "Maintenance Manual") for the regular operation plan and maintenance of the Project in conformity with the provisions of this Agreement and Good Industry Practice. The Maintenance Manual shall be submitted to the Authority and to the Independent Engineer not

later than 30 (thirty) days prior to Project achieving COD. It should show detailed operation procedures including a list of do's & don'ts. The Maintenance Manual shall be revised and updated once in 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

- 16.1.3. Without prejudice to the provisions of Clause 16.1.2, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition confirms to the provisions of this Agreement and Good Industry Practice.

16.2. Key Performance Indicators (KPIs)

- 16.2.1. The performance in service delivery shall be monitored by the Authority and same shall be monitored vis-à-vis the Concessionaire's Key Performance Indicators (the KPIs") as detailed in Schedule C of this Agreement; and
- 16.2.2. In the event that the Concessionaire fails to repair or rectify any defect or deficiency in service in adhering to minimum KPIs; it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, to be calculated as per the formula as set forth in Schedule C of this Agreement.

Recovery of such Damages shall be without prejudice to the rights of the Authority under the Agreement, including the right of Termination thereof. The Damages shall not be recovered if the breach(ies) are on account of Force Majeure.

16.3. Authority's right to take remedial measures

- 16.3.1. In the event the Concessionaire does not maintain and/or repair any defect or deficiency or any part thereof in conformity with the O & M Requirements, or the Maintenance Manual, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Independent Engineer, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 10% (ten per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.
- 16.3.2. The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 16.3.1 directly from the Escrow Account as if such costs and Damages were O & M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank, to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 16.3.2 and debit the same to O & M Expenses.

16.4. Overriding powers of the Authority

- 16.4.1. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the people residing in surrounding areas or to the personnel working at the respective FSTPs, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 16.4.2. In the event that the Concessionaire, upon notice under Clause 16.4.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 16.4.2 and take over the performance of the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O & M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 16.3 along with Damages specified therein.

16.5. Monitoring of Operations and Maintenance

- 16.5.1. During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Independent Engineer a monthly report stating in reasonable detail the condition of the Project Assets and the Project Facilities, machinery/systems including its compliance or otherwise with the O&M Requirements and the Maintenance Manual, and shall promptly give such other relevant information as may be required by the Independent Engineer.
- 16.5.2. The Independent Engineer shall inspect the Project at least once a quarter. It shall make a report of such inspection (the "O & M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the O & M Requirements, Maintenance Manual and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

ARTICLE 17: SAFETY REQUIREMENTS**17.1. Safety Requirements**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety to the personnel working at the Project Site and the people residing in the surrounding areas and/or the people passing through the surrounding areas. In this regard, the Concessionaire shall develop, implement and administer a surveillance and safety programme for

providing a safe environment at the Project Site in consultation with the Authority.

17.2. Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in consultation with the Authority. Such expenses shall be as approved and funded by the Authority.

ARTICLE 18: INDEPENDENT ENGINEER

18.1. Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm, to be the Independent Engineer under this Agreement (the “Independent Engineer”). The Independent Engineer shall assist the Authority in matters related to supervising construction, operation and maintenance of the Project and shall support the Authority to monitor compliance with Specifications and Standards and the KPIs. The appointment of Independent Engineer shall be made within 30 (thirty) days from the date of this Agreement and shall be initially for a period of 2 (two) years. Before expiry of the aforesaid appointment, the Authority shall appoint the Independent Engineer for a further term of 2 (two) years. At the discretion of the Authority, such procedure shall be repeated after expiry of each appointment.

18.2. Duties and functions

- 18.2.1. During the Construction Period the Independent Engineer shall inspect the Project Facilities at least once a month and once in a quarter during Operation Period, setting out the defects or deficiencies, if any, and status of compliance with the KPIs including the Influent Standards and the Discharge Standards. The Independent Engineer shall also verify the results of the tests undertaken by the Concessionaire at any time during the Operation Period at the Inlet Point and the Outlet Point to determine the standard of the Faecal Sludge and Septage, the byproducts and the Treated Effluent.
- 18.2.2. The Independent Engineer shall, at all times, have the right to attend any meetings held by the Authority to review the progress of construction, or O & M of the 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.
- 18.2.3. The Independent Engineer shall submit regular periodic reports to the Authority in respect of its duties and functions.
- 18.2.4. A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

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

18.3. Remuneration

The monthly remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority. Subject to the limits of 0.05% (zero point zero five per cent) of the Bid Project Cost up to COD; and thereafter subject to the limits of 0.03% (zero point zero three per cent) of the Bid Project Cost, one-half of such monthly remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

18.4. Termination of appointment

The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 18.1.

ARTICLE 19: FINANCIAL CLOSE

19.1. Financial close

19.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve financial close within 120 (one hundred and twenty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority specified in Clause 4.3, provided that the Damages specified herein shall be payable every 15 (fifteen) days in advance; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

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

19.2. Termination due to failure to achieve Financial Close

19.2.1. Notwithstanding anything to the contrary contained In this agreement, but subject to Clause 25.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 19.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have being waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have being terminated by mutual agreement of the Parties.

19.2.2. Upon Termination under Clause 19.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination return the Bid Security forthwith along with the Damages due and payable under clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 20: LEASE RENTAL

20.1. Lease Rental

The Concessionaire shall have to enter into a land lease agreement with the respective ULBs and to pay a lease rental (the "Lease Rental") of Rs. 1 per Square meter of land per annum for the land provided for development of the Project.

ARTICLE 21: PAYMENT OF BID PROJECT COST

21.1. Bid Project Cost

The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the to the Concessionaire, shall deemed to be Rs. -----(Rupees ----- only) (the "Bid Project Cost"). The Parties further agree that the Bid Project Cost specified hereinabove for payment to the Concessionaire shall be inclusive of the cost of construction, interest during construction, financing costs, preliminary and pre-operative expenses, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project, save and except any additional costs arising on account of Charge in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement.

21.2. Payment of Bid Project Cost

21.2.1. 50% (fifty per cent) of the Bid Project Cost shall be due and payable to the Concessionaire in 3 (three) unequal instalments during the Construction Period in accordance with the provisions of Clause 21.3.

21.2.2. The remaining Bid Project Cost shall be due and payable in 19 (nineteen) biannual instalments commencing from completion of 6 (six) months from COD in accordance with the provisions of 21.4.

21.3. Payment during Construction Period

21.3.1. Upon receiving a report from the Independent Engineer certifying the achievement of Payment Milestones as set forth hereunder, the Authority shall disburse, within 15 (fifteen) days of the receipt of such reports, the amount in accordance with the payment schedule as defined below:

S No.	Description	Description of Payment Milestone*	Schedule	release of payment*
--------------	--------------------	--	-----------------	----------------------------

S No.	Description	Description of Payment Milestone*	Schedule	release of payment*
1	1 st (first) Payment Milestone	shall be due and payable to the Concessionaire after it has expended at least 20% (twenty per cent) of the Bid Project Cost in the Project.	Within 3 (three) months from Appointed Date.	20% (twenty per cent) of the Bid Project Cost.
2	2 nd (second) Payment Milestone	shall be due and payable to the Concessionaire after it has expended at least 40% (forty per cent) of the Bid Project Cost in the Project.	Within 5 (five) months from Appointed Date.	20% (twenty per cent) of the Bid Project Cost.
3	3 rd (third) Payment Milestone	shall be due and payable to the Concessionaire on issuance of COD.	Within 6 (six) months from the Appointed Date.	10% (ten per cent) of the Bid Project Cost.

*subject to the provisions of Clause 10.3.2 and Clause 15.1, in case the land handed over is less than the land required for development of the envisaged Design Capacity as spelt out in Schedule A {Package 1/2/3/4/5/6/7}, the Payment Milestone shall be adjusted in proportion to the Design Capacity that could be developed based on the land handed over as on the Payment Milestone date and the release of payment shall be calculated accordingly.

21.4. Annuity Payments during Operation Period

21.4.1. The Bid Project Cost remaining to be paid shall be due and payable in equal biannual instalments over a period of 9 (nine) years and 6 (six) months commencing from COD, (the “Annuity Payments”). Each of the biannual instalments payable hereunder shall be paid along with interest as specified in Clause 21.4.2. The 1st (first) instalment of Annuity Payments shall be due and payable within 15 (fifteen) days of end of 6 (six) months from COD and the remaining instalments shall be due and payable within 15 (fifteen) days of completion of each of the successive 6 (six) months (the “Annuity Payment Date”).

21.4.2. Interest shall be due and payable on the reducing balance of Completion Cost at an interest rate equal to 9.75% (nine point seven five per cent). Such interest shall be due and payable biannually along with each instalment specified in Clause 21.4.1. For the avoidance of doubt and by way of illustration, the Parties agree that interest on the Bid Project Cost remaining to be paid, calculated from COD until the end of 6 (six) months, shall be due and payable to the Concessionaire along with the first Annuity Payment. The calculations for the above example shall be:

Amount of Annuity Payment + 9.75% X (50% of the Bid Project Cost X (1/2)).

For subsequent Annuity Payments, interest shall be calculated on the Bid Project Cost remaining to be paid on such Annuity Payment Date.

21.5. O & M Payments

Setting up of Faecal Sludge and Septage Treatment Plants (FSTPs) in Urban Local Bodies of Andhra Pradesh on Design, Build, Operate & Transfer (DBOT Hybrid Annuity) basis

- 21.5.1. The Parties acknowledge and agree that all O & M Expenses shall be borne by the Concessionaire and in lieu thereof; a lump sum financial support in the form of biannual payments shall be due and payable by the Authority, which shall be computed on the amount quoted by the selected bidder under its O & M Bid, in accordance with the provisions of this Clause 21.5 (the "O & M Payments"). The Parties further acknowledge and agree that any O & M Expenses in excess of the O & M Payments shall be borne solely by the Concessionaire, save and except as expressly provided in this Agreement. For avoidance of doubt it is clarified that the O & M Payments will be subject to any Change of Scope under Article 15 of this Agreement.
- 21.5.2. Subject to the provisions of Clause 21.5.3, the O & M Payments due and payable to the Concessionaire shall be paid in 2 (two) equal biannual instalments and disbursed by the Authority together with the corresponding instalments of Annuity Payments.
- 21.5.3. Each instalment of O & M Payment shall be the product of the amount determined in accordance with Clause 21.5.1 and the Inflation Multiple (the "Inflation Multiple") on the Reference Index Date preceding the due date of payment thereof. For the sake of clarity and by way of illustration, if (a). the O & M Bid is Rs. 10 (Rupees ten) lakh; (b). the O & M Payment is to be determined for the 2nd (second) year of the Operation Period; (c). the Inflation Multiple on the Bid Date shall be taken as 1 (one), the inflation shall be assumed at 5% (five per cent) and the Inflation Multiple on the Reference Index Date preceding the due date of payment is 1.1, then the O & M Payment for that period shall be the product of O & M Bid and the applicable Inflation Multiple divided by 2 (two), which shall be Rs.5.5 (Rupees five point five) lakh.

21.6. Revolving Fund

Authority shall deposit into the Escrow Account in advance a revolving fund (the "Revolving Fund") towards its payment obligations due and payable to the Concessionaire on achievement of Payment Milestones during Construction Period or the Annuity Payments due and payable during Operation Period, as the case may be, as per the provisions of this Article 21. For the avoidance of doubt and for the sake of clarity, the Authority shall deposit the Revolving Fund amount into the Escrow Account within 1 (one) month from Appointed Date equivalent to its payment obligations towards 1st Payment Milestone. The Escrow Account shall be replenished on or before issuance of Payment Certificate on achievement of 1st Payment Milestone with an amount equivalent to its payment obligations towards 2nd Payment Milestone and the same procedure shall be followed in its payment obligations towards 3rd Payment Milestone. Further, on or before issuance of COD, the Authority shall replenish the Escrow Account with the Revolving Fund equivalent to its payment obligations towards its 1st Annuity Payment along with the interest and the 1st O & M Payment. Thereafter, the same procedure shall be followed for subsequent payment obligations for the entire Concession Period.

For the sake of further clarity, the amount deposited by the Authority as Revolving Fund shall be kept as minimum escrow balance (the "Minimum Escrow Balance") by the Escrow Bank and shall be allowed to be withdrawn

only on the basis of issuance of Payment Certificate by the Authority and subject to Authority replenishing the Escrow Account with the next amount due and payable by it to the Concessionaire as per the provisions of this Article 21. Each time such replenishment of Escrow Account happens, the Minimum Escrow Balance shall be construed accordingly.

21.7. Mobilization Advance

The Authority shall, on request of the Concessionaire, made within 30 (thirty) days from the Appointed Date, and upon the Concessionaire furnishing a Bank Guarantee for a sum equal to 11% (eleven per cent) of the Bid Project Cost in a form satisfactory to the Authority, make an advance payment equal to 10% (ten per cent) of the Bid Project Cost (the "Mobilization Advance"). The Mobilization Advance shall be paid by the Authority within 30 (thirty) days of receipt of a request in this behalf from the Concessionaire. The rate of interest charged on the Mobilization Advance shall be 9.75% per annum. Such Mobilization Advance shall be deducted by the Authority along with the interest at 9.75% per annum in 3 (three) equal instalments from each of the payments to be made by the Authority to the Concessionaire in accordance with the provisions of Clause 21.3.

21.8. Treatment of incomplete works

21.8.1. The Parties acknowledge and agree that in the event COD occurs upon issuance of Provisional Certificate, the Annuity Payments and O & M Payments specified in this Article 21 shall be made proportionate to the works completed and the Design Capacity developed for the Project. The complete payments shall be effected on the issuance of Completion Certificate for entire Project.

21.8.2. In the event the Authority determines that any incomplete works referred to in Clause 21.7.1 are not required to be completed for any reason, it shall modify the scope of the Project in accordance with the provisions of Article 15 and the Bid Project Cost, Annuity Payments and O & M Payments shall be reduced on account of such Change of Scope as per the provisions of Article 15.

ARTICLE 22: ESCROW ACCOUNT

22.1. Escrow Account

22.1.1. Prior to the Appointed Date, the Concessionaire, shall have to open and establish Escrow Account with a bank (the "Escrow Bank") acceptable to the Authority in accordance with the Agreement read with the Escrow Agreement.

22.1.2. The nature and the scope of the Escrow Account are, as described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, if any, which shall be substantially in the form set forth in Schedule E.

22.2. Deposits into Escrow Account

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

- a. all funds constituting the Financial Package;
- b. all revenues from or in respect of the Project, including the proceeds of any deposits, capital receipts or insurance claims; and
- c. all payments by the Authority, after deduction of any outstanding payments.

22.3. Withdrawals during Concession Period

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

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c. O & M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d. O & M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Agreement, and certified by the Authority as due and payable to it;
- e. Any amounts due and payable to the Authority;
- f. Monthly proportionate provision of Debt Service due and payable in an Accounting Year;
- g. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- h. Monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt, if any;
- i. Any reserve requirements set forth in the Agreement or in the Financing Agreements; and

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

22.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 22.3.1, except with the prior written approval of the Authority.

22.4. Withdrawals upon Termination

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

- a. All taxes due and payable by the Concessionaire for and in respect of the Project;
- b. Percentage of Debt Due, excluding Subordinated Debt as per the terms of this Agreement;
- c. Outstanding payments due to the Authority;
- d. All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- e. Retention and payments relating to the liability for defects and deficiencies set forth in Article 30;
- f. Outstanding Debt Service including the balance of Debt Due;
- g. Outstanding Subordinated Debt, if any;
- h. Incurred or accrued O & M Expenses;
- i. Any other payments required to be made under this Agreement; and
- j. Balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 22.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 29.

22.4.2. The provisions of this Article 22 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 22.4.1 have been discharged.

ARTICLE 23: INSURANCE

23.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements, Applicable Laws and such

insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a coinsured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

23.2. Insurance Cover

Without prejudice to the provisions contained in Clause 23.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- a) Loss, damage or destruction of the Project Assets at replacement value;
- b) Comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- c) The Concessionaire's general liability arising out of the Concession;
- d) Liability to third parties for goods or property damage;
- e) Workmen's compensation insurance; and
- f) Any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items a) to e) above.

23.3. Notice to Authority

No later than 30 (thirty) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 23. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

23.4. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 23 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation,

modification or non-renewal has been delivered by the Concessionaire to the Authority.

23.5. Remedy for failure to insure

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

23.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 23 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

23.7. Concessionaire's waiver

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

23.8. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury: shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 22.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

23.9. Compliance with conditions of insurance policies

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

ARTICLE 24: ACCOUNTS AND AUDIT**24.1. Audited Accounts**

- 24.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 24.1.2. On or before the thirty-first day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

ARTICLE 25: FORCE MAJEURE**25.1. Force Majeure**

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India which affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

25.2. Non-Political Event

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

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 25.3;
- c. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

25.3. Indirect Political Event

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

- a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) Any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- c) Industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- d) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e) Any Indirect Political Event that causes a Non-Political Event; or
- f) Any event or circumstances of a nature analogous to any of the foregoing.

25.4. Political Event

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

- a. Change in Law, if as a result of Change in Law, the Concessionaire suffers an increase in costs and/or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 5 (rupees five) lakh in any Accounting Year;
- b. compulsory acquisition in national/state interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- c. any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- d. any event or circumstance of a nature analogous to any one of the foregoing.

25.5. Duty to report Force Majeure Event

- 25.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith.
- 25.5.2. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 25.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with weekly reports containing information as required by Clause 25.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

25.6. Effect of Force Majeure Event on the Concession

- 25.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in Clause 19.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 25.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:
- a. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - b. after COD, the Concessionaire shall be entitled to receive annuity Payments plus interest due and payable under this Agreement.
- provided any payment to be made under this clause shall be subject to deduction of outstanding dues of the Authority, if any.

25.7. Allocation of costs arising out of Force Majeure

- 25.7.1. Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 25.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:
- a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - b. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the

Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

- c. upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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

- 25.7.3. Save and except as expressly provided in this Article 25, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

25.8. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 25, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

25.9. Termination Payment for Force Majeure Event

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

- (i) prior to COD: 90% (ninety per cent) of Debt Due, less Insurance Cover.

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

(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 75% (seventy five per cent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date. Provided further the above payment so calculated above shall be reduced by Insurance Cover.

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

(i) In case termination occurs prior to COD:

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

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

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

(ii) In case Termination occurs on or after COD, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of Annuity Payments remaining unpaid for and in respect of the remaining Concession Period, including interest thereon up to the Transfer Date.

25.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 28.3.3 as if it were an Authority Default.

25.10. Dispute resolution

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

25.11. Excuse from performance of obligations

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

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

ARTICLE 26: COMPENSATION FOR BREACH OF AGREEMENT

26.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 26.3, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 26.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or any consequential losses incurred by the Authority.

26.2. Compensation for default by the Authority

Subject to the provisions of Clause 26.3, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and for determining such compensation, information contained in the Financial Package may be relied upon to the extent it is relevant.

26.3. Mitigation of costs and damage

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

ARTICLE 27: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

27.1. Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all

rights of the Concessionaire under this Agreement, pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

27.2. Authority to act on behalf of Concessionaire

27.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect any revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O & M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 22.3.

27.2.2. During the period of Suspension hereunder, all assets and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 27.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

27.3. Revocation of Suspension

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

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

27.4. Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the

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

27.5. Termination

27.5.1. At any time during the period of Suspension under this Article 27, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subjective to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 27.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 28 as if it is a Concessionaire Default under Clause 28.1.

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

ARTICLE 28: TERMINATION

28.1. Termination for Concessionaire Default

28.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, the Concessionaire shall be deemed to be in default of this Agreement (a "Concessionaire Default"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a. the Performance Security has been encashed and appropriated by the Authority in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 21 (twenty one) days;
- b. subsequent to replenishment or furnishing of fresh Performance Security, as the case may be, in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a cure period of 60 (sixty) days;

- c. the Concessionaire abandons or manifests intention to abandon the construction or the operation of the Project without the prior written consent of the Authority;
- d. COD does not occur within the period specified in Clause 12.3.3;
- e. the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- f. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- g. the Concessionaire has failed to make any payment to the Authority within the Period specified in this Agreement;
- h. an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- i. upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- j. a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- k. the Concessionaire creates any Encumbrance in breach of this Agreement;
- l. the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- m. a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- n. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- o. an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- p. the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- q. the Concessionaire has been, or in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

- r. a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - iii. each of the Project Agreements remains in full force and effect;
 - s. any representation and warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
 - t. the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
 - u. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
 - v. the Concessionaire issues a Termination Notice in violation of this Agreement;
 - w. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- 28.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of

such representation, issue the Termination Notice, subjective to the provisions of Clause 28.1.3.

28.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 28.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

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

28.2. Termination for Authority Default

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

- a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- b. the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- c. the Authority fails to provide, within a period of 180 (one hundred and eighty) days from the Appointed Date, the Site required for construction of the Project; or
- d. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

28.2.2. Without prejudice to any other rights or remedies which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the

Authority of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

28.3. Termination Payment

28.3.1. Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 65% (sixty five per cent) of the sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.

28.3.2. Notwithstanding to the provisions of Clause 28.3.1 upon Termination on account of Concessionaire Default during the Construction Period, the Termination Payment shall be based on the Payment Milestone achieved which is in terms of the physical progress made by the Concessionaire in the Project and the Termination Payment corresponding to the achieved Payment Milestone shall be as follows:

Payment Milestone	Termination Payment
1 st Payment Milestone	Nil
2 nd Payment Milestone	60% of Debt Due
3 rd Payment Milestone	80% of Debt Due

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

28.3.3. Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(i) in case the termination occurs prior to COD

a) Debt Due as on the Payment Milestone less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

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

b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

(ii) in case the termination occurs on or after COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to sum of Annuity Payments remaining unpaid for and in respect of the Concession Period, including interest thereon up to the Transfer Date.

28.3.4. Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at 9.75% per annum on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

28.3.5. The Concessionaire expressly agrees the Termination Payment under this Article 28 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

28.4. Certain limitations on Termination Payment

During the Construction Period, Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due in accordance with the provisions of this Agreement. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty five per cent) of the Total Project Cost.

28.5. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- a. be deemed to have taken possession and control of the Project forthwith;
- b. take possession and control of all materials, stores, implements, equipment, systems used or being used in the development of the Project;
- c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- d. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 29.1; and
- e. succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interest of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors,

and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

28.6. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 28.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money Damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 29: DIVESTMENT OF RIGHTS AND INTEREST

29.1. Divestment Requirements

29.1.1. Upon Termination, the Concessionaire shall comply with and confirm to the following Divestment Requirements:

- a. notify to the Authority forthwith the location and particulars of all Project Assets;
- b. deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- c. cure all defects and deficiencies in the Project Assets so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all the Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance including all programs and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- e. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning

all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturer's warranties in respect of any product or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

29.2. Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 30 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 29.

29.3. Vesting Certificate

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

29.4. Divestment Costs

29.4.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favor of the Authority upon Termination, save and except that all stamp

duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

29.4.2. In the event of any Dispute relating to matters covered by and under this Article 29, the Dispute Resolution Procedure shall apply.

ARTICLE 30: DEFECTS LIABILITY AFTER TERMINATION

30.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 30.2. For the avoidance of doubt, the provisions of this Article 30 shall not apply if Termination occurs prior to COD.

30.2. Retention in Escrow Account

30.2.1. Notwithstanding anything contrary contained in this Agreement a sum equal to 15% (fifteen per cent) of the Annuity Payment due and payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 30.1.

30.2.2. Without prejudice to the provisions of Clause 30.2.1, the Independent Engineer shall carry out an inspection of the Project at least 120 (one hundred and twenty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 30.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

ARTICLE 31: ASSIGNMENT AND CHARGES

31.1. Restrictions on assignment and charges

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

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

31.2. Permitted assignment and charges

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

- a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- b. mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow Account, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- c. assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- d. liens or encumbrances required by any Applicable Law.

31.3. Substitution Agreement

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

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

31.4. Assignment by the Authority

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

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

ARTICLE 32: LIABILITY AND INDEMNITY

32.1. General indemnity

The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any Users, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

32.2. Indemnity by the Concessionaire

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

- a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's Contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.

32.2.2. Without limiting the generality of the provisions of this Article 32, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project.

32.3. Notice and contest of claims

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

32.4. No consequential claims

Notwithstanding anything to the contrary contained in this Article 32, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

32.5. Survival on Termination

The provisions of this Article 32 shall survive Termination.

ARTICLE 33: RIGHTS AND TITLE OVER THE SITE

33.1. Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

33.2. Access rights of the Authority and others

33.2.1. The Concessionaire shall allow free access to the Site at all times for the Representatives of the Authority and the Independent Engineer, and for the persons duly authorized by the Authority to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

33.2.2. The Concessionaire shall, for the purpose of operation and maintenance of any utility specified in Article 11, allow free access to the Site at all times for the authorized persons of the controlling body of such utility.

33.3. Property taxes

The Concessionaire shall not be liable to pay any property taxes for the Site. However, the Concessionaire shall be required to pay, at its own cost, all applicable existing and future taxes/ charges/ fees/ levies including service tax, stamp duty, registration charges and any other charges payable/ leviable in respect of the said Project.

33.4. Restriction on sub-letting

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

ARTICLE 34: DISPUTE RESOLUTION

34.1. Dispute resolution

34.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 34.2.

34.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

34.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Managing Director, Swachha Andhra Corporation and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 34.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 34.3.

34.3. Arbitration

34.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 34.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 34.3.2. Such arbitration shall be held in accordance with the rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Vijayawada and the language of arbitration proceedings shall be English;

- 34.3.2. There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected;
- 34.3.3. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 34 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay;
- 34.3.4. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated; and
- 34.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

34.4. Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 34.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 35: DISCLOSURE

35.1. Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of the Concession Agreement, the Maintenance Manual, the O & M requirements and the Safety Requirements (hereinafter collectively referred to as the "Specified Documents") free of charge, during normal business hours on all working days at the Concessionaire's Registered/Corporate Office. The Concessionaire shall provide copies of the same to any person upon payment of copying charges on a 'no profit no loss' basis.

35.2. Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project free of charge, during normal business hours on all working days, at the Concessionaire's Registered/Corporate Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

- 35.3.** Notwithstanding the above provisions of Clauses 35.1 and 35.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the afore said clauses.

Explanation: The expression Protected Documents shall mean such of the Specified Documents or documents referred in Clause 35.1 and 35.2, or portion thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 36: REDRESSAL OF PUBLIC GRIEVANCES

36.1. Complaints Box

36.1.1. The Concessionaire shall maintain a public relations office at its Registered/Corporate Office and keep a box (the "Complaint Box") in all the FSTPs open to public access at all times for lodging of complaints, if any (the "Complaint");

36.1.2. In addition to the provisions of Clause 36.1.1, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and responses thereto.

36.2. Redressal of complaints

36.1.1. The Concessionaire shall attend to Public complaints promptly and reasonable action has to be taken for redressal of each of the complaints. It shall have to maintain a register wherein all the complaints are noted for the action taken on the same, time taken for closing of the complaint and such other information that the Authority may advise the Concessionaire to incorporate in the register.

36.1.2. Within seven days of the close of each month, the Concessionaire shall have to send the Authority the complaint file in electronic form (at the authorized email address). Upon perusal of the complaint file, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.

ARTICLE 37: MISCELLANEOUS

37.1. Governing law and jurisdiction

The Agreement shall be governed by the laws of India, including but not limited to laws of Government of Andhra Pradesh and Swachha Andhra Corporation and respective ULBs extant rules and regulations in force and as amended from time to time; and the Courts in Vijayawada/Hyderabad under the jurisdiction of Andhra Pradesh shall have exclusive jurisdiction in all matters under this Agreement.

37.2. Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

37.3. Delayed Payments

37.3.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless and otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay at the rate of 10.75% (ten point seven five per cent), and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

37.3.2. Unless and otherwise specified, any interest payable under this Agreement shall accrue on a daily basis and shall be compounded on the basis of quarterly rests.

37.4. Waiver

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

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

37.5. Liability for review of Documents and Drawings

Express extent expressly provided in this Agreement:

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

37.6. Survival

37.2.1. Termination shall:

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

37.2.2. All obligations surviving Termination shall only survive for a period of 1 (one) year following the date of such Termination.

37.7. Entire Agreement

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

37.8. Severability

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

37.9. No partnership

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

37.10. Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement

shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

37.11. Successors and Assigns

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

37.12. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall be deemed to have been delivered when in normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

37.13. Language

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

37.14. Counterparts

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

ARTICLE 38: DEFINITIONS

38.1. Definitions

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

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

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

- a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the month of Appointed Date and the month of Reference Date;
- b. from COD and until the 2nd (second) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base

(the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date:

- c. after the 2nd (second) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 1.2% (one point two per cent) thereof at the commencement of each month following the 2nd (second) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date:

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

“Affected Party” shall have the meaning set forth in Clause 25.1

“Agreement” or “Concession Agreement” means this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.

“Annuity Payments” shall have the meaning as set forth in Clause 21.4.1;

“Annuity Payment Date” shall have the meaning as set forth in Clause 21.4.1;

“Appendix” shall have the meaning set forth in Clause 10.3.1;

“Applicable Laws” means all laws brought into force and effect by Andhra Pradesh State Government or the Government of India (GoI) including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of respective rights and obligations of the parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

“Appointed Date” means the date on which every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Associate” or “Affiliate” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member}. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power of direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

“Authority Default” shall have the meaning set forth in Clause 28.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Clause 32.1;

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

“Availability” means the availability of the Facilities to convey, accept and treat the Faecal Sludge and Septage, as determined in accordance with Schedule B and the term “Available” shall be construed accordingly;

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

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

“Bid Project Cost” shall have the meaning as set forth in Clause 21.1;

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

“BOD” means biochemical oxygen demand;

“By-products” means the by-products of the treatment process after the Faecal Sludge and Septage has passed through the Project Facilities and it consists of the Digested Sludge, the Residual Grit and the Screenings;

“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 14.1;

“Change in Law” means occurrence of any of the following after the date of Bid:

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

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/Consortium Member}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof after the expiry of 3 (three) years from the COD, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be), in the proportion of the equity holding of {the selected bidder/Consortium Member} to the total Equity, if it occurs prior to completion of a period three years after COD, shall constitute Change in Ownership.

“Change of Scope” shall have the meaning set forth in Clause 15.1;

“Company” means the company acting as the Concessionaire under this Agreement;

“Completion Certificate” shall have the meaning as set forth in Clause 13.2;

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

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

“Concession Period” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“Concessionaire Default” shall have the meaning as set forth in Clause 28.1.1;

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

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

{“Consortium” shall have the meaning as set forth in Recital (B);}

{“Consortium Member” means a company specified in Recital (B) as a member of the Consortium;}

{“Lead Member” means a company specified in Recital (B) as the lead member of the Consortium;}

“Construction Period” means the period beginning from the Appointed Date and ending on COD;

“Construction Works” means all works and things necessary to complete the Project in accordance with this Agreement;

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

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

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

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

“DBOT” or “Design, Build, Operate & Transfer” shall have the meaning set forth in Recital (A);

“Damages” shall have the meaning set forth in Sub-clause (m) of Clause 1.2.1;

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

- a. the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment six months prior to the Transfer Date;
- b. all accrued interest, financing fees and the charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due six months prior to the Transfer Date and (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender; and
- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost.

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

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

“Development Period” means the period from the date of this Agreement until the Appointed Date”.

“Design Capacity” means the average flow of Faecal Sludge and Septage that the Facilities should be designed to handle and treat in a day as provided in Schedule A of this Agreement;

“DG Sets” means the backup diesel generator sets maintained by the Concessionaire at the Site, to ensure continuous supply of power for the operation of the Facilities, when the supply of power from the grid is not available;

“Digested Sludge” means the sludge which is obtained after the treatment and digestion of the Faecal Sludge and Septage;

“Discharge Standards” means the minimum standards set out in Schedule C that the Treated Effluent and Digested Sludge must comply with;

“Dispute” shall have the meaning set forth in Clause 34.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 34;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 29.1;

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

“Drawings” means drawings, calculations and documents pertaining to the Project and shall include ‘as built’ drawings of the Project.

"EPC Contract" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

“Emergency” means a condition or situation that is likely to endanger the environment or lives or security of the people at or around the Site, or which poses an immediate threat of material damage to any of the Project Assets;

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

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

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

“Escrow Agreement” shall have the meaning as set forth in Clause 22.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 22.1.1;

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

“Estimated Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Request for Proposal;

“Feacal Sludge” means the sludge from onsite containment systems and has not been transported through a sewer. It is raw or partially digested, a slurry or semisolid, and results from the collection, storage or treatment of combinations of excreta and blackwater, with or without grey water;

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

“Financial Default” shall have the meaning set forth in Schedule F;

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

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

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.3.2;

“Force Majeure” or Force Majeure Event” shall have the meaning ascribed to it in Clause 25.1;

“FSTPs” means the Faecal Sludge and Septage Treatment Plants to be developed under the provisions of this Agreement;

“GoAP” means the Government of Andhra Pradesh;

“GoI” means the Government of India;

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

Applicable Laws and Applicable Permits in reliable, safe, economical and efficient use of the Project;

“Government” means the Government of Andhra Pradesh;

“Government Instrumentality” means any department, division, or sub-division of the State Government or the GoI and includes any commission, board, authority, agency or any other local authority and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to the Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 32;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 32;

“Independent Engineer” shall have the meaning as set forth in Clause 18.1;

“Indirect Political Event” shall have the meaning as set forth in Clause 25.3;

“Inflation Multiple” shall have the meaning as set forth in Clause 21.5.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 23, and includes all insurances required to be taken out by the Concessionaire under Clause 23.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“KPIs” means the key performance indicators set out in Schedule C, which the Project Facilities shall achieve during the O & M Period;

“Lease Rental” shall have the meaning as set forth in Clause 20.1;

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

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters

arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Licensed Premises” shall have the meaning as set forth in Clause 10.2.2;

“Maintenance Manual” shall have the meaning ascribed to it in Clause 16.1.2;

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

“Minimum Escrow Balance” shall have the meaning as set forth in Clause 21.6;

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

“Non-Political Event” shall have the meaning set forth in Clause 25.2;

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

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

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

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

“O & M Inspection Report” shall have the meaning as set forth in Clause 16.5.2;

“O & M Payments” shall have the meaning as set forth in Clause 21.5.1;

“Operation Period” means the operation and maintenance period commencing from COD and ending on the Transfer Date;

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

“Payment Certificate” means a certificate issued by the Authority to the Escrow Bank certifying the release of payment to the Concessionaire towards the amount due and payable by the Authority to the Concessionaire in accordance with the provisions of Article 21;

“Payment Milestone” shall have the meaning as set forth in Clause 21.3.1;

“Performance Security” shall have the meaning set forth in Clause 9.1.1;

“Political Event” shall have the meaning as set forth in Clause 25.3;

“Power Outage” means any interruption in the supply of electricity from the grid or DG Sets maintained by the Concessionaire at the Site, which disrupts the continuous operation of the FSTP Facilities;

“Project” means the construction, operation and maintenance of the Project in accordance with the provisions of the Agreement; and includes all works, services, systems, software, equipment/plant & machinery relating to or in respect of the Scope of the Project at the Site and all Project Assets in accordance with this Agreement; and “Project Facilities” to be construed accordingly;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O & M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs.10 (Rupees ten) lakh;

“Project Assets” means all physical and other assets relating to and forming part of the Site including a). rights over the Site in the form of license or otherwise; b). tangible assets such as civil works and equipment including electrical systems, communication systems, maintenance depots, and administrative offices; c). Project Facilities; d). all rights of the Concessionaire under the Project Agreements, e). financial assets, such as receivables, security deposits, etc., f). insurance proceeds and g). Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Schedule” means the Project Completion Schedule submitted by the Concessionaire and as approved by the Authority;

“Proposed Technology” means the proven technology(ies) proposed to be used by the Concessionaire to develop the Project at the time of bidding for the Project and as specified in Designs and Drawings;

“Provisional Certificate” shall have the meaning as set forth in Clause 13.3;

“Punch List” shall have the meaning ascribed to it in Clause 13.3.1;

“Reference Index Date” means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Wholesale Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Wholesale Price Index or any constituent thereof shall be adopted provisionally and used until the Wholesale Price Index or such constituent thereof is revised and notified;

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

“Residual Grit” means the grit which is obtained as residual matter after the treatment of the Faecal Sludge and Septage;

“Revolving Fund” shall have the meaning as set forth in Clause 21.6;

“Rs. or “Rupees” means the lawful currency of the Republic of India;

“Safety Requirements” shall have the meaning set forth in Clause 17.1.1;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 12.3.1;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

“Scope of Work” shall have the meaning as set forth in Schedule B;

“Screenings” means solids such as fibres, plastic and other products or things, which shall have to be removed from the Faecal Sludge and Septage prior to the treatment at the Site;

“Septage” means partially treated sludge that is accumulated and stored in a septic tank;

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

“Site” shall have the meaning set forth in Clause 10.1;

“Specifications and Standards” means the specifications relating to the quality, quantity, capacity and other requirements for the Project, and any modifications thereof or additions thereto, as included in the design and

engineering for the Project submitted by the Concessionaire in accordance with the provisions of Schedule B, and expressly approved by the Authority;

“State” means the State of Andhra Pradesh;

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

- a) the principal amount of debt provided by the lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders;
- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 9.75% (nine point seven five per cent), but does not include any interest that had fallen due 6 (six) months prior to Transfer Date;

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

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

“Suspension” shall have the meaning set forth in Clause 27.1;

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

“Termination” means the expiry or termination of this Agreement and the Contract hereunder;

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

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

“Total Project Cost” means 50% (fifty per cent) of the Bid Project Cost specified in Clause 21.1;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Debt Due, in accordance with the provisions of this Agreement;

provided also that the Total Project Cost shall not exceed 50% (fifty per cent) of the actual capital expenditure on the Project and capitalized in the books of accounts of the Concessionaire as certified by the statutory auditor;

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

“Treated Effluent” means the water which is obtained after the treatment of the Faecal sludge and Septage;

“ULB” means Urban Local Body in the State of Andhra Pradesh for which the Faecal Sludge & Septage Treatment Plants (FSTPs) shall be established as per the provisions of this Agreement;

“Vesting Certificate” shall have the meaning as set forth in Clause 29.3;

“Waste Disposal Site” shall have the meaning as set forth in Clause 5.2 (q);

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY OF [***] by:

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

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

In the presence of: 1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

SCHEDULE A**PACKAGE 1:**

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Gooty	Anantapur	52.0	15
2	Kadiri	Anantapur	91.9	25
3	Kalyandurgam	Anantapur	58.9	10
4	Madakasira	Anantapur	113.0	5
5	Paamidi	Anantapur	33.8	10
6	Puttaparthi	Anantapur	93.6	10
7	Rayadurg	Anantapur	97.1	20
8	Rayachoty	Kadapa	51.9	25
9	Pulivendula	Kadapa	73.4	20
10	Dhone	Kurnool	53.3	20
11	Jammalamadugu	Kadapa	79.9	15

PACKAGE 2:

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Badvel	Kadapa	58.3	25
2	Mydukur	Kadapa	36.7	15
3	Rajampeta	Kadapa	53.1	15
4	Yerraguntla	Kadapa	39.1	10
5	Allagadda	Kurnool	56.3	10
6	Atmakur	Kurnool	70.3	15
7	Gudur	Kurnool	28.4	5
8	Nandikotkur	Kurnool	30.7	15
9	Palamaneru	Chittoor	41.1	15
10	Punganur	Chittoor	71.8	15

PACKAGE 3:

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Nagari	Chittoor	59.4	20
2	Puttur	Chittoor	64.7	15
3	Atmakur	Nellore	50.3	10
4	Gudur	Nellore	43.7	20
5	Naidupet	Nellore	69.7	15
6	Sullurpet	Nellore	96.3	15
7	Venkatagiri	Nellore	81.2	15
8	Kandukur	Prakasam	43.3	20
9	Kanigiri	Prakasam	81.2	15
10	Markapur	Prakasam	95.8	20
11	Giddalur	Prakasam	142.0	10

PACKAGE 4:

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Adanki	Prakasam	41.8	10
2	Chimakurthy	Prakasam	22.7	10
3	Chirala	Prakasam	61.9	25
4	Bapatla	Guntur	53.1	25
5	Macherla	Guntur	120.0	15
6	Mangalagiri	Guntur	26.6	25
7	Piduguralla	Guntur	67.5	15
8	Ponnur	Guntur	31.7	15
9	Repalle	Guntur	129.0	15
10	Sattenapalli	Guntur	34.0	15
11	Vinukonda	Guntur	89.5	15

PACKAGE 5:

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Tadepalli	Guntur	33.7	20
2	Jaggiahpetta	Krishna	149.0	15
3	Nandigama	Krishna	122.0	15
4	Nuzivid	Krishna	82.1	15
5	Pedana	Krishna	8.2	10
6	Tiruvuru	Krishna	130.0	10
7	Vuyyuru	Krishna	40.1	15
8	Jangareddigudem	West Godavari	55.1	15
9	Nidadavole	West Godavari	79.1	15
10	Tanuku	West Godavari	73.1	25
11	Palacole	West Godavari	106.0	20

PACKAGE 6:

S No.	Name of the Town	District	Distance from District Headquarters (Km)	Design Capacity of the FSTP (KLD)
1	Amalapuram	East Godavari	64.2	15
2	Gollaprolu	East Godavari	22.1	5
3	Mandapeta	East Godavari	46.5	15
4	Mumidivaram	East Godavari	50.5	10

5	Peddapuram	East Godavari	21.8	15
6	Pithapuram	East Godavari	15.3	15
7	Ramachandrapuram	East Godavari	33.9	15
8	Samalkot	East Godavari	15.9	15
9	Tuni	East Godavari	59.6	15
10	Yeleswaram	East Godavari	53.6	10
11	Kovvur	West Godavari	95.7	10

PACKAGE 7:

S No.	Name of the Town	District	Distance from District Head-quarters (Km)	Design Capacity of the FSTP (KLD)
1	Yellamanchali	Visakapatnam	48.7	15
2	Narsipatnam	Visakapatnam	70.9	20
3	Bobbili	Viziyanagaram	61.2	15
4	Nellimarla	Viziyanagaram	10.5	10
5	Salur	Viziyanagaram	56.9	15
6	Amadalavalasa	Srikakulam	48.3	10
7	Ichapuram	Srikakulam	99.7	10
8	Palakonda	Srikakulam	40.5	10
9	Palasa Kasibugga	Srikakulam	81.9	15
10	Parvathipuram	Srikakulam	88.7	15
11	Rajam	Srikakulam	41.9	15

SCHEDULE B
(see Clause 2.1.1)
SCOPE OF WORK

The Scope of Work of the Concessionaire during the Concession Period is as detailed hereunder:

- a. The concessionaire is responsible for design, construction/installation, operation and maintenance of the FSTPs for effective treatment of Faecal Sludge and Septage in respective ULBs at the Project Site being provided by the Authority/ULBs and in conformity with the Specifications and Standards submitted by the Concessionaire and as approved by the Authority. The Design Capacity of each of the FSTPs shall be as spelt out in Schedule A of this Agreement.
- b. The construction includes the civil works along with development of all support infrastructure, electromechanical, instrumentation and such other activities that are required to be carried out for putting the FSTPs in safe operations;
- c. The design and construction of structures such as treatment modules, building, receiving stations and such other things shall have to take into consideration the local conditions and to cope with the risks associated with storms, winds, flooding, etc.
- d. Depending on the type of end products, viz., sludge and treated waste water, adequate and safe storage facility shall be provided. The design shall take into account the necessary measures, storage and/or treatment needed to render the helminths' eggs inert;
- e. The FSTPs shall be designed and constructed for all-weather operation and be able to handle variable input loads of varying characteristics and ability of the system to handle anticipated shocks such as floods, soil-subsidence, power outage, process hazard if chemical or biological materials are used, etc., and measures for mitigating risks. Arrangements for buffer-storage and/or pre-treatment as necessary, shall be provided;
- f. To carry out soil bearing capacity tests before commencement of construction works to obtain data to develop foundation designs;
- g. To install and operate bore wells at the FSTPs and it includes re-boring, in case of failure of water source;
- h. To develop storage facility at the Project Site for septage & sludge received and treated;
- i. The support infrastructure shall include the following:
 - i. Reception area with toilet and washroom;
 - ii. Operator room with toilet and washroom;
 - iii. Interior roads within FSTP premises;
 - iv. Compound wall of wall thickness of at least 30 cm and 2 m height above ground level;

- v. Feecal Sludge receiving platform;
 - vi. Facility to store bio-solids as needed;
 - vii. Drainage inside the FSTP premises and drainage outfall into storm water drainage;
 - viii. Provision for rain water harvesting; and
 - ix. To develop such other support infrastructure as incidental to the activities.
- j. To establish and operate laboratory for testing the influent and effluent as per protocols for testing, and testing of bio-solids as per WHO/other applicable norms, 1 (one) laboratory for the Project;
- k. Alternative electrical power source sufficient to operate the pollution control system of FSTP shall be installed and operated as required;
- l. To install and operate 2 (two) CCTVs in each of the FSTPs, one covering the tankers/trucks unloading area and the other covering treatment facility area; and CCTVs feed have to be connected to the Swachha Andhra Corporation/ULBs;
- m. To install and operate biometric access control system and entry into the Project sites be regulated through biometric access for all the staff working at the treatment facility and the unloading tanker/truck drivers;
- n. To undertake a mass awareness / sensitization program in the surrounding residential / village area, so as to ensure local people are aware of the facility and to take them into confidence of the FSTP activities;
- o. To undertake marketing, distributing and selling soil conditioner/bio-fertilizer and/or bio-gas and the recycled water as may be required;
- p. To establish consumer grievance redressal system for Feecal Sludge management and to share helpline numbers with residents as part of monitoring and record keeping systems for efficient management of Feecal Sludge; and
- q. Perform and fulfill such other obligations incidental to the proposed activities.

Project development with the proposed technology:

1. The Concessionaire shall have to employ the technology that it had submitted in the Bid and as approved by the Technical Advisory Committee (TAC) constituted by GoAP;
2. The Concessionaire has the right to develop the Project using such approved technology for implementation of the Project in accordance with the provisions of the Concession Agreement and Applicable Laws. The Concessionaire shall have the right to modify, adapt, upgrade, or change the technology, from time to time, based on actual operations of processing facility subject to meeting Key Performance Indicators and other provisions of the Concession Agreement. The Concessionaire has the following general obligations, irrespective of the technology used, for Project development:

- i. Components / equipment to be deployed at the treatment plant shall comply with approved/minimum technical standards as per Bureau of Indian Standards (BIS) / International Electro-technical Commission / technical standards that are specified by Government of Andhra Pradesh, as amended from time to time, and as per good industry practice; and
 - ii. Open burning of sludge/waste is not permitted.
3. If the selected bidder/Consortium Member is the owner of the proposed technology, then the Concessionaire shall enter into a technology license agreement with the selected bidder/Consortium Member under which the selected bidder/Consortium 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 Project Facilities;
4. If the selected bidder/Consortium 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, non-exclusive and royalty-free license to use the proposed technology. At no point will the Authority be obliged to make any payments to the Concessionaire towards the licensing and use of the proposed technology;
5. Upon Termination of this Agreement, the Concessionaire shall assign the license and the related rights to use the proposed technology for the sole purpose of operating and maintaining the Project at no additional cost to the Authority;
6. The Concessionaire shall indemnify the Authority for any claims, losses, damages and costs suffered by the Authority as a result of an infringement of any third party's Intellectual Property Rights caused by the operations and use of the Project; and
7. If FSTPs are developed using different technologies, then, the provisions of the above conditions mentioned herein above sub-clauses 3 to 6 shall apply to each such technologies adopted for the Project.

Specifications and Standards: The Concessionaire shall have to submit the Specifications and Standards based on the Scope of Work and as per the requirements of the Project, setting out the proposed technology, process flow-chart with design values for inputs and outputs at each stage, with plan for implementation and operation of the Project. The Specifications and Standards shall comprise the approach and methodology for treatment and disposal and/or reuse of Faecal Sludge & Septage, implementation schedule and timelines, manpower deployment, etc. The Specifications and Standards shall be in adherence to all the regulatory guidelines/norms/standards, etc., and in accordance with the provisions of this Agreement. The Concessionaire, during the Concession Period, shall not deviate from the approved Specifications and Standards without written approval from the Authority.

The Specifications and Standards shall have to cover the following aspects:

Setting up of Faecal Sludge and Septage Treatment Plants (FSTPs) in Urban Local Bodies of Andhra Pradesh on Design, Build, Operate & Transfer (DBOT Hybrid Annuity) basis

I. **Technical Plan** for Construction/Rehabilitation of all parts of the value-chain covering the following things:

- i. Design: Process flow-chart with design values for inputs and outputs for all the unit operations.
- ii. Process description accompanying process flow-chart with covering the following things briefly:
 - Mass Balance calculations for the process flow-chart indicating loading rates/retention period and efficiency of unit operations;
 - Dimensioned layout of treatment components within Site plan;
 - Hydraulic profile of treatment components;
 - Energy consumption.
- iii. Broad engineering aspects with materials specifications:
 - Material specifications, equipment/machinery used, structural aspects, specifications for laboratories, etc.
 - Dimensioned layout including associated infrastructure such as internal roads, septage receiving station, internal drainage and any other facility as required for the safe and efficient operation of the treatment facility;
 - Anticipated life in years for components including civil, electromechanical and any other machinery installed;
 - Procurement/Construction/installation/implementation plan along with quality control protocols, QA testing, etc.,
- iv. Area allocation statement – land requirements, the area utilization plan for the site and Project facilities including processing facility, any other facilities and common areas etc.
- v. Implementation Plan – present a detailed activity schedule along with milestones in line with the requirements set out in the draft Concession Agreement. This should include a schedule for procuring, installing, and deploying equipment and trial run and testing at the site. This should also outline the timeline envisaged for obtaining various Government approvals.
- vi. Salient features of the proposed technology and Plant & Equipment deployed: To cover range of influent characteristics the designed plant can handle, Bio-solids (dry faecal sludge) Output parameters, etc.

II. **Operation & Maintenance Plan:**

- i. Process Flow Chart and Material Balance Statement setting out the activities and the outputs at each stage.
- ii. Calculations and methodology for operations with respect to processing & disposal and/or reuse of sludge & septage at the sites.

- iii. Resource Utilization Statement indicating the proposed equipment procurement and utilization, contracting activities, utilization of office and other facilities.
- iv. The maintenance (regular & emergency) schedules should also be indicated over the entire Concession Period.
- v. Re-use of treated outputs (liquid and solid).
- vi. Details on net energy consumption/KLD of faecal sludge treated.

III. **Organization & Staffing:**

To present the calculations for manpower requirement for different parts of the FSTPs value-chain. Proposed organization structure and composition of the project and operational team to be presented, including staff deployment plan, suitable timings for plant operations and roles and responsibilities. The Concessionaire shall indicate the number of staff to be sourced locally.

IV. **Change Management Plan:**

Bidders should propose the strategies and technology framework to support project implementation and transition to the new system -

- i. Plan during transition from the Authority run system to private run system.
- ii. Information, Education and Communication awareness campaigns and related initiatives to be launched.
- iii. Mechanism for grievance redressal and/or customer service.

VI. **Identification of Risks and Mitigation plan:**

Ability of the system to ensure all weather operations and be able to handle variable inputs of varying characteristics, ability of the system to handle anticipated shocks such as floods, soil-subsidence, power outage, process hazard if chemical or biological materials are used, etc., and measures for mitigating risks.

SCHEDULE C
(see Clause 16.2.1)
KEY PERFORMANCE INDICATORS

1. The Concessionaire shall ensure that the Availability of the Project Facilities to convey, accept and treat the Faecal Sludge and Septage up to its Design Capacity except during Force Majeure. Provided that during the period of a scheduled maintenance that is undertaken as per the approved scheduled maintenance program or as notified and approved by the Authority, the Concessionaire shall ensure that the Availability is at least at 95% of the Design Capacity. In case of deviation from this Key Performance Indicator (KPI), the Authority is entitled to recover Damages at Rs. 5000 (Rupees five thousand) per day per FSTP.

2. FS Characteristics

The physical and chemical characteristics of Septage are summarized in the Table below (U.S. EPA (1984)).

Constituent (all units but for pH are in mg/l)	Average	Range
Biochemical Oxygen Demand	6,480	440 - 78,600
Chemical Oxygen Demand	31,900	1,500 - 703,000
Total solids	34,106	1,132 - 130,745
Total Volatile Solids	23,100	353 - 71,402
Total Suspended Solids	12,862	310 - 93,378
Volatile Suspended Solids	9,027	95 - 51,500
Total Kjeldahal Nitrogen	588	66 - 1,060
Ammonia-Nitrogen	97	3 - 116
Total Phosphorus	210	20 - 760
Alkalinity	970	522 - 4,190
Grease	5,600	208 - 23,368
pH	-	1.5 – 12.6
<i>Note: Similar parameters have been adopted in the Advisory developed MoU, Jan 2013 and CPHEEO</i>		

Sludge characteristics mentioned in the FSM Book by Linda Strande and paper published by Strauss, 1996.

Parameter	Type “A” high strength	Type “B” low strength
Example	Public toilet or bucket latrine sludge	Septage
Characterization	Highly concentrated, mostly fresh FS; stored for days or weeks only	FS of low concentration; usually stored for several years; more stabilized than Type “A”
COD (mg/L)	20-50,000	<15,000
COD/BOD	5:1 to 10:1	5:1 to 10:1
NH ₄ -N (mg/L)	2-5,000	<1000
TS (%)	≥ 3.5 %	< 3 %
SS (mg/L)	≥30,000	7000 (approx)

Helminth Eggs (unit/ml)	20-60,000	4000 (approx)
----------------------------	-----------	---------------

The Concessionaire is responsible for ensuring compliance with the treatment and discharge norms in order to reuse treated wastes as a fertilizer or soil conditioner in agriculture.

Parameter	Concentration not to exceed (mg/kg) dry basis, except for pH and carbon to nitrogen ratio)
Arsenic	10
Cadmium	5
Chromium	50
Copper	300
Lead	100
Mercury	0.15
Nickel	50
Zinc	1000
C/N ratio	20-40
pH	5.5-8.5
<i>Compost Quality (FCO) as per SWM Rules, 2016 and Dept. of Fertilizers.</i>	

Dewatered septage to be used as a fertilizer it should satisfy the following criteria of Class A Bio-solids of US EPA (CEPT, 2015).

- Faecal coliform density < 1000 MPN/g total dry solids
- Salmonella sp. Density < 3 MPN/ 4 g of total dry solids
- Helminth egg concentration of < 1/g total solids (WHO, 2006)
- E coli of 1000/g total solids (WHO, 2006).

Accordingly, the Concessionaire has to adhere to the above KPIs and for any deviation, the Authority is entitled to levy and collect the Damages at Rs.5000 (Rupees five thousand) per month per FSTP.

SCHEDULE D
(See Clause 9.1)
PERFORMANCE SECURITY

(To be submitted on Non-Judicial stamp paper of appropriate value purchased in the name of the issuing bank)

To:
The Managing Director,
Swachha Andhra Corporation,
Vijayawada.

WHEREAS ----(Name and address of M/s XXXX Ltd), hereinafter referred to as “the Concessionaire”, has undertaken to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project as defined therein in the Concession Agreement dated _____ with Swachha Andhra Corporation (hereinafter referred to as “the Agreement”)

AND WHEREAS in terms of the Conditions as stipulated in the Agreement, the Concessionaire is required to furnish, a Bank Guarantee by way of Performance Security, issued by a Scheduled Bank in India, in your favour, as per Clause 9.1 of the Agreement, to secure due and satisfactory compliance of the obligations by the Concessionaire on their part, in accordance with the Agreement, (which guarantee is hereinafter called as “the Performance Security”).

AND WHEREAS the Concessionaire has approached us, (Name of the issuing Bank) for providing the Performance Guarantee, AND WHEREAS in consideration of the fact that the Concessionaire is our valued constituent and the fact that he has entered into the Agreement with you, we (Name of the Bank) having our Registered Office at, _____ and Branch office at _____, India have agreed to issue the Performance Guarantee, therefore we (Name of the issuing Bank) through our Branch at _____ India furnish you the Performance Guarantee in the manner hereinafter contained and agree with you as follows:

We (Name of the issuing Bank), undertake to indemnify you and keep you indemnified from time to time to the extent of Rs_____ (Rupees_____) against any loss or damage caused to or suffered by or that may be caused to or suffered by you on account of any breach or breaches on the part of the Concessionaire of any of the terms and conditions contained in the Agreement and in the event of the Concessionaire default or defaults in carrying out any of the work or discharging any obligation in relation thereto under the Agreement or otherwise in the observance and performance of any of the terms and conditions relating thereto in accordance with the true intent and meaning thereof, we shall forthwith on demand pay to you such sum or sums not exceeding the sum of Rs._____ (Rupees_____) may be claimed by you on account of breach on the part of the Concessionaire of their obligations in terms of the Agreement.

Notwithstanding anything to the contrary we agree that your decision as to whether the Concessionaire has made any such default or defaults and the amount or amounts to which you are entitled by reasons thereof will be binding on us and we

shall not be entitled to ask you to establish your claim or claims under Performance Guarantee but will pay the same forthwith on your demand without any protest or demur.

This Performance Guarantee shall continue and hold good until it is released by you on the application by the Concessionaire after expiry of the relative Concession Period of the Agreement and after the Concessionaire had discharged all his obligations under the Agreement and submitted a "No Demand Certificate" provided always that the guarantee shall in no event remain in force after the day of _____, without prejudice to your claim or claims arisen and demanded from or otherwise notified to us in writing before the expiry of three months from the said date which will be enforceable against us notwithstanding that the same is or are enforced after the said date.

Should it be necessary to extend Performance Guarantee on account of any reason whatsoever, we undertake to extend the period of Performance Guarantee on your request under intimation to the Concessionaire till such time as may be required by you. Your decision in this respect shall be final and binding on us.

You will have the fullest liberty without affecting Performance Guarantee from time to time to vary any of the terms and conditions of the Agreement or extend the time of performance of the Agreement or to postpone any time or from time to time any of your rights or powers against the Concessionaire and either to enforce or forbear to enforce any of the terms and conditions of the Agreement and we shall not be released from our liability under Performance Guarantee by the exercise of your liberty with reference to matters aforesaid or by reason of any time being given to the Concessionaire or any other forbearance, act, or omission on your part or or any indulgence by you to the Concessionaire or by any variation or modification of the Agreement or any other act, matter or things whatsoever which under law relating to sureties, would but for the provisions hereof have the effect of so releasing us from our liability hereunder provided always that nothing herein contained will increase our liability hereunder beyond the limit of Rs. _____ (Rupees _____) as aforesaid or extend the period of the guarantee beyond the said day of _____ unless expressly agreed to by us in writing.

The Performance Guarantee shall not in any way be affected by your taking or giving up any securities from the Concessionaire or any other person, firm or company on its behalf or by the winding up, dissolution, insolvency or death as the case may be of the Concessionaire.

In order to give full effect to the guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Concessionaire hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of surety and other rights, if any, which are in any way inconsistent with any of the provisions of Performance Guarantee. Subject to the maximum limit of our liability as aforesaid, Performance Guarantee will cover all your claim or claims against the Concessionaire from time to time arising out of or in relation to the Agreement and in respect of which your claim in writing is lodged on us before expiry of three months from the date of expiry of Performance Guarantee.

Any notice by way of demand or otherwise hereunder may be sent by special courier, telex, fax or registered post to our local address as aforesaid and if sent by post it shall be deemed to have been given when the same has been posted.

The Performance Guarantee and the powers and provisions herein contained are in addition to and not by way of limitation of or substitution for any other guarantee or guarantees heretofore given to you by us (whether jointly with others or alone) and now existing un-cancelled and that Performance Guarantee is not intended to and shall not revoke or limit such guarantee or guarantees.

The Performance Guarantee shall not be affected by any change in the constitution of the Concessionaire or us nor shall it be affected by any change in your constitution or by any amalgamation or absorption thereof or therewith but will endure to the benefit of and be available to and be enforceable by the absorbing or amalgamated company or concern.

The Performance Guarantee shall come into force from the date of its execution and shall not be revoked by us any time during its currency without your previous consent in writing. We further agree and undertake to pay you the amount demanded by you in writing irrespective of any dispute or controversy between you and the Concessionaire.

Notwithstanding anything contained herein:

- i. Our liability under this guarantee shall not exceed Rs _____ (Rupees _____ only);
- ii. This guarantee shall be valid up to _____; and
- iii. We are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if you serve upon us a written claim or demand at ----- (place) on or before _____ (mention period of the guarantee as found under clause ii. above plus claim period).

We have the power to issue Performance Guarantee in your favour by statute and the undersigned has full power to execute Performance Guarantee under the Power of Attorney to him by the Bank.

Dated this _____ day of _____ 2018.

For and on behalf of

BRANCH MANAGER SEAL
ADDRESS PLACE

SCHEDULE –E
(See Clause 22.1.2)
ESCROW AGREEMENT

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

AMONGST

1. LIMITED, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2.name and particulars of Lenders’ Representative and having its registered office atacting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3.name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. The Swachha Andhra Corporation represented by its Managing Director and having its office at Flat NO 303, Vijayalakshmi Residency, ESI Road, Gunadala, Vijayawada-520004 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) for establishment and operation/maintenance of Faecal Sludge and Septage Treatment Plants in Urban Local Bodies of Andhra Pradesh (the “Project”) on design, build, operate and transfer (the “DBOT Hybrid Annuity”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

Setting up of Faecal Sludge and Septage Treatment Plants (FSTPs) in Urban Local Bodies of Andhra Pradesh on Design, Build, Operate & Transfer (DBOT Hybrid Annuity) basis

1. DEFINITIONS AND INTERPRETATION**1.1. Definitions**

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

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

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

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

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

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

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

“Minimum Escrow Balance” shall have the meaning ascribed thereto in Clause 3.2;

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

“Payment Certificate” means the certificate issued by the Authority towards its payments to the Concessionaire as per the provisions of the Concession Agreement;

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

“Revolving Fund” means the amount that the Authority shall deposit into the Escrow Account in advance towards its payment obligations due and payable to the Concessionaire on achievement of Payment Milestones, or the Annuity Payments, as the case may be, as per the provisions of the Concession Agreement; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month

and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

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

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

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

2.2. Acceptance of Escrow Bank

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

Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

- 2.3.1. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

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

2.5. Rights of the parties

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

2.6. Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

- 3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a. all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
 - b. all funds received by the Concessionaire from its share-holders, in any manner or form;
 - c. any revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
 - d. all proceeds received pursuant to any insurance claims.
- 3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

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

- a. Revolving Funds as per the provisions of the Concession Agreement and any other monies disbursed by the Authority to the Concessionaire. For the avoidance of doubt and for the sake of clarity, the amount deposited by the Authority as Revolving Fund shall be kept as minimum escrow balance (the “Minimum Escrow Balance”) and shall be allowed to be withdrawn only on the basis of issuance of Payment Certificate by the Authority and subject to Authority replenishing the Escrow Account with the next amount due and payable by it to the Concessionaire as per the provisions of the Concession Agreement. Each time such replenishment of Escrow Account happens, the Minimum Escrow Balance shall be construed accordingly;
- b. all revenues collected by the Authority in exercise of its rights under the Concession Agreement; and
- c. Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any amounts due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3. Deposits by Senior Lenders

The Lenders’ Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4. Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT**4.1. Withdrawals during Concession Period**

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

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- e. Any amounts due and payable to the Authority;
- f. monthly proportionate provision of Debt Service due in an Accounting Year;
- g. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- h. monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- i. any reserve requirements set forth in the Concession Agreement and in the Financing Agreements; and
- j. balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2. No later than 30 (thirty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with

prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

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

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. 90% (ninety per cent) of Debt Due, excluding Subordinated Debt;
- c. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- d. retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 30 of the Concession Agreement;
- e. outstanding Debt Service including the balance of Debt Due;
- f. outstanding Subordinated Debt;
- g. incurred or accrued O&M Expenses;
- h. any other payments required to be made under the Concession Agreement; and
- i. balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (h) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3. Application of insufficient funds

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

4.4. Application of insurance proceeds

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

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 27 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

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

5.2. Notification of balances

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

5.3. Communications and notices

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

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

capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

- d. shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

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

5.5. Regulatory approvals

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

6. ESCROW DEFAULT

6.1. Escrow Default

- 6.1.1. Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:
 - a. the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
 - b. the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
 - c. the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

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

7.2. Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary escrow agreement

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

conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITIES

9.1. General indemnity

- 9.1.1. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. Notice and contest of claims

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

10. DISPUTE RESOLUTION

10.1. Dispute resolution

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

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

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

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

11.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3. Priority of agreements

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

11.4. Alteration of terms

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

11.5. Waiver

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

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

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

11.6. No third party beneficiaries

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

11.7. Survival

11.7.1. Termination of this Agreement:

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

11.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 1 (one) year following the date of such termination or expiry of this Agreement.

11.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent

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

11.9. Successors and assigns

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

11.10. Notices

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

11.11. Language

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

11.12. Authorised representatives

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

11.13. Original Document

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

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Senior Lenders by the Lenders' Representative

(Signature)
(Name)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

For and on behalf of Swachha Andhra Corporation by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.

\$ To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULE -F
(See Clause 31.3.1)
SUBSTITUTION AGREEMENT

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

AMONGST

1. Swachha Andhra Corporation represented by its Managing Director and having its office at Flat NO 303, Vijayalakshmi Residency, ESI Road, Gunadala, Vijayawada-520004 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).
2. LIMITED, a company incorporated under the provisions of the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
3.name and particulars of Lenders’ Representative and having its registered office atacting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

WHEREAS:

- A. The Authority has entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) for establishment and operation/maintenance of Faecal Sludge and Septage Treatment Plants (the “Project”) in Urban Local Bodies of Andhra Pradesh and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is

hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

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

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

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

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

1.2. Interpretation

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

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

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

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

2. ASSIGNMENT

2.1. Assignment of rights and title

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

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

- 3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2. Substitution upon occurrence of Financial Default

- 3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof and send a copy to the Authority for its information and record.

A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

- 3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 26 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written

request from the Lenders' Representative at the end of 180 (one hundred and eighty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

- 3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days.

3.4. Procedure for substitution

- 3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- a. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - b. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

- c. enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5. Selection to be binding

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

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

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

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the

Authority shall undertake Termination under and in accordance with the provisions of Article 27 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

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

5.3. Realisation of Debt Due

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

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

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

- a. Termination of the Agreement; or
- b. no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. INDEMNITY

7.1. General indemnity

- 7.1.1. The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

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

7.2. Notice and contest of claims

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

8. DISPUTE RESOLUTION

8.1. Dispute resolution

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with rules as may be mutually agreed by the Parties and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Hyderabad and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3. Priority of agreements

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

9.4. Alteration of terms

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

9.5. Waiver

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

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

9.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party

to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6. No third party beneficiaries

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

9.7. Survival

9.7.1 Termination of this Agreement:

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

9.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 1 (one) year following the date of such termination or expiry of this Agreement.

9.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and email address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday,

the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

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

9.12. Authorised representatives

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

9.13. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE
DELIVERED

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

SIGNED, SEALED AND

For and on behalf of
Swachha Andhra Corporation
by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1.

2.

SCHEDULE – GUndertaking^{\$}

(Refer Clause 6.1)

(To be submitted on Non-Judicial stamp paper of appropriate value)

-----, the Urban Local Body having its principal office at
-----, undertake as under:

WHEREAS ----- (Name of the Concessionaire) has undertaken the Project to establish and operate/maintain the faecal sludge and septage Treatment Plants in Urban Local Bodies of Andhra Pradesh under Public Private Partnership (PPP) framework on Design, Build, Operate & Transfer (the “DBOT Hybrid Annuity”) basis, in accordance with the provisions of the Concession Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project as defined therein in the Concession Agreement dated ----- entered into with the Managing Director, Swachha Andhra Corporation (hereinafter referred to as “the Agreement”).

AND WHEREAS in terms of the conditions as stipulated in the Agreement, the respective ULB is required to provide an Undertaking as per Clause 6.1 (c) of the Agreement to ensure that the faecal sludge and the septage gets delivered at the Project Site and to regulate such delivery in accordance with the provisions of the Agreement.

DO HEREBY UNDERTAKE:

1. to commit delivery of faecal sludge and septage that is generated in and around the ----- (the ULB) at the Project Site for treatment as per the provisions of the Agreement and regulate such delivery;
2. to commit access to Waste Disposal Site during the Concession Period, in case it is situated outside the Project Site, as per the provisions of Clause 5.2 (q) of the Agreement;
3. to commit access to the Site as per the provisions of Clause 10.2.1 of the Agreement to the Concessionaire;
4. to commit delivery of faecal sludge and septage at the Project Site during Trial Operations as per the provisions of Clause 13.2 of the Agreement;
5. that, we will abide by all the terms and conditions of the Agreement as applicable to us in this regard and in case of any non-compliance of the provisions of the Agreement, the decision of Swachha Andhra Corporation shall be binding on us.
6. that, this undertaking shall be binding on us, our successors and assigns.

SOLEMNLY AFFIRMED at ----- on this ----- day of -----20---.

^{\$}To be submitted in original.

Signature of the Authorized Signatory
Name of ULB:

Witness:

- 1.
- 2.