



Nashik Municipal Corporation, Nashik

CONCESSION AGREEMENT FOR

**Improvement of Sewage Management System in Nashik City to Prevent
Pollution in River Godavari based on PPP/HAM Model**

JULY 2025




EXECUTIVE ENGINEER
Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

TABLE OF CONTENTS

CONCESSION AGREEMENT	1
1. DEFINITIONS AND INTERPRETATION	5
2. SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION	25
3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM	28
4. SITE AND ASSET OWNERSHIP	34
5. MOBILIZATION ADVANCE GUARANTEES	39
6. PROJECT ENGINEER	42
7. CONSTRUCTION PERIOD	43
8. OPERATIONS AND MAINTENANCE PERIOD	62
9. PAYMENT AND INVOICING	80
10. FINANCING ARRANGEMENTS AND SECURITY	93
11. INSURANCE AND INDEMNITIES	94
12. OWNERSHIP INFORMATION	98
13. CHANGE IN LAW	98
14. FORCE MAJEURE	100
15. SUSPENSION	106
16. EVENTS OF DEFAULT	110
17. CONSEQUENCES OF TERMINATION	114
18. TERMINATION COMPENSATION	116
19. TRANSFER UPON THE EXPIRY OR ON TERMINATION	120
20. VARIATION	122
21. DISPUTE RESOLUTION	124
22. REPRESENTATIONS AND WARRANTIES	126
23. MISCELLANEOUS	129



Concessionaire



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Nashik Municipal Corporation, Nashik



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2024

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TREASURY OFFICE NASHIK

25 JUN 2025

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CONCESSION AGREEMENT

This Concession Agreement (**Agreement**) is executed on this 08th day of July Two Thousand and Twenty Five at Nashik:

AMONGST

(1) **NASHIK MUNICIPAL CORPORATION (NMC)**, a statutory body constituted under Maharashtra Municipal Corporation Act, 1976, with its registered office at Office of the **Executive Engineer**, Public Health Engineering Department (Sewerage) Nashik Municipal Corporation, Nashik Rajiv Gandhi Bhavan, Sharanpur Road Nashik. (hereinafter referred to as **NMC** which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

,AND

(2) **KUMBH WASTE WATER MANAGEMENT PRIVATE LIMITED**, a company organized, incorporated, registered and existing under the Companies Act, with its registered office at 116A, 11th Floor, Maker Chamber VI, 220, Nariman Point, Mumbai, Mumbai- 400021, Maharashtra acting through **Mr. Naveen Patekar**, Authorized Signatory duly authorized by resolution dated 16th June 2025 (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns)




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

NMC and the Concessionaire shall collectively be referred to as the **Parties** and individually as a **Party**.

WHEREAS:

- A. The Nashik Municipal Corporation (NMC), approved a hybrid annuity model to implement sewerage treatment plant (STP) project in view of the "Simhasth Kumbh Mela on PPP/HAM Model.
- B. Subsequently, to constitute various authorities to assist the NMC in achieving its aim of effective abatement of pollution in the Godavari River.
- C. NMC has the power to develop, maintain, and regulate water supply and sewerage works in Nashik, Maharashtra and the NMC, has decided to construct, operate, and maintain STPs at Nashik on a PPP/HAM basis.
- D. For this purpose, NMC intends to engage a concessionaire who will design, develop, finance, construct, operate, and maintain Tapovan STP & Associated Infrastructure Facilities, Agar Takli STP & Associated Infrastructure Facilities, Chehedhi STP & Associated Infrastructure Facilities, Panchak STP & Associated Infrastructure Facilities and Other Associated Infrastructure Facilities after the expiry of the Term, transfer the Facilities to the NMC in accordance with this Concession Agreement (collectively the **Project**).
- E. NMC commenced a competitive Bid Process for the Project by issuing a request for Qualification (the **RFQ**), inviting interested parties to submit their qualification proposals to NMC for undertaking the Project. The RFQ Qualified Bidders were issued the Request for Proposal (RFP) to further submit their Financial Proposals.
- F. Pursuant to the terms of the RFP, NMC received proposals from RFQ Qualified bidders, including a proposal submitted by the Selected Bidder on 19th April 2025.
- G. Following a process of evaluation of qualification proposals in RFQ and financial proposals submitted by the bidders in RFP Stage (including the Selected Bidder), NMC has on 12th June 2025 accepted the proposal submitted by the Selected Bidder for the development of the Project. Subsequently, NMC has issued the letter of award dated 13th June 2025 to the Selected Bidder (the **LOA**).
- H. The Selected Bidder has accepted the LOA and has agreed to undertake the Project in accordance with the terms of this Agreement.
- I. The Selected Bidder has incorporated a special purpose vehicle to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement.
- J. NMC, have agreed to enter into this Agreement with the Concessionaire for implementation of the Project, subject to and on the terms and conditions set out in this Agreement.

IT IS AGREED as follows:




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Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Adjoining Property	means any land and/or property adjoining or adjacent or any part of the Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
Adjusted DG Set Units	has the meaning ascribed to it in Clause 9.4(g)(b)(B)(II).
Affected Party	means the Party affected by a Force Majeure Event.
Agartakli STP & Associated Infrastructure Facilities	Means the following facilities 1. Agartakli STP 1 – 97 MLD 2. Agartakli STP 2 – 70 MLD 3. Nandini Sangam SPS – 7.2 MLD (existing – Retrofitting work) 4. Agartakli MPS – 135.1 MLD (existing – Retrofitting work) 5. Nandini Pre-confluence SPS – 74.8 MLD (newly proposed) 6.
Applicable Laws	means the Constitution of India and all and any laws, enacted or brought into force and effect by the GoI, any State Government of Maharashtra (including the GoMH), any Government Authority or any local government having jurisdiction over the Parties, the Site or the Project, including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be applicable to the execution of this Agreement and the performance of the respective rights and obligations of the Parties, as may be in force and effect during the subsistence of this Agreement. For the avoidance of doubt, and without in any way limiting the generality of the foregoing, Applicable Laws shall include the EPA, the EPA Rules,.
Applicable Permits	means any permissions, clearances, concessions, authorizations, consents, licenses, permits, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws.
Appointed Date	means the date of signing of this Agreement.
Arbitration Act	means the Arbitration and Conciliation Act, 1996, as amended from time to time.
Article	means an article of this Agreement.
Associate	means, in relation to the Concessionaire, [the Selected Bidder], a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls the Concessionaire, the Selected Bidder, as the case may be.




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EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik


Associated Infrastructure	means infrastructure facilities associated with operation of Nashik STPs, including but not limited to sewage pumping stations (including main pumping stations and any other pumping stations) and the rising mains, as described in greater details in technical specifications of each STP in relevant Facility Schedule, which need to be constructed and/or operated and maintained by the Concessionaire in accordance with this Agreement, and complete such infrastructure as lighting, ancillary infrastructure, other functional building such as administrative building etc. if any for the STPs.
Availability	means the availability of the Facilities to convey, accept and treat the Sewage, as determined in accordance with Clause 8.12(a)(i) and the term 'Available' shall be construed accordingly.
Availability Liquidated Damages	means the liquidated damages payable by the Concessionaire to the NMC for failure to achieve the Guaranteed Availability, in accordance with Clause 8.12(a)(v).
Basic Engineering Designs	means the following designs and documents to be submitted by the Concessionaire and approved by the NMC as a Condition Precedent: <ul style="list-style-type: none"> (a) process description, process calculations, (b) hydraulic calculations; (c) list of design codes and standards; (d) master drawing schedule; (e) drainage design; (f) STP Facilities layout; (g) process flow diagram; (h) hydraulic flow diagram; (i) mass balance diagram; (j) process and instrumentation diagram; (k) tentative single line diagram; (l) electrical load list.
Bid	means a bid consisting of Letter of Technical Bid, Bid Security, Power of Attorney and the Financial Proposal submitted by a Bidder for the award of the Project, and Bids mean collectively, all the bids for the Project.
Bid Due Date	means the last date of submission of the Bids as set out in the RFP.
Bid Process	means the dual -stage bidding process, with two sub-stages, undertaken by NMC to award the Project to the Selected Bidder on the terms and conditions set out in this RFP. The Bid Process has commenced with the issuance of the RFQ, this RFP has been issued to RFQ qualified Bidders only and will end on the date that the Concession Agreement is executed with the Special Purpose Vehicle incorporated by the Selected Bidder for the Project on the Appointed Date.
Bid Price	means the price calculated for each Bidder, based on the values provided by such Bidder in the Bid Price Sheet, as a part of its Financial Proposal, to design, finance, develop, construct, rehabilitate, operate, and maintain the Nashik Facilities.
Bid Project Cost	means INR 14,75,55,00,000.00 (Rupees One Thousand Four Hundred Seventy Five Crores and Fifty Five Lakhs Only) , being the cost of construction of the Nashik Facilities, as quoted by the Selected Bidder in its Bid, which includes the interest during construction,



	Taxes and all other pre-operative expenses in relation to the Nashik Facilities.
BOD	means biochemical oxygen demand,
Business Day	means any day other than Saturday, Sunday or any public holiday, on which the NMC and the banks are open for business in Nashik.
Capex Annuity	means the amount to be specified in the Concession Agreement, which is payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of each Nashik Facilities Bid Price Less Nashik Facilities Payment Milestones in accordance with the Concession Agreement.
Capital	means, in respect of the Concessionaire, the total capital of the Concessionaire that will be raised by the issuance of equity shares, preference shares and convertible instruments.
Change in Law	means the occurrence of any of the following events after the Bid Due Date: (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority; (c) changes in the interpretation, application or enforcement of any Applicable Law or judgement by any court/Government Authority; (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or (e) the introduction of any new Tax (including goods and services tax) or a change in the rate of an existing Tax. It is clarified that Change in Law shall not include any change in the (Indian) Income Tax Act, 1961 with regard to the taxes on the income of the Concessionaire.
Chehedi STP & Associated Infrastructure Facilities	Means the following facilities 1. Chehedi STP – 64 MLD 2. Chadegaon SPS – 1.3 MLD (existing – Retrofitting work) 3. Chehedi SPS – 76.1 MLD (existing – Retrofitting work) 4. Waldevi & Darna SPS – 26.1 MLD (newly proposed)
Clause	means a clause of this Concession Agreement.
COD Certificate	means the certificate issued by the NMC to the Concessionaire upon issuance of the Trial Operations Completion Certificates for the individual Nashik Facilities namely Tapovan STP & Associated Infrastructure Facilities, Agartakli STP & Associated Infrastructure Facilities, Chehedi STP & Associated Infrastructure Facilities, Panchak STP & Associated Infrastructure Facilities and Other Associated Infrastructure Facilities and also satisfaction of the conditions set out in Clause 7.13(a).
Comfort Letter	Comfort Letter means letter issued by either Urban Development Department or Finance Department of Government of Maharashtra as per Schedule 13
Commercial	means the date on which the COD Certificate is issued

Concessionaire




Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Operations Date or COD	to the Concessionaire in accordance with Clause 7.13(a) for individual Nashik Facilities namely Tapovan STP & Associated Infrastructure Facilities, Agartakli STP & Associated Infrastructure Facilities, Chehedi STP & Associated Infrastructure Facilities, Panchak STP & Associated Infrastructure Facilities and Other Associated Infrastructure Facilities.
Companies Act	means the (Indian) Companies Act, 1956 or the (Indian) Companies Act, 2013, as amended from time to time, as the context may require.
Completion Cost	means the cost of completing the construction of the Nashik Facilities, as calculated in accordance with Clause 9.4(b).
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Permits	means the Applicable Permits which are required to be obtained and maintained by the Concessionaire to develop, operate and maintain the Facilities, as set out in Schedule 8.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 16.1.
Concessionaire Related Parties	means any of the following: (a) the Selected Bidder or Associates of the Selected Bidder; (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity; (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity; or any Person acting on behalf of the Concessionaire.
Concessionaire's Representative	means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with NMC ,for the purposes of this Agreement and notified as such in writing to NMC .
Conditions Precedent	means collectively, the obligations of the Concessionaire that are set out at Clause 3.2, the obligations of NMC that are set out at Clause 3.3 ,and ' Condition Precedent ' means any one of these.
Confidential Information	means any part of this Agreement, or any information contained therein or any material provided to any Party pursuant to this Agreement, all of which information shall be deemed to be confidential, except to the extent that this Agreement otherwise requires.
Construction Completion Certificate	means the certificate issued by NMC to the Concessionaire to certify completion of construction of the individual Nashik Facilities and the satisfaction of all other conditions required to be fulfilled by the Concessionaire in accordance with Clause 7.11(c).
Construction Completion Date	means the date on which the individual Nashik Facilities Construction Completion Certificate is issued to the Concessionaire, in accordance with Clause 7.11(c) (iii), and the reference to Construction Completion Date for individual Nashik Facilities namely Tapovan STP & Associated Infrastructure Facilities, Agartakli STP & Associated Infrastructure Facilities, Chehedi STP & Associated Infrastructure Facilities, Panchak STP & Associated Infrastructure Facilities and Other Associated Infrastructure Facilities. shall be construed accordingly.
Construction Payments	means, for each Facilities, the payments to be made to the Concessionaire during the Construction Period, upon satisfactory completion of the Payment Milestones, which shall, in aggregate, be equivalent to Rs.1038.07 Cr



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EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Construction Period	has the meaning ascribed to it in Clause 7.1.
Construction Plan	means the detailed construction plan for the Nashik Facilities to be prepared by the Concessionaire, which will set out the work to be performed by the Concessionaire to achieve the Nashik Facilities Payment Milestones, in a manner such that the Facilities are completed on or prior to the Scheduled Construction Completion Date. The Construction Plan shall be approved by NMC in accordance with Clause 7.3.
Construction Price Index	shall comprise: (a) 70% of WPI; and (b) 30% of CPI(IW), which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Control	means, with respect to a Person: (a) the ownership, directly or indirectly, of more than 50% of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, and the term ' Controlled ' shall be construed accordingly.
Cost	means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.
CP Long-Stop Date	has the meaning ascribed to it in Clause 3.5(a).
CPI(IW)	means the Consumer Price Index for Industrial Workers published by the Labour Bureau, GoI and shall include any index which substitutes the CPI(IW), and any reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published on the last date of the preceding quarter.
Debt Due	means the aggregate of the following sums expressed in Rupees outstanding on the date of issuance of the Notice of Intent to Terminate: (a) the principal amount of the debt provided by the Lenders under the then prevailing - Financing Documents, i.e. original financing documents for financing the Bid Project Cost , or any other refinancing including any other loan backed by future cash flows/receivables of the SPV (including for tenor extension / securitization or any other purpose). (For clarity , this shall also include any o/s Bank Guarantees/ Surety bond in favour of authority , unless released by authority) and (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in (a) above until the date of the Notice of Intent to Terminate but excluding (i) any interest, fees or charges that had fallen due 1 year prior to the date of the Notice of Intent to Terminate, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and



Executive Engineer
EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

	<p>(iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to an NMC Event of Default or an, NMC Event of Default, provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken.</p> <p>For the purpose of calculating Debt Due:</p> <p>(i) the aggregate of the principal amounts of the debt provided by the Lenders under the Financing Documents shall, in no event, exceed 85% of the Bid Project Cost; (as escalated by prevailing escalation index) ; and</p> <p>(ii) any amount of Debt Due in foreign currency as on the date of the Notice of Intent to Terminate shall be converted to Rupees at the exchange rate published on the official website of the Reserve Bank of India as at 12 noon on the relevant date.</p>																					
Default Liquidated Damages	means the Delay Liquidated Damages, Availability Liquidated Damages, Performance Liquidated Damages, and the Power Consumption Liquidated Damages.																					
Delay Event	has the meaning ascribed to it in Clause 7.9(b).																					
Delay Liquidated Damages	has the meaning ascribed to it in Clause 7.10(a).																					
Design Capacity	<p>means the average flow of Sewage that the Nashik Facilities should be designed to handle and treat in a day, which, for the Nashik Facilities shall be.</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Nashik STPs</th> <th>Capacity (MLD)</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Tapovan STP</td> <td>180 MLD</td> </tr> <tr> <td>2</td> <td>Agar Takli 1 STP</td> <td>70 MLD</td> </tr> <tr> <td>3</td> <td>Agar Takli 2 STP</td> <td>97 MLD</td> </tr> <tr> <td>4</td> <td>Chehedli STP</td> <td>64 MLD</td> </tr> <tr> <td>5</td> <td>Panchak STP</td> <td>75 MLD</td> </tr> <tr> <td></td> <td>Total</td> <td>486 MLD</td> </tr> </tbody> </table>	Sr. No.	Nashik STPs	Capacity (MLD)	1	Tapovan STP	180 MLD	2	Agar Takli 1 STP	70 MLD	3	Agar Takli 2 STP	97 MLD	4	Chehedli STP	64 MLD	5	Panchak STP	75 MLD		Total	486 MLD
Sr. No.	Nashik STPs	Capacity (MLD)																				
1	Tapovan STP	180 MLD																				
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4	Chehedli STP	64 MLD																				
5	Panchak STP	75 MLD																				
	Total	486 MLD																				
Designs and Drawings	means, collectively, the Phase I Designs and Drawings and the Phase II Designs and Drawings.																					
DG Sets	means the backup diesel generators set maintained by the Concessionaire at the Site, to ensure continuous supply of power for the operation of the Facilities, when the supply of power from the grid is not available.																					
Dewatered Sludge	means the sludge which is obtained after the dewatering of sludge generated from treatment of the Sewage at the Nashik STPs.																					
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(iii).																					
Discharge Points	means the points at which the Treated Sewage from the STP will be																					



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 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

	discharged, as set out in the Schedule 12 (Technical Specifications), and 'Discharge Point' shall mean any of these.
Discharge Standards	Means, for the Nashik Facilities, the minimum standards set out in the Technical Specifications that the Treated Sewage and Dewatered Sludge must comply with.
Dispute	has the meaning ascribed to it in Clause 21.1.
Dispute Meeting	has the meaning ascribed to it in Clause 21.1.
Dispute Notice	has the meaning ascribed to it in Clause 21.1.
Effective Date	Effective date shall be mutually agreed with substantial fulfilment of individual CPs for individual facilities by both parties.
Emergency	means a condition or situation that endangers, or which in the reasonable opinion of NMC, the Project Engineer or the Concessionaire, may endanger the environment or lives or security of people at or around the Site or that poses an imminent threat of material damage to any property (including the Facilities) at or around the Site.
Encumbrance(s)	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
EPA	means the Environment (Protection) Act, 1986, as amended from time to time.
EPA Rules	means the Environment (Protection) Rules, 1986, as amended from time to time.
Equity	means the sum expressed in INR, i.e. Indian National Rupee, representing the paid-up equity share capital of the Concessionaire for meeting the equity component of its financial obligations under this Agreement and the Financing Documents, which, for the purpose of this Agreement, shall include convertible instruments that shall compulsorily convert into equity share capital and any loans provided by any shareholder of the Concessionaire.
Escrow Account	means the interest-bearing account, linked to NMC GST account, opened by NMC, with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term.
Escrow Agreement	means the agreement to be executed among NMC, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account, in the form set out at Schedule 3.
Escrow Bank	means the Scheduled Bank with which NMC will open the Escrow Account, pursuant to the Escrow Agreement.
Event of Default	means NMC Event of Default, or a Concessionaire Event of Default, as the context may require.
Executing Agency	Means the, any State Government (including the GoMH), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoI or the GoMH exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Concession Agreement.
Expiry Date	means the date occurring after the expiry of 25 years from the COD of individual




 EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

	Nashik Facility.
Financial Close	means, the date on which the Financing Documents become effective, the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance. The same may be achieved post Effective Date .
Financial Package	means the financing package indicating the means of financing the Facilities, and includes all Financial Assistance specified in the Financing Documents and the Equity.
Financial Proposal	means the financial proposal submitted by the Selected Bidder in accordance with the RFP for undertaking the Project.
Financial Year	means each 12-month period commencing on 1 April of one calendar year and ending on 31 March of the next calendar year; and if different for a company, then the 12-month period for which such company files its statutory audited accounts in the normal course of its business.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of all funded and non-funded financial assistance, including loans, advances and or any refinancing that the Concessionaire may avail of for the Project from the Lenders and includes any document providing Security to the Lenders.
First Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(A).
First Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(A).
FM Notice	has the meaning ascribed to it in Clause 14.2(a).
Force Majeure Event	means a Non-Political Force Majeure Event, an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, as the case may be.
Forced Unavailability	means an interruption of or a reduction in the Availability of any Facility that is the result of: <ul style="list-style-type: none"> (a) a maximum capacity utilization of such Facility, as notified by the Concessionaire to NMC in accordance with Clause 8.9; (b) a suspension of the performance of the O&M services for such Facility pursuant to Clause 15.1(a)(i) or Clause 15.2(a)(i), to the extent any such event is not attributable to the Concessionaire; or (c) a suspension of the operation of any Facility pursuant to any order or instruction from the relevant Government Authority restricting the discharge of the Treated Sewages from such Facility at the relevant Discharge Point; or (d) unavailability or breakdown of the Supporting Infrastructure for such Facility.
Fuel Price	means the prevailing price of diesel at Indian Oil Corporation or Hindustan Petroleum Corporation Limited's retail outlets in Nashik, as determined on the 15 th day of a month.
Fundamental Change in Law	means any Change in Law that: <ul style="list-style-type: none"> (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or (b) renders a material part of this Agreement invalid, illegal or unenforceable; or results in the Concessionaire being deprived of the whole or a substantial part of



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

	the benefit of this Agreement.
Funding Tie Up	Means suitable financial arrangement entered into by Nashik Municipal Corporation with Government of Maharashtra or any such Financial Institution for providing grant be equivalent to Rs.1038.07 Cr during construction.
Gol	means the Government of India.
Good Industry Practices	means the exercise of such degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced developer engaged in construction, management, and maintenance of STP in India of the type and size similar to the Facilities.
GoMH	means the Government of Maharashtra .
Government Authority	Means the, any State Government (including the GoMH), any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the Gol or the GoMH exercises control, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Site, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with the this Concession Agreement. .
Grace Period	has the meaning ascribed to it in Clause 7.10I.
Guaranteed Availability	has the meaning ascribed to it in Clause 8.12(a)(i).
Guaranteed Energy Consumption	means the maximum number of units of power quoted by a Bidder in its Project Approach Note, which it expects the Concessionaire to consume during the O&M Period to operate and maintain the Nashik Facilities.
Hand-back Conditions	mean the condition in which the Site, the Nashik Facilities, shall be handed back to NMC or any entity nominated by NMC on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement and are described in greater detail in the Technical Specifications.
Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the Facilities upon expiry or early termination of the Project, as set out in Clause 19.3.
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 14.1(b)(ii).
Influent Standards	means the permissible standards and characteristics for the incoming sewage for each STP, set out in the Technical Specifications.




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 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

Inlet Point	means the point mutually agreed to between NMC and the Concessionaire at the Nashik Facilities where: (a) the Sewage sample shall be drawn to test compliance with the Influent Standards; and (b) meters shall be installed for the purpose of determining the volume and concentration of the Sewage delivered at the Nashik Facilities.
Intellectual Property Rights	means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
Invoice	means an invoice for payment of: (a) the Construction Payments during the Construction Period; or (b) the Capex Annuity (along with interest), the O&M Charges submitted by the Concessionaire to NMC in accordance with Article 9.
KPI Adherence Report	has the meaning ascribed to it in Clause 8.12(b)(vi).
KPIs	means the key performance indicators set out in Schedule 9, which the Facilities must achieve during the O&M Period.
Lenders	includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents but does not include any shareholder or Associates of the Concessionaire who have provided any shareholder loans to the Concessionaire.
Liquidated Damages	means the Delay Liquidated Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the Power Consumption Liquidated Damages.
LOA	has the meaning ascribed to it in Recital G.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and which act or event causes a material financial burden or loss to any Party.
Milestone Completion Certificate	means, in respect of any Payment Milestone, a certificate issued by NMC in accordance with Clause 7.11(a), to certify that such Payment Milestone has been achieved in accordance with the requirements of this Agreement.
Minimum Escrow Balance	has the meaning ascribed to it in Clause 9.5(b).
Minor Casualty	means any fire or other casualty that results in physical damage to the Nashik Facilities to the extent that the total cost (as estimated by the Project Engineer) of repairing and/or replacing the damaged portion of the Nashik Facilities as the case may be, to the same condition as previously existed would not exceed the amount of INR 25,00,000 (Rupees twenty five lakhs).
MLD	means million liters per day.
Mobilization Advance	means an amount equivalent to 10% of the Nashik Facilities Bid Project Cost that is to be paid in advance to the Concessionaire for mobilization and execution of the construction works for the Nashik Facilities in accordance with Clause 9.3(d).



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Mobilization Advance Guarantee	has the meaning ascribed to it in Clause 5.1.
Nashik Facilities	Means the namely 1) Agartakli STP & Associated Infrastructure Facilities 2) Chehedli STP & Associated Infrastructure Facilities 3) Panchak STP & Associated Infrastructure Facilities 4) Tapovan STP & Associated Infrastructure Facilities 5) Other Associated Infrastructure Facilities as the context may require, and the term 'Nashik Facilities' shall be construed accordingly.
NASHIK STPs	Means the Tapovan STP (180 MLD), Agar Takli 1 STP (97 MLD), Agar Takli 2 STP (70 MLD), Chehedli STP (64 MLD) and Panchak STP (75 MLD) as the context may require.
NMC Applicable Permits	means the Applicable Permits which are required to be obtained by NMC to undertake the Project, as set out in Schedule 7.
NMC GST Account	Name of Account – Nashik Municipal Corporation GST Account no. – 60525625248 IFSC code – MAHB0000014 Bank Name – Bank of Maharashtra, Nashik City Branch. Branch code - 00014 This account shall be linked with NMC Escrow account.
NMC Event of Default	has the meaning ascribed to it in Clause 16.3.
NMC Related Parties	means any of the following: (a) an officer, servant, employee or agent of NMC, acting in that capacity; (b) any contractor or subcontractor of NMC and their directors, officers, servants, employees or agents, acting in that capacity; or (c) any Person acting on behalf of NMC. For the avoidance a doubt, 'NMC Related Parties' does not include the Concessionaire,.
NMC's Representative	means any officer nominated by NMC, from time to time, to act on its behalf and liaise with the Concessionaire , for the purposes of this Agreement and notified as such in writing to the Concessionaire , in accordance with the Clause 7.6 (d).
Nashik Facilities Bid Price	means Bid Project Cost adjusted for the Price Index Multiple calculated in accordance with the Concession Agreement under clause 9.4 (b). It is same as Completion Cost.
Nashik Facilities Capex Annuity	means the amount payable to the Concessionaire per quarter during the O&M Period, towards reimbursement of Nashik Facilities Bid Price LESS Nashik Facilities Payment Milestones in accordance with the Concession Agreement.



[Signature]
Executive Engineer

EXECUTIVE ENGINEER

Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Nashik Facilities O&M Charges	means the amount required by a Bidder per quarter (including all Taxes) to operate and maintain the each Nashik Facilities during the O&M Period. The Nashik Facilities O&M Charges for the first quarter after the COD will be determined on the basis of the O&M Charges quoted by the Bidder for the first month from the COD, in its Financial Proposal, which amount shall be escalated @ 5% per Year in accordance with the Concession Agreement.
Nashik Facilities Payment Milestones	means the milestones listed in the Concession Agreement for release of Construction Payments be equivalent to Rs.1038.07 Cr in accordance with the clause 9.3 (e) of Concession Agreement.
Net Worth	means the net worth of a Company, which shall be determined as follows, in case of a: (a) Company, means (i) subscribed and paid up equity share capital; and (ii) reserve s LESS (iii) revaluation reserves; (iv) miscellaneous expenditure not written off; (v) reserves not available for distribution to equity shareholders; and (vi) aggregate value of accumulated losses. (b) trust or society , means the sum of available corpus and reserves; (c) partnership firm , means the sum of the partners' capital account and undistributed profits; (d) limited liability partnership , means the sum of partners' capital account and undistributed profits as per the 'Statement of Account' prepared as per Limited Liability Partnership Rules, 2009; (e) sole proprietorship , means the value of all assets minus liabilities of the proprietorship but does not include the personal assets or liabilities of the sole proprietor; and (f) individual , means the sum of the value of all unencumbered assets owned by the individual minus the sum of the value of all liabilities of the individual.
Non-Political Force Majeure Event	has the meaning ascribed to it in Clause 14.1(b)(i).
Notice of Arbitration	has the meaning ascribed to it in Clause 21.2.1
Notice of Intent to Terminate	means a notice of intent to terminate issued by NMC in case of a Concessionaire Event of Default (in accordance with Clause 16.2) or a notice of intent to terminate issued by the Concessionaire in case of a NMC Event of Default (in accordance with Clause 16.5), stating its intention to terminate this Agreement.
O&M	means operation and maintenance.



O&M Charges	means the amount required by the Concessionaire per quarter to operate and maintain the each Nashik Facilities, excluding the Power Charges, during the O&M Period. The O&M Charges for the first quarter after the COD will be determined on the basis of the O&M Charges quoted by the Selected Bidder (in the Financial Proposal) for the first month from the COD, escalated @ 5% per Year in accordance with the Concession Agreement. .
O&M Manual	means the manual, required to be prepared by the Concessionaire and approved by NMC for the operation and maintenance of the Facilities in accordance with Clause 8.2.
O&M Payments	means for each of Nashik Facility, collectively the: (a) relevant Capex Annuity; (b) interest on the reducing balance of (Nashik Facilities Bid Price LESS Construction Payments); (c) relevant O&M Charges; to be paid by NMC to the Concessionaire during the relevant O&M Period for such component, in accordance with this Concession Agreement.
O&M Period	means the period commencing from the COD of individual Nashik Facility and ending on the Expiry Date, during which the Concessionaire is required to operate and maintain the Facilities.
O&M Price Index	shall comprise: (a) 70% of CPI(IW); and (b) 30% of WPI, which constituents may be substituted by such alternative index or indices as the Parties may mutually agree.
Other Associated Infrastructure Facilities	Means the following facilities <ol style="list-style-type: none"> 1. Interception & Diversion (I&D) of all untreated / untapped nallahes flowing into River Godavari 2. Diversion of sewer through gravity mains up to neary by pumping station/existing sewer manhole 3. Rising mains up to proposed STP/SPS 4. Adgaon SPS – 38.8 MLD (newly proposed) 5. Makhmalabad SPS – 50 MLD (newly proposed) 6. Untwadi SPS – 18.4 MLD (existing – Retrofitting work) 7. Gangapur Road SPS – 28.4 MLD (existing – Retrofitting works) 8. Gangapur MPS – 5.4 MLD (existing – SCADA integration) 9. Chikhali Nallah SPS – 29.1 MLD (existing – Retrofitting works) 10. Govardhan SPS – 7.8 MLD (newly proposed) 11. Gangapur Gaon Nallah SPS – 0.75 MLD (newly proposed) 12. Gangapur Gaon Nallah D-STP – 0.5 MLD (newly proposed) 13. Someshwar Nallah SPS – 3.3 MLD (newly proposed) 14. Anandwadi SPS – 0.23 MLD (newly proposed) 15. Pimpalgaon Khamb SPS – 42.9 MLD (existing – SCADA integration) 16. Vadner Dhumala SPS – 9 MLD (newly proposed)
Online Monitoring System	means the monitoring system(s) to be set up by the Concessionaire as part of the STP of each Nashik Facilities for continuous monitoring of the volume, specifications and characteristics of the Raw Sewage and the Treated Sewage.
Outlet Point	means the outlet of the STP of each Nashik Facilities where the sample of the Treated Sewage shall be drawn periodically to test compliance with the Discharge Standards.

Concessionaire



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Price Index Multiple	means, the variation multiple in the Price Index occurring between the Reference Index Date preceding the Bid Due Date and the Reference Index Date preceding the date of the Invoice, which is calculated by dividing the Price Index on the Reference Index Date preceding the date of the Invoice by the Price Index on the Reference Index Date preceding the Bid Due Date. For the avoidance of doubt and by way of illustration, if (a) the Price Index on the Reference Index Date preceding the Bid Due Date, say 30 May, 2018, is 200; (b) the Invoice is submitted on 15 April, 2020; and (c) the Price Index as on 31 March, 2020 is 210, then the Price Index Multiple for determination of the amount due in respect of such Invoice shall be 1.05.
Project	has the meaning ascribed to it in Recital D.
Project Engineer	means the engineering firm appointed by NMC in accordance with Clause 6 of this agreement.
Proposed Technology	means the proven technology(ies) proposed to be used by the Concessionaire to develop the Nashik STPs, as specified by the Concessionaire in its Designs and Drawings.
Qualifying Change in Law	means any Change in Law, which: (a) is directly applicable to the Project; (b) impacts the Cost or time for undertaking the Project; and (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Due Date.
Reference Index Date	means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.
Residual Grit	means the grit which is obtained as residual matter after the treatment of the Sewage at the Nashik STPs.
RFP	has the meaning ascribed to it in Recital E.
Rupee or Rs. or INR	means Indian National Rupee.
SBI MCLR	means the prevailing marginal cost of fund-based lending rate for a tenor of 1 year, notified by the State Bank of India.
Schedule	means a schedule of this Agreement.
Scheduled Bank	means a bank as defined under section 2(e) of the Reserve Bank of India Act, 1934, as amended from time to time.
Scheduled COD	means the date which is 1 month from the Construction Completion Date of the individual Nashik Facilities, by which the Concessionaire is required to achieve the COD for the individual Nashik Facilities.
Scheduled Construction Completion Date	means the date, which is 24 months, extendable by 6 months with mutual agreement between NMC and Concessionaire, from the Effective Date, by which the Concessionaire is required to complete the construction of the Facilities. (including Monsoon Period)
Scheduled Maintenance	means a planned maintenance of any Facility that: (a) has been scheduled and allowed by NMC in accordance with the Scheduled Maintenance Programme; and is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of such Facility, as the case may be.



Executive Engineer

Scheduled Maintenance Programme	means, for each year of the O&M Period, the schedule for undertaking preventive and corrective maintenance of the Facilities, as prepared by the Concessionaire and approved by NMC in accordance with Clause 8.11(f).
Scheduled Payment Milestone Completion Date	means the scheduled date of completion of the construction work corresponding to the relevant Payment Milestone.
Scope of Work	means the scope of work for construction and O&M of the Facilities as set out in Schedule 1.
Screenings	means solids such as fibres, plastic and other products or things, which need to be removed from the Sewage, prior to the treatment of Sewage at the Nashik STPs.
Second Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(B).
Second Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(B).
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means the Bidder selected by NMC for award of the Project.
Sewage	means the sewage that is in liquid, solid or semi-solid form and brought for treatment to the Facilities.
Site	Means the site(s) for Tapovan STP & Associated Infrastructure Facilities, Agartakli STP & Associated Infrastructure Facilities, Chehedhi STP & Associated Infrastructure Facilities, Panchak STP & Associated Infrastructure Facilities and Other Associated Infrastructure Facilities as the context may require..
STP(s)	means sewage treatment plant(s).
STP By-Products	means the by-products of the treatment process after the Sewage has passed through the Facilities comprising the Dewatered Sludge, the Residual Grit and the Screenings.
Subcontract	means a contract entered into by the Concessionaire to subcontract any part of its scope of work in relation to the Project under this Agreement.
Subcontractor	means the Concessionaire's counterparty under any Subcontract.
Substitution Agreement	means the substitution agreement to be executed by NMC, the Concessionaire and the Lenders, in the format set out in Schedule 2.
Supporting Infrastructure	means the supporting infrastructure facilities required for the operation of the Nashik Facilities, which will be provided, operated and maintained by NMC during the Term.
Taxes	means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, goods and service tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors and the term Tax shall be construed accordingly.




 Executive Engineer
EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

Tapovan STP & Associated Infrastructure Facilities	Means the following facilities 1. Tapovan STP – 180 MLD 2. Bhadrakali SPS – 23.1 MLD (existing – Retrofitting work) 3. Ganeshwadi SPS – 39 MLD (existing – Retrofitting work) 4. Old Ganeshwadi SPS – 42.7 MLD (existing – Retrofitting work) 5. Kapila SPS – 60.8 MLD (existing – Retrofitting work) 6. Old Kapila SPS – 15.3 MLD (existing – Retrofitting work) 7. New Kapila SPS – 100 MLD (newly proposed) 8. Takali Kathi SPS – 12.8 MLD (existing – Retrofitting work)
Technical Specifications	means the technical specifications for design, construction, operation and maintenance of the Facilities, as set out in Schedule 10.
Term	has the meaning ascribed to it in Clause 3.7.
Termination Compensation	means the compensation payable by , NMC upon termination of this Agreement, in accordance with Article 18.
Third Breach	has the meaning ascribed to it in Clause 8.12(b)(iii)(C).
Third Breach Notice	has the meaning ascribed to it in Clause 8.12(b)(iii)(C).
Threshold Limit	has the meaning ascribed to it in Clause 13.2(e)(i).
Total Casualty	means any fire or other casualty that results in physical damage to the Nashik Facilities, to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Nashik Facilities (as determined by the Project Engineer), to the same condition as existed previously, would be more than 25% of the total replacement cost of the Facilities.
Treated Sewage	means the water which is obtained after the treatment of the Sewage at the Nashik STPs.
Trial Operations	means the operation of the respective Nashik Facilities on a trial basis for a period of 1 month from the Construction Completion Date or such longer period as may be determined in accordance with Clause 7.12.
Trial Operations Completion Certificate	means the certificate issued by NMC to the Concessionaire upon successful completion of the Trial Operations of the respective Nashik Facilities.
Trial Operation	means the procedures for conducting the Trial Operations, as set out in the agreement
Procedures	Technical Specifications, Schedule 10.
Unscheduled Outage	means an interruption of or a reduction in the Availability of any Facility that is not the result of a Forced Unavailability.
Variation	means any alteration in the Scope of Work, Technical Specifications or the Designs and Drawings, as instructed by NMC or proposed by the Concessionaire, in accordance with Article 20.
Variation Order	means an order issued by NMC certifying its approval of a proposed Variation and recording the terms and condition on which the proposed Variation is required to be implemented.



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Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Waste Disposal Site	means the site identified by NMC for disposal of the STP By-Products and other waste material (including silt) from the Nashik STPs.
Website	means the web portal of NMC, available at the url: https://mahatenders.gov.in
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.
WPI	means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.



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Executive Engineer
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 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

1.2 Rules of Interpretation

In this Agreement, unless the context otherwise requires:

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

Concessionaire



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

set out in this Agreement shall prevail,

- (l) The provisions of the Articles, Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Articles, Clauses and the Schedules.
- (m) In the event of any ambiguities or discrepancies within this Agreement, the following shall apply:
- (i) between two Clauses of this Agreement, the provisions of the specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the specific Schedule relevant to the issue under consideration shall prevail over the more general; and
 - (iii) between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules.
- (n) In the event of any discrepancy between various documents issued by or provided to NMC as a part of the Bid Process, the following order of priority shall apply:
- (i) this Concession Agreement;
 - (ii) the Schedules to this Concession Agreement;
 - (iii) the Financial Proposal submitted by the Selected Bidder;
 - (iv) the LOA issued to the Selected Bidder;
 - (v) the written clarifications, if any, issued to the bidders; and
 - (vi) the RFP.
 - (vii) the RFQ.
- (o) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify NMC, for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and NMC, shall be responsible to and indemnify the Concessionaire for the acts and omissions of NMC Related Parties respectively, as if they were the acts and omissions of NMC as the case may be.
- (p) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of NMC, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (q) The rule of construction, if any, that an agreement should be interpreted against the



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Party responsible for the drafting and preparation thereof shall not apply to this Agreement.

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

1.3 Units of Measurement

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

2. SCOPE OF THE PROJECT AND GRANT OF THE CONCESSION

2.1 Scope of the Project

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

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

2.2 Grant of Concession

- (a) On and from the Effective Date and subject to the terms of this Agreement, Applicable Laws and Applicable Permits, NMC grants to the Concessionaire the exclusive right to:
- (i) design, finance, construct and complete the Facilities; and
- (ii) upon completion of construction of the Facilities, operate and maintain the

Concessionaire



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Facilities during the O&M Period.

- (b) The grant of the concession set out in Clause 2.2(a) shall oblige or entitle the Concessionaire, as the case may be, to the following:
- (i) access to the Site from the Effective Date, for the sole purpose of implementing the Project;
 - (ii) apply for and obtain all the Concessionaire Applicable Permits and utilities required to undertake the Project;
 - (iii) raise funds (through both debt and equity financing)
 - (iv) complete the construction of the Facilities on or before the Scheduled Construction Completion Date;
 - (v) upon completion of construction of the Facilities, undertake Trial Operations;
 - (vi) upon successful completion of the Trial Operations, operate and maintain the Facilities until Expiry Date;
 - (vii) receive, treat and process Sewage up to the Design Capacity;
 - (viii) store, treat, market, sell or dispose of the STP By-Products subject to and in accordance with this Agreement;
 - (ix) store, treat, market, sell or dispose of the treated Sewage water, Sludge, Manure, Biogas, Carbon credit, Water credit or any other byproduct generated or associated derivatives from STPs;
 - (x) transfer the Facilities to NMC upon the expiry of the Term or termination of this Agreement, after rectification of any defects in the Facilities, in accordance with the Hand-back Conditions and the Hand-back Requirements;
 - (xi) receive the Construction Payments during the Construction Period and the O&M Payments during the O&M Period, subject to compliance with the terms and performance of the obligations under this Agreement;
 - (xii) appoint Subcontractors, agents, advisors and consultants and enter into Subcontracts to undertake the Project, with the prior approval of NMC;

2.3 Description of the Facilities

- (a) The Facilities shall include the Nashik STPs, the Online Monitoring Systems, the



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

on-site testing laboratory facilities, temporary storage facilities for the Dewatered Sludge, the I&D Works and all other such facilities necessary or associated with the STP for treatment, processing and disposal of the Sewage, as described in greater detail in Schedule 1 (*Scope of Work*) and Schedule 10 (*Technical Specifications*).

- (b) The Concessionaire shall operate the Facilities and treat the Sewage in a manner such that the KPIs are achieved, and the Treated Sewage and Dewatered Sludge comply with the Discharge Standards.
- (c) The by-products of the Sewage treated at the Nashik STPs (i.e., STP By-Products) will be bifurcated into the Screenings, the Dewatered Sludge and the Residual Grit. The Concessionaire will be required to dispose the STP By-Products and silt as follows:
- (i) the Residual Grit, the Screenings, and the silt will be disposed at the relevant Waste Disposal Site to be identified by NMC within a radius of 15 km from the relevant Site, in accordance with the Technical Specifications; and
- (ii) The Concessionaire shall dewater the STP Sludge at a sludge handling facility to be provided by the Concessionaire at the Site and have to either sell the Dewatered Sludge to farmers/other third party buyers or dispose the Dewatered Sludge at the relevant Waste Disposal Site, identified by NMC, within a radius of 15 km from the relevant Site. Provided that if the Concessionaire sells the Dewatered Sludge to any third party, the Concessionaire shall be required to share 10% of revenues from such sale with the NMC,
- (d) The Concessionaire shall transfer the Treated Sewage to the Discharge Point, for discharge into the river or sale to third parties or utilization for reuse / irrigation purposes. Subject to approval from Irrigation department as per the prevailing agreement and its term condition between WRD & NMC regarding the water reservation and treated wastewater reuse opportunities, if the Concessionaire sells the Treated Sewage to any third party, the Concessionaire shall be required to share 10% of the revenues from such sale with NMC. Necessary infrastructure cost required for reuse will not be borne by NMC.
- (e) The Concessionaire is free to sell bio gas or its processed derivatives, if any, to potential consumers as well as carbon or water credits if any, 10% of revenue generated from such sale shall be shared with NMC.

2.4 Use of Proposed Technology

- (a) The Concessionaire shall design and develop the Nashik STPs on the basis of the Proposed Technology, approved by NMC as part of the Designs and Drawings.
- (b) If the Selected Bidder is the owner of the Proposed Technology, then the Concessionaire shall enter into a technology license agreement with the Selected

Concessionaire



Executive Engineer

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EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Bidder, under which the Selected Bidder will grant to the Concessionaire an irrevocable, perpetual, assignable, non-exclusive and royalty-free license to use the Proposed Technology to develop and operate the Facilities.

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

3. CONDITIONS PRECEDENT, EFFECTIVENESS AND TERM

3.1 Effectiveness

- (a) The day on which all of the Conditions Precedent have been satisfied in accordance with this Article 3 shall be the Effective Date.
- (b) This Article 3 and Article 2.1(Scope of the Project) and Article 2.2 (Grant of the Concession), Article 5 (Mobilization Advance Guarantees), Article 6 (Project Engineer), Article 10 (Financing Arrangements and Security), Clause 11.1 (Indemnity and Limitation of Liability), Article 12 (Change in Ownership), Article 13 (Change in Law), Article 14 (Force Majeure), Article 21 (Dispute Resolution), Article 22 (Representations and Warranties) and Article 23 (Miscellaneous) and the related Schedules, shall come into full force and effect and be binding on the Parties on and from the Appointed Date and continue until such time as this Agreement expires or is terminated in accordance with its terms. The other provisions of this Agreement shall come into full force and effect and be binding on the Parties on and from the Effective Date and continue until such time as this Agreement expires or is terminated in accordance with its terms.

3.2 Conditions Precedent to be satisfied by the Concessionaire

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled)



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

on the Appointed Date):

- (a) submit the Designs and Drawings to NMC for its approval in accordance with Clause 7.2;
- (b) prepare the Construction Plan within 30 days from the Appointed Date and submit the Construction Plan to NMC for its approval in accordance with Clause 7.3;
- (c) obtain all Concessionaire Applicable Permits that are required for commencement of construction of the Facilities at its own cost and expense and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect for the entire Construction Period, or such longer period as may be required under Applicable Laws;
- (d) submit to NMC certified true copies of all resolutions adopted by the board of directors of the Concessionaire authorizing execution, delivery and performance of this Agreement, Substitution Agreement and the Escrow Agreement by the Concessionaire;
- (i) execute a shareholders' agreement amongst the shareholders of the Concessionaire, and deliver to NMC a certified true copy of the shareholders' agreement (attested by a director of the Concessionaire);
- (j) submit to NMC certified true copies of the constitutional documents of the Concessionaire;
- (k) submit to NMC a legal opinion stating that: (i) this Agreement has been duly executed and is legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into and comply with its obligations under this Agreement, has been taken, fulfilled or done;
- (l) submit to NMC a certificate, duly attested by a director, certifying the shareholding pattern of the Concessionaire; and

3.3 Conditions Precedent to be satisfied by NMC

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

- (a) grant access to the Nashik Facilities Site and all necessary rights of way to the Nashik Facilities Site to the Concessionaire, free of Encumbrances and encroachments;
- (b) to the extent relevant, obtain any change in land use permission from the relevant Government Authority to enable the Concessionaire to undertake the Project at the Site;
- (c) subject to Clause 3.2(a), review and approve the Phase I Designs and Drawings in accordance with Clause 7.2;
- (d) subject to Clause 3.2(b), review and approve the Construction Plan in accordance with

Concessionaire



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Clause 7.3;

- (c) obtain all approvals and consents, including NMC Applicable Permits and any approvals from the National Green Tribunal, required for NMC to enter into this Agreement and undertake the Project;
- (f) provide access road(s) to the Nashik Facilities Site, which are capable of being used for transportation of equipment and material to the Nashik Facilities Site for the construction of the Facilities;
- (g) Funding Tie up from State Government
- (h) Obtaining Comfort Letter as per Schedule 13 from Government of Maharashtra for this escrow arrangement as per Format Provided.
- (i) Open escrow account linked to the NMC GST account.
- (j) Notify the Waste Disposal Site(s) for disposal of STP By-Products, silt, construction debris, and surplus excavated material, as set out in Clause 2.3(c);
- (k) Operate and maintain Supporting Infrastructure for the Facilities.
- (l) Obtain all approvals and consents that may be required for NMC to enter into this Concession Agreement and undertake the Project;
- (m) Appoint the Project Engineer in accordance with Article 6;
- (n) Obtain the following Clearance / Approval / Permissions. NMC shall procure these permissions. However Concessionaire shall provide documentation and followup support to the NMC.

1. Tree Cutting/Site Clearing

- (i) Tapovan STP Site (proposed 180 MLD))
- (ii) Chehedi STP Site (proposed 64 MLD STP)
- (iii) Panchak STP Site (proposed 75 MLD STP)
- (iv) Agartakli STP Site (proposed 97 MLD STP)
- (v) All proposed SPS locations, as required
- (vi) Necessary approvals and execution planning for tree cutting and site clearing.

2. New Land Requirements for Proposed SPS

- (i) Gangapur Gaon Nallah (for SPS and D-STP)
- (ii) Someshwara Nallah SPS
- (iii) Anandwadi Nallah SPS
- (iv) Nandini Sangam SPS (near the confluence point)
- (v) All other proposed SPS as mentioned in the Schedule 1
- (vi) Initiation of land acquisition/clearance process. NMC shall get this land in its possession before the Effective Date of the contract.

3. Power Supply (11 KV)

- (i) Required for all proposed STPs & SPSs
- (ii) Additional power demand assessment for capacity enhancement at existing STPs/SPSs



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

(iii) Timely approvals and installations. NMC shall procure required power connections in its name.

4. Permissions for Laying of Rising Main

- (i) Makhmalabad SPS to Tapovan STP through residential / market area.
- (ii) NMC shall obtain necessary approvals from relevant authorities before commencement of contract.

5. Permissions for Interception Weir Construction

- (i) Nandini River (before confluence point with Godavari)
- (ii) NMC shall finish the approval process before the Effective Date of the contract.

6. Proper Access to Nallahs & SPS

- (i) Access to all Nallahs and proposed SPS location.
- (ii) NMC shall develop of suitable access routes before Effective Date of the contract.

7. Site for Disposal of STP Sludge

- (i) NMC shall identify and approve the sludge disposal site.

8. Site for Disposal of Construction & Demolition Debris

- (i) NMC shall identify and approve the site for disposal of construction and demolition debris.

9. Inspection & Audit of Existing Sewer Infrastructure:

- (i) Sewer lines, manholes, and rising mains
- (ii) Repair of identified leakages in manholes and pipelines

3.4 Post Effective Date

Post Effective Date, both the NMC and Concessionaire may,

- obtain all Concessionaire Applicable Permits that are required for achieving Financial Closure of the Project.
- execute the Escrow Agreement with NMC and the Escrow Bank in the agreed form set out in Schedule 3;

Concessionaire



Executive Engineer

ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- execute the Substitution Agreement with NMC and the Lenders in the agreed form set out in Schedule 2.
- achieve Financial Closure and submit a copy of the Financing Documents and the Financial Package to NMC, duly certified by a director of the Concessionaire.
- submit to NMC a legal opinion stating that the Substitution Agreement has been duly executed and is legally valid.

3.5 Satisfaction of Conditions Precedent

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


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

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

3.6 Consequences of failure to satisfy Conditions Precedent

- (a) Subject to this Clause 3.6:




 Executive Engineer
EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

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

Concessionaire



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

3.7 Term

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

4. SITE AND ASSET OWNERSHIP

4.1 Grant of License over the Site

- (a) NMC shall grant the Concessionaire a license over the Nashik Facilities Site along with all necessary rights of way, to enter upon, access and occupy the Nashik Facilities Site, free of all Encumbrances in accordance with this Clause 4.1, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

shall include the exclusive right to:

- (i) design, construct and commission the Nashik Facilities at the Site;
 - (ii) operate and maintain the Nashik Facilities during the O&M Period;
 - (iii) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Site, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
 - (iv) use access roads, gates, fences and utilities at or about the Site;
 - (v) discharge, store, treat and manage the STP By-Products and the Treated Sewage produced by the Nashik Facilities; and
 - (vi) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Site.
- (b) On and from the Effective Date and subject to the provisions of this Agreement, NMC shall grant the Concessionaire: (i) a license over the Nashik Facilities Site including the exclusive right to occupy and use the Nashik Facilities Site to construct the Nashik Facilities; and (ii) all necessary rights of way to the Nashik Facilities Site. Any charges payable for obtaining the right of way will be paid directly by NMC.
- (c) NMC shall provide the Nashik Facilities Site to the Concessionaire free of Encumbrances and encroachments as a Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Nashik Facilities Site by NMC, NMC will remove such hazardous substances at its own cost and expense.
- (d) The Concessionaire shall not without the prior written consent or approval of NMC use the Site for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by NMC.
- (e) The full ownership and title over the Site shall vest with NMC for the entire Term.
- (f) NMC warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy the Site, from such time that access is granted to the Concessionaire and until the expiry of the Term or early termination of this Agreement. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Site or any part thereof or in the event of any

Concessionaire



Executive Engineer

EXECUTIVE ENGINEER
Public Works Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, NMC shall, if called upon by the Concessionaire, defend such claims and proceedings.

- (g) Subject to any substitution rights exercised by the Lenders, the license granted by NMC shall automatically terminate upon termination of this Agreement or expiry of the Term.

4.2 Right, Title and Interest in the Facilities

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

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

4.3 Site Data and Verification

- (a) NMC has made available to the Concessionaire, the layout plans, load flow studies and all other relevant data, studies and reports in NMC's possession in connection with the Site and the Facilities.
- (b) The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- (i) The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by NMC and any other information available with respect to the Facilities and the Site and to have satisfied itself as to all the relevant matters including: the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Site;

- (ii) the suitability of the Site for undertaking the construction and operation of the Facilities;
- (iii) the condition of the utilities available till the battery limits of the Site;
- (iv) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
- (v) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
- (vi) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
- (vii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
- (viii) the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Government Authority; and
- (ix) all other matters that may affect the performance of its obligations under this Agreement.

4.4 Unforeseen Site Conditions

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

4.5 Site Related Covenants

The Concessionaire agrees and undertakes that:

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

Concessionaire

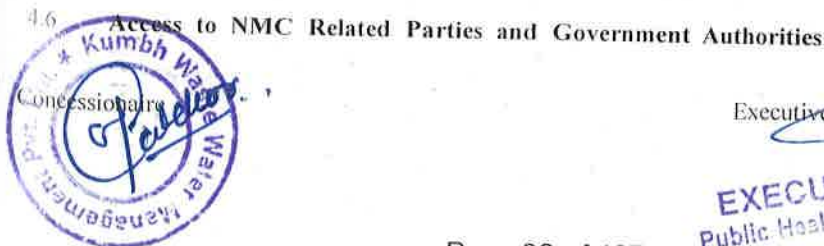



Executive Engineer

ENGINEER
Public Engineering, (Sewerage)
Nashik Municipal Corporation, Nashik

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

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



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

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

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

5. MOBILIZATION ADVANCE GUARANTEES

5.1 Mobilization Advance Guarantee

- (a) Within 30 days of the Effective Date, the Concessionaire / Promoters shall submit to NMC:
 - (i) an unconditional and irrevocable Bank Guarantee / Insurance Surety bond / adequate Corporate guarantee for an amount equal to 110% of the Mobilization Advance for the Nashik Facilities in the form set out at Schedule 4 (the **Nashik Facilities Mobilization Advance Guarantee**); and The Mobilization Advance Guarantee shall secure the Mobilization Advance paid to the Concessionaire in accordance with Clause 9.3(d). The cost of procuring the Mobilization Advance Guarantees shall be borne solely by the Concessionaire/Promoters, as the case may be.
- (b) The Mobilization Advance Guarantee shall remain valid until the entire Mobilization Advance secured by such Mobilization Advance Guarantee has been adjusted against the Construction Payments. However, the relevant Mobilization Advance Guarantee shall, progressively reduced by the value of the relevant Mobilization Advance Guarantee by the amount of the Mobilization Advance adjusted against each of the 8 instalments of the Construction Payments, in accordance with Clause 9.3(d). The same may be achieved by way of NMC providing release letter for particular amount / return of Bank Guarantee / Insurance Surety bond / Corporate

Concessionaire



Executive Engineer

EXTENSION ENGINEER
Public Health Engineering (sewerage)
Nashik Municipal Corporation, Nashik

guarantee (in case of multiple BGs) / furnish of new BG with lower amount.

- (c) If any Mobilization Advance Guarantee is scheduled to expire before the entire Mobilization Advance has been adjusted, then the Concessionaire shall arrange for an extension of the relevant Mobilization Advance Guarantee at least 30 days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, NMC shall be entitled to drawdown the total amount available under such Mobilization Advance Guarantee and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the Mobilization Advance Guarantee.
- (d) NMC shall be entitled to utilize such retained amount in the same manner as it would utilize the Mobilization Advance Guarantee. Upon receipt of an extension or replacement Mobilization Advance Guarantee or on adjustment of the entire Mobilization Advance, NMC shall return the unutilized cash security amount to the Concessionaire.

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

- (e) NMC shall have the right to draw on the Mobilization Advance Guarantees in the event of the inadequate adjustment of the Mobilization Advance in accordance with Clause 9.3(d), prior to the Construction Completion Date.
- (f) NMC shall be required to give 15 days prior notice to the Concessionaire of its intention to make a demand under any Mobilization Advance Guarantee.

5.2 Performance Securities

- (a) The Concessionaire / Promoters shall have submitted to NMC, prior to the Appointed Date an unconditional and irrevocable Bank Guarantee / Corporate Guarantee / Insurance Surety Bond for an amount equal to 3% of Bid Project Cost quoted by Bidder in Financial proposal (**Performance Security**)
- (b) The Performance Security shall remain valid until 31 months from the Effective Date or 1 month from the COD, whichever is later.
- (c) The Performance Security retained by NMC shall be returned after the expiry of 30 days from the COD, unless this Agreement is terminated earlier, in which case the Performance Security will be returned within 30 days from the date of termination, subject to NMC's right to receive any amounts from the Concessionaire under this Agreement.
- (d) The Performance Security shall secure the due performance of all the Concessionaire's obligations during the Construction Period.
- (e) The cost of procuring the Performance Security shall be borne solely by the



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Concessionaire/Promoters.

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

5.3 ESHS Performance Security

- a) The Concessionaire / Promoters shall have submitted to NMC, prior to the Appointed Date an unconditional and irrevocable Bank Guarantee / Corporate Guarantee / Insurance Surety Bond for an amount equal to 1% of Bid Project Cost quoted by Bidder in Financial proposal (Performance Security)
- b) The ESHS Performance Security shall be valid until the Expiry Date or Termination of the Agreement, whichever is earlier.
- c) The ESHS Security shall have an initial validity period till COD, which must thereafter be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the expiry of the O&M Period. If any of the ESHS Security is not renewed by the expiry of the 11th month of the relevant year, then NMC shall be entitled to drawdown the total amount available under the ESHS Security and retain such amount as cash security until such time that the Concessionaire submits an extension or replacement of the ESHS Security.
- d) The ESHS Performance Securities shall secure the due performance of the Concessionaire's ESHS obligations during the Construction Period and the O&M Period, as set out in the approved ESHS Documents.
- e) The cost of procuring the ESHS Performance Securities shall be borne solely by the Concessionaire.
- f) The NMC shall have the right to draw on the ESHS Performance Securities and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its ESHS related obligations, responsibilities or commitments during the Construction Period or the O&M Period, in accordance with this Agreement.

5.4 O&M Securities

- a) The Concessionaire / Promoters shall have submitted to NMC, Within 60 days of the relevant Construction Completion Date an unconditional and irrevocable Bank Guarantee / Corporate Guarantee / Insurance Surety Bond for an amount equal to 4 % of Bid Project Cost quoted by Bidder in Financial proposal (Performance Security).
- b) The Concessionaire / Promoters shall maintain the O&M Securities in full force and effect until the expiry of the O&M Period.
- c) The O&M Securities shall have an initial validity period of 1 year, which must be renewed on a year-on-year basis, before the expiry of the 11th month of the relevant year, until the expiry of the O&M Period or Termination of the Concession Agreement, whichever is earlier.
- d) The Performance Securities shall secure the due performance of all the Concessionaire's obligations during the O&M Period.
- e) The cost of procuring the O&M Securities shall be borne solely by the Concessionaire.
- f) The NMC shall have the right to draw on the O & M Securities and claim up to the

Concessionaire



Executive Engineer

Public Works Engineer (Sewerage)
Nashik Municipal Corporation, Nashik

amount guaranteed upon the Concessionaire's failure to satisfy any of its obligations, responsibilities or commitments during the O&M Period, or any amount due and payable by the Concessionaire to the NMC (including any Liquidated Damages, Performance Liquidated Damages, Termination Compensation) , in accordance with this Agreement.

6. PROJECT ENGINEER

- 6.1 NMC shall appoint a third-party engineering firm with requisite technical expertise, knowledge and experience in the design, engineering and construction of STP as the engineer for the Project (the **Project Engineer**). The Project Engineer shall assist NMC in supervising the construction/renovation, operation and maintenance of the Facilities and shall support NMC to monitor compliance with the KPIs during the O&M period. The detailed scope of work of the Project Engineer is set out in Schedule 5.
- 6.2 All fees, costs, charges and expenses payable to the Project Engineer shall be borne by NMC.
- 6.3 The Concessionaire may request NMC, to replace the Project Engineer if the Concessionaire believes that the Project Engineer is not performing its duties in accordance with this Agreement or is otherwise impeding the performance of the Concessionaire's obligations under this Agreement.

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

- (a) if it has reason to believe that the Project Engineer has not discharged its duties in accordance with this Article 6 and/or Schedule 5; or
- (b) has received a formal complaint from the Concessionaire. In such a case NMC, will make necessary investigations and it is established that the Project Engineer has not discharged its duties in accordance with this Article 6 and/or Schedule 5; or
- (c) if the Project Engineer submits its resignation.
- 6.4 In appointing any replacement of the Project Engineer, NMC shall comply with this Schedule 5.
- 6.5 The Project Engineer shall be required to act independently, reasonably, fairly and expeditiously to ensure: (a) the timely completion of construction of the Facilities on or before the Scheduled Construction Completion Date and (b) compliance with the KPIs during the O&M Period.
- 6.6 During the Construction Period, the Project Engineer shall inspect the Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Technical Specifications and Designs and Drawings. The Project Engineer shall send the report to NMC and the Concessionaire within 7 days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any, identified by the Project Engineer.

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

7. CONSTRUCTION PERIOD

7.1 Commencement and Duration

The period for construction of the Nashik Facilities shall commence on and from the Effective Date, and shall continue until the Construction Completion Date (including monsoon period_) (the



Executive Engineer
PUBLIC HEALTH ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Construction Period).

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

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

7.2 Designs and Drawings

(a) Phase I Designs and Drawings

(i) *Basic Engineering Designs*

- A) The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. If the Concessionaire proposes to set up the Power Plant, the Concessionaire shall also submit the Basic Engineering Designs for the Power Plant. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and cost overruns and to ensure smooth construction of the Facilities. The Nashik Facilities should be designed in a manner such that the Concessionaire can obtain a consent to operate from the Maharashtra Environment Protection and Pollution Control Board for the operation of the Facilities. The Basic Engineering Designs should also specify the Proposed Technology for the Nashik STP.
- B) Within 30 days from the Appointed Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft Basic Engineering Designs to NMC for its review and approval.
- C) NMC shall forward the Basic Engineering Designs to the Project Engineer for their review and comments.
- D) NMC shall provide comments if any, on the draft Basic Engineering Designs (including the Project Engineer) to the Concessionaire or notify the Concessionaire of its approval of the draft Basic Engineering Designs within 15 days from the date of receipt of the draft Basic Engineering Designs. NMC may require the Concessionaire to amend or modify the draft Basic Engineering Designs if NMC, /other institute, or the Project Engineer identifies any deficiencies, inaccuracies or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from NMC, then the Concessionaire shall modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, NMC's/ the Project Engineer's



comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to NMC for its approval within 10 days of receipt of comments. The process set out in this Clause 7.2(a)(i) shall continue until the Basic Engineering Designs are certified by IIT/VNIT/other institute and are approved by NMC in accordance with this Clause 7.2(a)(i)(C) and Clause 7.2(a)(i)(D).

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

(b) Phase II Designs and Drawings

- (i) At least 1 month prior to the commencement of work for the second Payment Milestone for the Nashik Facilities, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the Phase II Designs and Drawings for the works corresponding to the second Payment Milestone for the Nashik Facilities. The process set out in Clause 7.2(a)(i)(C) and clause 7.2(a)(i)(D) will apply for approval of the Phase II Designs and Drawings for the works corresponding to the second Payment Milestone.

- (ii) The process set out in Clause 7.2(a)(iii) above shall apply to the submission and approval of the Phase II Designs and Drawings for the work corresponding to the second Payment Milestone, and thereafter, each subsequent Payment Milestone for the Facilities.

- (c) The Concessionaire shall construct the Nashik Facilities strictly in accordance with the approved Designs and Drawings. If there are any errors or deficiencies in the Technical Specifications, the Designs and Drawings shall take into account, address or rectify such errors or deficiencies. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Designs and Drawings without the prior written approval of NMC. The Concessionaire shall not commence construction of any part of the Facilities prior to approval of the Designs and Drawings in accordance with this Clause 7.2. If the Concessionaire undertakes any construction work for the Nashik Facilities prior to the approval of the Designs and Drawings, it shall do so at its own risk and NMC shall have the right to reject any such construction work that does not comply with the approved Designs and Drawings.

- (d) Notwithstanding any approval of the Designs and Drawings by NMC, the




Executive Engineer

Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to Clause 3.5 and Clause 7.10(b), the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 7.2.

7.3 Construction Plan

- (a) Within 30 days from the Appointed Date, the Concessionaire shall prepare and submit to NMC a detailed Construction Plan. The Construction Plan shall set out:
 - i) The detailed plan for completing the construction of the Nashik Facilities by the Scheduled Construction Completion Date; specific activities and extent of construction work to be performed by the Concessionaire to achieve each of the 4 Nashik Facilities Payment Milestones; and
 - ii) the order in which the Concessionaire proposes to execute the construction of the Nashik Facilities.
- (b) NMC shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 days from the date of receipt of the draft Construction Plan from the Concessionaire. NMC may require the Concessionaire to amend or modify the draft Construction Plan if NMC identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan from NMC, then the Concessionaire shall incorporate the suggestions made by NMC and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by NMC. Thereafter, the Concessionaire shall submit the revised Construction Plan to NMC for its approval. The process set out in this Clause 7.3(b) shall continue until the Construction Plan is approved by NMC in accordance with this Clause 7.3(b).
- (c) The Concessionaire shall construct the Nashik Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of NMC. The Concessionaire shall not commence construction of any part of the Facilities prior to approval of the Construction Plan in accordance with this Clause 7.3.
- (d) Notwithstanding any approval of the Construction Plan by NMC, the Concessionaire shall, subject to Clause 7.11(b), be solely liable for completing the construction of the Facilities by the Scheduled Construction Completion Date.
- (e) The Concessionaire shall submit a consolidated Construction Plan for the Nashik Facilities.




EXECUTIVE ENGINEER
Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

7.4 Subcontracting

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the Construction Period, with the prior written consent of NMC.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to NMC for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 7.5(b) above, NMC shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.
- (d) The approval of any Subcontractor and the corresponding Subcontract by NMC shall be subject to the following conditions:
 - (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the Construction Period;
 - (ii) the Subcontract is on terms consistent with this Agreement;
 - (iii) the Subcontract contains provisions that provide, at NMC's option, for the subcontract to be novated or assigned to NMC or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle NMC or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of NMC shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractor.
- (e) If NMC does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by NMC.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to NMC for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of NMC and the process set out in this Clause 7.5 shall apply in such case.
- (h) Notwithstanding the approval of any Subcontractor by NMC, the Concessionaire



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

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

7.5 Concessionaire's Construction Obligations

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

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

- (i) complete the work corresponding to each Payment Milestone by the Scheduled Payment Milestone Completion Date and complete the construction of the relevant Nashik Facilities by the relevant Scheduled Construction Completion Date, in a manner that is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, Applicable Laws, Applicable Permits and Good Industry Practices.
 - (ii) the Nashik Facilities are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;
 - (iii) the Nashik Facilities are free from all defects in design, materials, and workmanship;
 - (iv) the Nashik Facilities are safe, reliable and fit for purpose; and
 - (v) the Nashik STPs shall be capable of treating Sewage up to its respective Design Capacity.
- (b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the Nashik Facilities, and make reasonable endeavours to assist NMC in obtaining the Applicable Permits from the relevant Government Authorities;
 - (c) within 30 days of the Effective Date, and in any event, prior to the commencement




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

of any construction of the Nashik Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Facilities, and liaise with NMC's Representative, and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, the Concessionaire may replace the Concessionaire's Representative with prior written notice to NMC;

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




Executive Engineer
Public Works Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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



[Signature]
EXECUTIVE ENGINEER
 Executive Engineer
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

7.6 **NMC's rights and obligations**

During the Construction Period, NMC shall:

- (a) comply with all its obligations under Applicable Laws (including, specifically the MWSSB Act) and NMC Applicable Permits;
- (b) make reasonable endeavours to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) maintain the Supporting Infrastructure to enable the delivery of Sewage at the Nashik STP and disposal of the Treated Sewage from the Nashik STP during the Trial Operations;
- (d) within 30 days of the Effective Date, and in any event, prior to the commencement of any construction for the Nashik Facilities, appoint a Person with sufficient skill and expertise to act as NMC's Representative. NMC's Representative shall liaise with the Concessionaire's Representative, and the Project Engineer during the Construction Period and the O&M Period. At any time during the Term, NMC may replace NMC's Representative and same shall be informed to concessionaire;
- (e) cause the Project Engineer to carry out timely inspection of the Nashik Facilities, and perform its other obligations and duties under this Agreement;
- (f) upon progressive completion of construction works for the Nashik Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, as certified by the Project Engineer, issue the Milestone Completion Certificates and the Construction Completion Certificate to the Concessionaire; and
- (g) ensure that the Concessionaire enjoys peaceful access to the Site and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site or create any Encumbrance over any part of the Site, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.
- (h) make the Construction Payments, on satisfactory completion of the relevant Payment Milestone, in accordance with Clause 9.3;
- (r) ensure that the Escrow Account is funded with the Minimum Escrow Balance, in accordance with Clause 9.4(c).
- (s) Novation of existing O&M contracts of all STPs and SPSs in the name of Concessionaire at the time of COD of Nashik Facilities.
- (t) NMC shall identify all leaking sewer lines, rising mains and manhole so that no sewage



Executive Engineer

EXECUTIVE ENGINEER
Public Works Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

is leaked into the river

7.7 Deleted

7.8 Utilities

- (a) The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the construction of the Nashik Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc. at the Site. The Concessionaire shall bear the cost of all power, water, and other utilities consumed by it during the Construction Period, and the Concessionaire shall not be entitled to claim any reimbursement from NMC, in this regard.
- (b) The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clause 7.10(a) and Clause 7.10(b) above.
- (c) NMC shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Nashik Facilities.

7.9 Construction Timelines

- (a) The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Nashik Facilities on or before the Scheduled Construction Completion Date.
- (b) Subject to Clause 7.11(c) below, the Concessionaire shall be entitled to a day-for-day extension of the relevant Scheduled Payment Milestone Completion Date or as the case may be, the Scheduled Construction Completion Date, if the completion of construction of the Facilities is delayed due to any of the following reasons (each such event, a **Delay Event**):
 - (i) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
 - (ii) a Qualifying Change in Law;
 - (iii) undue delay by the relevant Government Authority in granting or renewing any Applicable Permit, despite the Concessionaire having applied for such grant or renewal expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (iv) undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of




Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Applicable Laws in making such application;

- (v) any delay attributable to unforeseen site conditions in accordance with Clause 4.4;
- (vi) delay by NMC in approval of the Phase I and II Designs and Drawings in accordance with Clause 7.2;
- (vii) delay by NMC in approval of the O&M Manual in accordance with Clause 8.2;
- (viii) delay by NMC in issuance of a Milestone Completion Certificate in accordance with Clause 7.11(a);
- (ix) any variation proposed by NMC in the Technical Specifications or the Designs and Drawings in accordance with Article 20; or
- (x) delay caused in complying with any instructions of NMC or the Project Engineer, which instructions are not attributable to any default of the Concessionaire.

The Concessionaire shall promptly provide NMC (with a copy to the Project Engineer,) with a notice upon becoming aware of any Delay Event listed at Clause 7.10(b) above. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Clause 7.10(b), within 7 days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 7.10(b).

- (c) Without prejudice to the Concessionaire's obligations to notify NMC regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 7.10(b); and (ii) give NMC and the Project Engineer access to such records and documents or provide NMC and the Project Engineer with copies, if so requested.
- (d) If the Concessionaire claims an extension of time in accordance with Clause 7.11(b) and NMC is of the opinion that such delay was caused or materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 7.11(b) but solely attributable to the Concessionaire, then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.
- (e) If two or more of the Delay Events listed in Clause 7.10(b) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under




Executive Engineer
Public Works Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Clause 7.10(b).

- (f) Except as provided in Clause 7.10(b), the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
- (i) delay caused in complying with any instructions of NMC or the Project Engineer which are attributable to any act or omission of the Concessionaire;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines;
 - (iii) unavailability or shortage of equipment, materials, or any other resources;
 - (iv) any delay in approving the drafts of the Designs and Drawings, the Construction Plan or any other document submitted by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan or other documents, as the case may be; or
- (g) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with Article 21 (Dispute Resolution).

7.10 Delay Liquidated Damages and Bonus

- (a) Subject to Clause 7.11, if the Concessionaire fails to complete the work corresponding to any Payment Milestone by the relevant Scheduled Payment Milestone Completion Date or fails to complete the construction of the Nashik Facilities by the Scheduled Construction Completion Date, then NMC shall be entitled to liquidated damages for each day of delay beyond the Scheduled Payment Milestone Completion Date, or, as the case may be, the Scheduled Construction Completion Date, at the rate of 0.1% for each day of delay from the Scheduled Payment Milestone Completion Date, or the Scheduled Construction Completion Date as the case may be (called **Delay Liquidated Damages**) up to maximum of 10% of the Construction Payments. The Delay Liquidated Damages will be payable until the work for the relevant Payment Milestone is completed or, as the case may be, the construction of the Facilities is completed, as certified by NMC in accordance with Clause 7.11.

If the Concessionaire completes the construction of the Facilities by the Scheduled Construction Completion Date, the aggregate Delay Liquidated Damages recovered by NMC under this Clause 7.10(a) for a delay in achieving any Payment Milestone shall be refunded by NMC to the Concessionaire, without any interest. Provided that, if the Concessionaire completes the construction of only one Facility (and not all the Facilities) by the Scheduled Construction Completion Date, then the NMC




EXECUTIVE ENGINEER
Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

shall only refund the Delay Liquidated Damages recovered by the NMC under this Clause 7.12(a) for the Facility that is completed by the Scheduled Construction Completion Date.

- (b) NMC shall be entitled to deduct the Delay Liquidated Damages from the amount payable to the Concessionaire for any Payment Milestone to the extent of the Delay Liquidated Damages.
- (c) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by NMC as a result of the delay in the completion of the Nashik Facilities, and not as penalty.
- (d) If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle NMC from claiming any Delay Liquidated Damages, then NMC will be entitled to claim against the Concessionaire for general damages for delay in completing the works for the relevant Payment Milestone by the Scheduled Payment Milestone Completion Date, or for the delay in completing the construction of the Nashik Facilities by the Scheduled Construction Completion Date.
- (e) If the Concessionaire fails to complete the works for a Payment Milestone within 6 months of the Scheduled Payment Milestone Completion Date or if the Concessionaire fails to complete the construction of the Nashik Facilities within 6 months from the Scheduled Construction Completion Date, other than on account of any Delay Event (**Grace Period**), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 16.1.
- (f) The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Nashik Facilities, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavors to avoid or reduce further delay in completing the Facilities.
- (g) **Bonus on early completion**
If the Construction Completion Date for a Nashik Facilities occurs prior to the Scheduled Construction Completion Date excluding extendable period of 6 months, the Concessionaire shall be entitled to a bonus equal to 0.05% of the Construction Payments for each day by which the Construction Completion Date precedes the Scheduled Construction Completion Date.

7.11 Completion of Works

- (a) Completion of Payment Milestones



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (i) Upon completion of the works corresponding to each Payment Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to NMC, with a copy to the Project Engineer, requiring NMC to inspect (or cause the Project Engineer to inspect) the completed works covered by the relevant Payment Milestone. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.5.
- (ii) If NMC is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.5, then, subject to Clause 7.11(a)(v) below, NMC shall issue a Milestone Completion Certificate to the Concessionaire for such completed Payment Milestone within 7 Business Days from the date of inspection of the works covered by such Payment Milestone.
- (iii) If NMC is of the view that the works for the relevant Payment Milestone do not satisfy the requirements of Clause 7.5, then NMC shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Clause 7.5. Upon receipt of such comments, suggestions or instructions from NMC, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to NMC. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until NMC is satisfied that the works for the relevant Payment Milestone have been completed in accordance with the requirements of Clause 7.5 and issues a Milestone Completion Certificate in accordance with this Clause 7.11(a).
- (iv) If NMC fails to:
- (A) inspect the completed portion of the works covered by the relevant Payment Milestone, within 7 Business Days from the date of receipt of a notice from the Concessionaire under Clause 7.11(a)(i) above;
- (B) provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Payment Milestone, within 7 Business Days from the date of inspection of such completed portion of the works; or
- (C) issue the Milestone Completion Certificate, within 7 Business Days from the date of inspection of the completed portion of the works covered by the relevant Payment Milestone,



Concessionaire


EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

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

(b) Testing and Commissioning of the Facility

- (i) Upon completion of construction of any particular Nashik Facility, in accordance with the requirements set out in this Agreement, the Concessionaire shall issue a notice to NMC requiring it to be present at the Site on the date specified in such notice to undertake a final inspection of the completed Nashik Facility and conduct any tests required to ensure that the Facility complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.
- (ii) Within 5 days from the date of receipt of a notice under Clause 7.11(b)(i) above, NMC may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 days from the date specified in the notice received from the Concessionaire under Clause 7.11(b)(i) above.
- (iii) The Concessionaire shall, on the date specified in the notice issued under Clause 7.11(b)(i) or on such other date as may be agreed with NMC, carry out the tests in accordance with the instructions and under the supervision of NMC, to demonstrate that the Nashik Facility complies with the requirements of Clause 7.5.
- (iv) If NMC is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Facility, identified by NMC or revealed through the tests and the Nashik Facility shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that NMC is satisfied that the Facility has been completed in accordance with Clause 7.5 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Nashik Facility and shall not be



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

entitled to any extension of time for remedying such defects or deficiencies or for retesting the Facility.

- (v) If NMC is satisfied with the results of the tests and inspection of the Nashik Facility, NMC shall issue the Milestone Completion Certificate in respect of the last Payment Milestone to the Concessionaire, within 7 days from the date of inspection and testing of the completed Facility. The issue of the Milestone Completion Certificate for the last Payment Milestone shall certify that the particular Nashik Facility has been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Facility is safe and fit for purpose.
- (vi) If NMC fails to:
 - (a) inspect or witness the testing of the Nashik Facility within 14 Business Days from the date of receipt of notice from the Concessionaire issued under Clause 7.11(b)(i) or such other date as may be agreed with the Concessionaire;
 - (b) notify the Concessionaire of any defects or deficiencies in the Facility within 7 Business Days from the date of inspection and testing of the Facility; or
 - (c) issue the Milestone Completion Certificate for the last Payment Milestone within 7 Business Days from the date of inspection and testing of the Facility,

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

(c) Issue of Construction Completion Certificate

- (i) Within 10 Business Days from the date of issuance of the Milestone Completion Certificate for the last Payment Milestone, NMC shall issue the Construction Completion Certificate for the respective Nashik Facility to the Concessionaire, subject to the following conditions having been fulfilled by the Concessionaire:
 - (A) the submission of 4 hard copies and 1 soft copy on a compact disc of complete sets of the "as-built" drawings of the Facility;
 - (B) the Concessionaire having obtained all Applicable Permits necessary for commencement of the O&M services (including specifically, the consent to operate from the Maharashtra,



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Maharashtra Environment Protection and Pollution Control Board for the operation of the Facilities);

- (C) the Concessionaire having obtained adequate insurance for the O&M Period in accordance with Clause 11.2;
 - (D) the Concessionaire having engaged sufficient number of adequately skilled O&M personnel to perform the services during the O&M Period; and
 - (E) the O&M Manual having been approved by NMC; and
 - (F) the Concessionaire having cleared the Site and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site.
- (ii) If NMC fails to issue the Construction Completion Certificate for the Nashik Facility to the Concessionaire within 10 Business Days from the date of satisfaction of the conditions set out in Clause 7.11(c)(i)(A) to (F) above and fails to notify the Concessionaire of any reasons for the failure to issue the Construction Completion Certificate for the Facility, then, the Construction Completion Certificate for the Facility shall be deemed to have been issued to the Concessionaire upon the expiry of the 10 Business Days period.
- (iii) The date of the issuance of the Construction Completion Certificate shall be the Construction Completion Date for the Facility.

7.12 Trial Operations

- (a) Subject to Clause 7.12(c) below, within 1 day of the issuance of the Construction Completion Certificate for the Nashik Facility to the Concessionaire, the Concessionaire shall commence the Trial Operations of the relevant Nashik Facility in accordance with the Trial Operation Procedures to determine whether the Nashik Facility meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations for treatment and disposal of treated Sewage in accordance with this Agreement.
- (b) NMC shall ensure that about 50% quantity of Sewage is delivered to the Nashik Facilities during the Trial Operations to enable the Concessionaire to demonstrate that the Nashik Facility meets the Technical Specifications and the KPIs.




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (c) If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the Sewage delivered to the relevant Nashik Facility, then the Concessionaire shall promptly notify NMC. If in the opinion of NMC, the quantity or quality of Sewage is not adequate to undertake Trial Operations, then NMC shall extend the time period for the Trial Operations. In such case, the Scheduled COD will also be extended on a day-for-day basis, provided that the Scheduled COD shall not be extended beyond the date which is 6 months from the Construction Completion Date.
- (d) During the Trial Operations of the respective STPs, NMC shall or shall cause the Project Engineer to monitor the performance of the Facility on a regular basis and shall have the right to test the compliance of the incoming Sewage with the Influent Standards and test the compliance of the STP By-Products and the Treated Sewage with the Discharge Standards every 7 days to ensure that the Nashik Facility meets the Technical Specifications.
- (e) If NMC, or, as the case may be, the Project Engineer is of the view that: (i) the Trial Operations are not being conducted in accordance with the Trial Operations Procedure; or (ii) there are any defects or deficiencies in the Nashik Facility, NMC shall instruct the Concessionaire to follow the Trial Operation Procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs.

It is clarified that no Availability Liquidated Damages or Performance Liquidated Damages are payable by the Concessionaire during the Trial Operations period for a failure to achieve the KPIs. However, for the Trial Operations to be successfully concluded, the Concessionaire must demonstrate that the Facility consistently and continuously meets the KPIs during the last 10 days of the 1 month Trial Operations period, as may be extended in accordance with Clause 7.12(c) above. If the Facility fails to achieve the KPIs on a continuous basis during the last 10 days of the initial 1 months Trial Operations period (as extended in accordance with Clause 7.12(c), then the Trial Operations period shall be extended by another 10 days. Subject to Clause 7.12(j), the Trial Operations shall continue until the Concessionaire can demonstrate that the Facility consistently achieves the KPIs for 10 consecutive days.

- (f) If the Concessionaire has been able to consistently achieve the KPIs for 10 consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to NMC requiring NMC to undertake a final inspection of the Facility. NMC shall have the right to undertake such final inspection within 10 Business Days of a notice being issued by the Concessionaire.
- (g) If, upon final inspection, NMC is satisfied that the Facility meets the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, NMC shall issue the Trial Operations Completion Certificate for the Facility to the Concessionaire within 7 days of NMC undertaking a final inspection of the Facility pursuant to Clause 7.12(f) above.




 Executive Engineer
EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

- (h) If, upon final inspection, NMC believes that the Facility does not comply with the KPIs and/or Technical Specifications, other than due to: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) the quality or characteristics of the Sewage being beyond the Influent Standards, then NMC shall reject the Facility and terminate this Agreement. Upon termination of this Agreement, in accordance with this Clause 7.12(h), the consequences set out in Article 16 shall follow.
- (i) If NMC: (i) does not undertake a final inspection of the Facility within 10 Business Days of receipt of a notice from the Concessionaire under Clause 7.12(f); or (ii) fails to notify the Concessionaire of any defects in the Facility within 7 days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within 7 Business Days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for Facility and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the 10 Business Days period (in case of (i)) and upon the expiry of the 7 Business Days period (in case of (ii) and (iii)).
- (j) If the Trial Operations are not successfully completed and/or the Concessionaire fails to issue a notice to NMC under Clause 7.12(f) above on or prior to the Scheduled COD, as may be extended in accordance with Clause 7.12(c), for any Facility, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.
- (k) Notwithstanding anything contained in Clause 7.12(i), if the Concessionaire fails to successfully complete the Trial Operations for the Facility on or prior to the Scheduled COD, as may be extended in accordance with Clause 7.12(c), due to the: (i) volume of Sewage being inadequate to conduct the Trial Operations; or (ii) quality or characteristics of the Sewage being beyond the Influent Standards, for any Facility, then such failure will be treated as a NMC Event of Default, and the consequences set out at Article 16 shall follow.
- (l) The Concessionaire will not be entitled to any O&M Payments or any other payment for conducting the Trial Operations, which shall be carried out solely at the cost and risk of the Concessionaire. Power charges during Trial Operations shall be paid by NMC.

7.13 Commercial Operations Date

- (a) Within 7 Business Days from the date of issuance of the Trial Operations Completion Certificates for the respective Nashik Facilities, NMC shall issue the COD Certificate for the individual Nashik Facilities STP and its Associated Infrastructure i.e. Tapovan STP (180 MLD) and its Associated Infrastructure STPs, Agartakli STPs (97 & 70 MLD) and its Associated Infrastructure STPs, Panchakh STP (75 MLD) and its Associated Infrastructure,



Executive Engineer
EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

Chehed STP (64 MLD) and its Associated Infrastructure and Other Associated Infrastructure subject to the following conditions having been fulfilled by the Concessionaire:

- (i) the Concessionaire having submitted to NMC the Scheduled Maintenance Programme for the first-year post COD; and
 - (ii) Each STPs can have separate COD dates post completion of their respective facilities.
- (b) If NMC fails to issue the COD Certificate to the Concessionaire within 10 Business Days from the date of satisfaction of the conditions set out in Clause 7.12 (a) above and fails to notify the Concessionaire of any reasons for the failure to issue the COD Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 10 Business Days period.
- (c) The date on which the COD Certificate is issued to have been issued to the Concessionaire shall be the Commercial Operations Date of the Facilities.

8. OPERATIONS AND MAINTENANCE PERIOD


8.1 Commencement and Duration

The period for the operation and maintenance of the Nashik Facilities shall commence on and from COD of the individual STPs, and shall continue until the Expiry Date (the **O&M Period**) of those individual STPs, unless the Agreement is terminated earlier in accordance with Article 16 and any other related clauses in RFP, DCA and Schedules..

8.2 O&M Manual

- (a) The Concessionaire shall prepare a detailed O&M Manual for the Nashik Facilities based on the Proposed Technology and in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of the Nashik Facilities) and maintenance procedures. In case of any errors or deficiencies in the Technical Specifications, the O&M Manual shall take in account, address or rectify such errors or deficiencies. The Language of the O&M Manual shall be English.
- (b) At least 90 days prior to the Scheduled Construction Completion Date, the Concessionaire shall submit 4 hard copies and 1 soft copy on a compact disc of the draft O&M Manual to NMC for its review and approval.
- (c) NMC shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M




Executive Engineer
PUBLIC HEALTH ENGINEER
Nashik Municipal Corporation, Nashik

Manual within 20 days from the date of receipt of the draft O&M Manual from the Concessionaire. NMC may require the Concessionaire to amend or modify the draft O&M Manual if NMC identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from NMC, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by NMC and/or address, in writing, NMC's comments on the draft O&M Manual and submit the revised O&M Manual to NMC within 10 days of having received NMC's response, for its approval. The process set out in this Clause 8.2(c) shall continue until the O&M Manual is approved by NMC in accordance with this Clause 8.2(c).

- (d) The Concessionaire shall revise the O&M Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Clause 8.2(c) will apply as is to the approval of the revised manual.
- (e) The Concessionaire shall undertake the O&M of the Facilities strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the approved O&M Manual without the prior written approval of NMC. The Concessionaire shall not commence operation of the Facilities prior to approval of the O&M Manual in accordance with this Clause 8.2.
- (f) Notwithstanding any approval of the O&M Manual by NMC, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of this Clause 8.2.
- (g) The Concessionaire shall submit a consolidated O&M Manual for the Nashik Facilities.

8.3 Subcontracting

- (a) The Concessionaire may enter into Subcontracts to perform any part of its scope of work during the O&M Period, with the prior written consent of NMC.
- (b) The Concessionaire shall provide a copy of each proposed Subcontract, along with details of the relevant Subcontractor, to NMC for its approval, which should set out the precise scope of work to be subcontracted to such Subcontractor and should be consistent with the terms of this Agreement.
- (c) Within 15 days of receipt of a draft Subcontract under Clause 8.3(b) above, NMC shall notify the Concessionaire of its approval or rejection (along with reasons) of the Subcontractor.



- (d) The approval of any Subcontractor and the corresponding Subcontract by NMC shall be subject to the following conditions:
- (i) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the O&M Period;
 - (ii) the Subcontract is on terms consistent with this Agreement;
 - (iii) the Subcontract contains provisions that provide, at NMC's option, for the Subcontract to be novated or assigned to NMC or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor or entitle NMC or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default. However, the step-in rights of NMC shall always be subject to the substitution rights of the Lenders under this Agreement or the Substitution Agreement; and
 - (iv) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Subcontractors.
- (e) If NMC does not notify its approval or rejection of any Subcontract to the Concessionaire within 15 days of the receipt of the draft Subcontract, then such Subcontract will be deemed to be approved by NMC.
- (f) Within 7 days of the execution of an amendment to any approved Subcontract, the Concessionaire shall submit a copy of such amendment to NMC for its records.
- (g) If the Concessionaire proposes to novate an approved Subcontract and/or replace an approved Subcontractor, then such novation or replacement shall be with prior approval of NMC and the process set out in this Clause 8.3 shall apply in such case.
- (h) Notwithstanding the approval of any Subcontractor by NMC, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

8.4 Concessionaire's rights and obligations

- (a) The Concessionaire shall operate and maintain the Facilities in a manner that:
- (i) is in compliance with the Technical Specifications, Applicable Laws,




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Applicable Permits and Good Industry Practice;

- (ii) results in the Facilities achieving the KPIs;
 - (iii) ensures that the Nashik STP is capable of treating Sewage up to its Design Capacity on a daily basis
 - (iv) ensures efficient treatment of Sewage and handling and disposal of STP By-Products and the Treated Sewage;
 - (v) is safe and reliable, subject to normal wear and tear of the Facilities;
 - (vi) is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Facilities
 - (vii) maintains the safety and security of personnel, material and property at the Site, in accordance with the Applicable Laws and Applicable Permits; and
 - (viii) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the Applicable Laws and Applicable Permits
- (b) The Concessionaire shall provide adequate power backup at the Site (through any means including but not limited to installation of DG Sets subject to satisfaction of NMC) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Facilities during the O&M Period.
- (c) The Concessionaire shall provide all necessary assistance to the Project Engineer and NMC in undertaking inspection and monitoring of the operation and maintenance of the Nashik Facilities.
- (d) The Concessionaire shall reasonably consider and act upon the comments/suggestions made by the Project Engineer and NMC during any meetings of the Concessionaire with its Subcontractors.
- (e) The Concessionaire shall provide NMC and the Project Engineer with reasonable access to the Site during office hours to monitor and inspect the Facilities.
- (f) The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Subcontractors' personnel or equipment, to or from the Site, does not interfere with local traffic in the vicinity of the Site.
- (g) The Concessionaire shall develop and implement a safety and surveillance programme for the Facilities and for handling and disposal / sale of the STP By-Products and the Treated Sewage, and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site.
- (h) The Concessionaire shall ensure that none of its employees, consultants, service



Executive Engineer

EXECUTIVE ENGINEER
Public Works Engineering (Sewerage)
Nashik Sewerage Corporation, Nashik.

providers, suppliers, or Subcontractors, including any O&M contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice, as defined in Clause 23.18.

8.5 NMC's rights and obligations

During the O&M Period, NMC shall:

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

8.6 NMC's additional rights and obligations

During the O&M Period, NMC shall:

- (a) make the O&M Payments in accordance with Clause 9.4; and
- (b) ensure that the Escrow Account is funded with the Minimum Escrow Balance/ O&M Period Minimum Escrow Balance, as applicable.

8.7 Utilities

- (a) NMC shall apply for and obtain the power connection (at the battery limit of the relevant Site) for the operation of the Nashik Facilities, in its name, at least 30 days prior to the Scheduled Construction Completion Date. The Concessionaire shall provide all necessary assistance to NMC in procuring the power connection, including by providing all documents and information necessary to complete the application process.
- (b) The Concessionaire shall install and maintain at its cost, all utilities (other than power) necessary for the O&M of the Facilities, including water, telephone




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

connections, internet connections, etc. at the Site. Specifically, to procure water for the O&M of the Facilities, the Concessionaire may dig bore wells at the Site after obtaining all Applicable Permits (including any no-objection certificates from the Central Ground Water Authority or the relevant state authority).

- (c) The Concessionaire shall not be entitled to any additional costs to comply with its obligations in this Clause 8.7.
- (d) NMC shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the O&M of the Facilities.

8.8 Monitoring and Reporting

a) Online Monitoring and Meters

- (i) At Nashik STP/Pumping Stations, the Concessionaire should install and maintain an online monitoring system, in accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming Sewage and the Treated Sewage. The online monitoring devices should be capable of measuring and analyzing

- (A) the flow rate and characteristics of the Raw Sewage at the Inlet Point and of the Treated Sewage at the Outlet Point.

Apart from flow monitoring, record shall be maintained for equipment's historical running information, status, faults, and any other parameters required to judge its conditions. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.

- (ii) As part of the online monitoring system, the Concessionaire shall also install flow measurement meters in accordance with Applicable Laws and Technical Specifications, at the rising mains, Inlet Point, the Outlet Point and at any other point set out in the Technical Requirements/ Specifications or required as per Applicable Laws, to measure the flow of sewage over the weir and the volume and concentration of Sewage delivered to the Facilities, and the Treated Sewage discharged from the Facilities.
- (iii) The Concessionaire shall record and transmit all data collected from the online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming Sewage and the Treated Sewage. The Concessionaire shall furnish a summary report for Nashik STP to NMC (with a copy to the Project Engineer) on a daily basis, which shall indicate: (A) the volume of the Sewage received at the relevant Nashik STP and the volume of



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

the Treated Sewage discharged from the relevant Nashik STP during each hour of the relevant day; (B) the periods during which the volume of Sewage received at the relevant Nashik STP exceeded its Design Capacity; (C) the quality of the incoming Sewage was beyond the Influent Standards; (D) the quality of the Treated Sewage was beyond the Discharge Standards, (E) hourly sump level for each pumping station (SPS); and (F) the hourly volume of Sewage discharged at each SPS.

- (iv) Deleted.
- (v) The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire O&M Period.
- (vi) At Nashik STP, the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.
- (vii) Deleted.
- (viii) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by NMC and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

b) Records and Reporting Requirements

(i) The Concessionaire shall maintain:

- (A) records of the volume and characteristics of the Sewage received at, and the STP By-Products and the Treated Sewage discharged from the Nashik STP; and
- (B) records of the sump levels and volume of the Sewage discharged from the relevant location's SPSs; and
- (C) books of accounts recording all payments received from NMC, and other revenues derived/collected by it from the Facilities or resulting from its use, separately for Nashik STP.

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

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





EXECUTIVE ENGINEER
Executive Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

c) It is clarified that the reports set out in this Clause 8.8 will be separately prepared and



Executive Engineer 
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 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

furnished for Nashik STP.

- d) It is expressly agreed between the Parties that the , shall be permitted to inspect the Site and/or all accounts, records, and other documents relating to contract performance of the Concessionaire, as well as its Subcontractors, agents, personnel, consultants, service providers or suppliers, including O&M contractors for the Project and have them audited by auditors appointed by the Bank.

8.9 Design Capacity Utilization

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

8.10 Testing

- a) The Sewage and the Treated Sewage will be tested at the Inlet Point and the Outlet Point, respectively in accordance with this Clause 8.10 and the Technical Specifications Concessioners should test inlet and outlet of the Raw sewage and treated sewage characterises from NABL accredited laboratory at least 4 times per month. MPCB shall test the parameters at least once a month at the plant, the cost of the testing shall be borne by the Concessionaire. If the parameters are not meeting the desired norms, liquidated damages as per schedule 6 shall as applicable..
- b) The Concessionaire shall test the characteristics of the incoming Sewage at the Inlet Point to determine if the incoming Sewage meets the Influent Standards. The Concessionaire will be required to carry out such tests at the Inlet Point at the intervals specified in the Technical Specifications or at such other time interval as may be instructed by NMC.
- c) The Concessionaire shall test the characteristic of the Treated Sewage at the Outlet Point to determine if the Treated Sewage meets the Discharge Standards. The Concessionaire will be required to carry out such tests at the Outlet Point at the intervals specified in the Technical Specifications or such other time interval as may be instructed by NMC.
- d) The Concessionaire shall test the characteristics of the Dewatered Sludge after



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

dewatering of the raw Sewage at the Nashik STP to assess the solid concentration in the Dewatered Sludge per the Technical Specifications.

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

8.11 Maintenance and Repair of the Facilities

- a) During the O&M Period, the Concessionaire shall undertake the maintenance of the Facilities and repair any damage to the Facilities either by itself, or through an approved Subcontractor, such that the Facilities shall be:
 - (i) in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
 - (ii) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers; and
 - (iii) capable of meeting the KPIs.

For the first year of the O&M Period, the Concessionaire shall submit its scheduled maintenance programme for the Nashik STP, specifying the Scheduled Maintenance periods for Nashik STP and the impact of such Scheduled Maintenance periods on the Availability of the Nashik STP (**Scheduled Maintenance Programme**) to NMC at least 1 month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 month prior to the beginning of the relevant year. The Scheduled Maintenance Programme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs. It is clarified that the Concessionaire shall submit separate Scheduled Maintenance Programme for the Facilities of each of the STPs.

- b) NMC shall notify the Concessionaire of its approval of such schedule.

If NMC does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the Availability of a Facility, NMC shall advise the



Concessionaire within 15 days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the Availability of a Facility may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If NMC fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested.

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



Executive Engineer

A blue ink signature of the Executive Engineer, written over the printed name.

Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

8.12 Key Performance Indicators

a) Availability

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

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

- ii. In computing the Availability of each Facility, the Concessionaire agrees that the Facility will be deemed to be Available at all times, other than during the period of:

- (A) an Unscheduled Outage affecting such Facility;
- (B) a Power Outage affecting such Facility;
- (C) suspension of the O&M services for such Facility, for reasons attributable to the Concessionaire (in accordance with Clause 15.1 and 15.2); or an Emergency affecting such Facility, attributable to the Concessionaire,
- (D) during which the Facility will be deemed to be not Available.

- iii. Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.

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

- v. Availability Liquidated Damages

Without prejudice to Clause 8.12(a)(iv), if the Availability on any given day is less than the Guaranteed Availability, if the Availability of any Facility on any given day is less than the Guaranteed Availability, then the



Concessionaire shall pay the liquidated damages set out in Schedule 6 (Liquidated Damages).

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

b) Influent Standards and Discharge Standards

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




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Concessionaire on the first day of the Second Breach (**Second Breach Notice**) requiring the Concessionaire to cure the Second Breach within 20 days from the date of the Second Breach Notice. If the Second Breach continues beyond 2 days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the amount of the Performance Liquidated Damages specified in Schedule 6, from the 1st day of the Second Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified in Schedule 6, for the first 2 days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the 3rd day of a continuing Second Breach.

- (C) If: (I) the Second Breach continues for 20 days from the date of the Second Breach Notice; or (II) another instance of non-compliance with the Discharge Standards occurs within 6 months of the Second Breach, then such breach shall constitute the **Third Breach**. Upon occurrence of the Third Breach, NMC shall issue a notice to the Concessionaire on the first day of the Third Breach (**Third Breach Notice**) requiring the Concessionaire to cure the Third Breach within 20 days from the date of the Third Breach Notice. If the Third Breach continues beyond 2 days of the Third Breach Notice, then:
- (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages specified in Schedule 6, from the 1st day of the Third Breach; and (Y) the Capex Annuity for the relevant quarter(s) will be reduced by an amount equal to the Capex Annuity for the relevant quarter/90 for each day that the Third Breach continues beyond the 1st day of the Third Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay twice the Performance Liquidated Damages specified in Schedule 6, for the first 2 days of a continuing breach from the date of the Third Breach Notice and thrice the specified Performance Liquidated Damages from the 3rd day of the Third Breach, in addition to the reduction in the Capex Annuity.
- (D) If: (I) the Third Breach is not cured within 20 days from the Third Breach Notice; or (II) a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall apply.
- (E) The Parties acknowledge that the Performance Liquidated Damages (including any escalation contemplated in this Clause 8.12(b)(iii)) are a genuine pre-estimation of and reasonable compensation for the



environmental damage that may be caused by the Concessionaire's continuing failure to comply with the Discharge Standards, and not as penalty. The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to comply with the Discharge Standards and/or Applicable Law.

- (iv) If the Treated Sewage and/or the Dewatered Sludge does not meet the Discharge Standards on account of: (A) the characteristics of the Sewage being beyond the permissible Influent Standards; or (B) the volume of the Sewage being more than the Design Capacity of the relevant Nashik STP, then, the Concessionaire shall not be liable to pay any Performance Liquidated Damages for a failure to meet the Discharge Standards.
- In the event of the actual volume of sewage being more than the design capacity, the Concessionaire shall not be bound by the Guaranteed Energy Consumption limits and the payment of power charges shall be as per the actuals.
- (v) The Performance Liquidated Damages payable by the Concessionaire in any quarter of the O&M Period will be deducted from the O&M Payments due to the Concessionaire for such quarter. If the Performance Liquidated Damages for a quarter exceed the O&M Payments for such quarter, then the excess amounts shall, at the discretion of NMC, will be adjusted against the O&M Payments for the subsequent quarter.
- (vi) Within 7 days from the end of each month, the Concessionaire shall be required to provide the monthly progress report for each Facility (prepared in accordance with Clause 8.8(B)(iii)(E) above) on compliance of such Facility with the KPIs, which should indicate the periods during which such Facility did not meet the Guaranteed Availability or the Treated Sewage and/or the Dewatered Sludge did not meet the Discharge Standards and the reasons for such failure. The Project Engineer shall be required to certify each such monthly report before it is provided to NMC. Such certified report on compliance with KPIs shall be referred to as the KPI Adherence Report and shall form the basis for O&M Payments being made to the Concessionaire during the O&M Period.

8.13 Disposal of STP By-Products and the Treated Sewage

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



Waste Disposal Site


EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (i) Within 30 days from the Effective Date, NMC shall inform the Concessionaire of each Waste Disposal Site at which the Concessionaire shall be required to dispose the STP By-Products, resulting from the treatment of the Sewage at the Nashik STP, and any other waste materials resulting from the construction of the Facility during the Construction Period (including silt).
- (ii) NMC may shift any Waste Disposal Site from time to time during the O&M Period provided that, the Waste Disposal Sites will always be within a radius of 15 km from the boundary of the relevant Site and any shifting of a Waste Disposal Site will be with at least 30 days' prior written notice to the Concessionaire.
- (iii) If, at any time during the O&M Period, NMC shifts a Waste Disposal Site to a location beyond a radius of 15 km from the boundary of the relevant Site, then, NMC shall compensate the Concessionaire for any additional transportation costs incurred by the Concessionaire in transporting the STP By- Products, to such Waste Disposal Site.
- (iv) Any approval for disposal of the STP By-Products at the Waste Disposal Sites will be obtained by NMC at its cost. Further, all costs and charges in connection with the setting up and maintaining the Waste Disposal Sites (including any tipping fee for the disposal of the STP By-Products) will be borne by NMC. The Concessionaire shall only be responsible for transporting the STP By-Products to the Waste Disposal Sites and subject to Clause 8.13(a) above, bearing the costs for transportation and unloading of the STP By-Products at the Waste Disposal Sites.
- b) Disposal of Residual Grit and Screenings
- (i) The Concessionaire shall, at its cost and expense, be required to transfer the Residual Grit and the Screenings to the relevant Waste Disposal Site and shall make adequate transportation arrangements for this purpose.
- (ii) The Concessionaire shall ensure that the Residual Grit and the Screenings are neither disposed at any place on or about the Site, other than the Waste Disposal Sites, nor discharged into the river. The disposal of the Residual Grit and the Screenings at the Waste Disposal Sites must be strictly in accordance with all Applicable Laws. The Concessionaire shall indemnify NMC against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Clause 8.13(b) and all Applicable Laws in disposal of the Residual Grit and the Screenings.
- c) Disposal of Dewatered Sludge
- (i) As part of each Facility, the Concessionaire shall be required to set up and



maintain a sludge handling facility (If space is available) at the relevant Site, where the Concessionaire can dry the Dewatered Sludge during the O&M Period.

- (ii) The Concessionaire shall, at its cost and expense, provide for a storage facility within the Nashik Site (Based on Space Availability) to temporarily store the dried Dewatered Sludge until such Dewatered Sludge is sold or disposed in accordance with this Agreement.
- (iii) The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to sell the Dewatered Sludge, at such price and to such Persons as it may deem fit. or dispose the Dewatered Sludge at the Waste Disposal Sites. Provided that if the Concessionaire sells the Dewatered Sludge. to any third party. The Concessionaire shall be required to share 10% of revenues from such sale with the NMC.
- (iv) The Concessionaire shall maintain proper records of sale of any Dewatered Sludge generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to NMC for its review.
- (v) Deleted.

d) Disposal of Treated Sewage

- (i) NMC. The Concessionaire shall, subject to compliance with Applicable Laws and Applicable Permits, be free to dispose/ sell the Treated Sewage in the following manner:
- (ii) NMC. The Concessionaire shall transfer the Treated Sewage to the Discharge Point, for discharge into the river or sale to third parties or utilization for reuse / irrigation purposes. Subject to approval from Irrigation department as per the prevailing agreement and its term condition between WRD & NMC regarding the water reservation and treated wastewater reuse opportunities, if the Concessionaire sells the Treated Sewage to any third party, the Concessionaire shall be required to share 10% of the revenues from such sale with NMC. Necessary infrastructure cost required for reuse will not be borne by NMC.
- (iii) The Concessionaire shall maintain proper records of sale of any Treated Sewage generated from the Facilities (including the revenues earned by the Concessionaire from such sale) and make them available to NMC for its review.
- (iv) The Concessionaire shall indemnify NMC against any costs or liabilities that may arise due to the Concessionaire's failure to comply with this Article 8.13(d) and all Applicable Laws in disposal of the Treated Sewage.
- (v) The NMC shall indemnify the Concessionaire against any costs or liabilities




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

that may arise due to the disposal of the Treated Sewages from the relevant Discharge Point.

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

- (1) All rights and interest in the STP By-Products discharged from the Nashik STP shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to a third-party buyer/off-taker / NMC in accordance with this Agreement.
- (2) All rights and interest in the Treated Sewage discharged from the Nashik STP shall vest with the Concessionaire at all times during the O&M Period, unless transferred by the Concessionaire to third-party buyer/off-taker / NMC in accordance with this Agreement.

8.14 Remedial Measures

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

8.15 O&M Personnel

- (a) For the O&M key personal like plant in charge, engineers, chemist etc shall be engaged by concessioners. The Concessionaire shall engage (either directly or through an approved Subcontractor) adequate number of suitably skilled and qualified personnel to undertake the O&M of the Facilities in accordance with the requirements set out in this Article 8.
- (b) The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under applicable laws.
- (c) Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation. Concessioner to follow




Executive Engineer
ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

minimum wages applicable to Municipal Corporation area time to time.

- (d) NMC is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify NMC against all losses, claims, costs and damages that NMC may suffer due to the Concessionaire's or any of its Subcontractor's failure to comply with applicable laws.

9. PAYMENT AND INVOICING

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

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

9.3 Construction Payments

- (a) NMC shall deposit an amount equivalent to the first 2 Nashik Facilities Payment Milestones in the Escrow Account in accordance with Clause 9.5 and the Escrow Agreement, prior to the Effective Date. From the Effective Date and during the Construction Period, NMC, shall ensure that the Escrow Account is funded with an amount equivalent to the next 2 Payment Milestones for the Nashik Facilities.
- (b) 10% of the Bid Project Cost for the Nashik Facility shall be given to the Concessionaire as a Mobilization Advance in accordance with Clause 9.3(d), which will be adjusted against the Construction Payments to be paid by NMC, to the Concessionaire in 8 instalments, in accordance with Clause 9.3(e). The Construction Payments will be paid to the Concessionaire upon completion of the work corresponding to the Payment Milestones and certification of completion of such Payment Milestones by NMC in accordance with Clause 7.13.
- (c) Deleted



Concessionaire


EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik
Executive Engineer

(d) Mobilization Advance

- (i) 10 % of the Bid Project Cost shall be payable to the Concessionaire as the Mobilization Advance, within 30 days from the Effective Date, subject to the Concessionaire having submitted a Mobilization Advance Guarantee in accordance with Clause 5.1.
- (ii) Subject to Article 9.3(d)(iv) below, Mobilization Advance shall be an interest free advance for mobilization and towards execution of the construction works for the Nashik Facilities.
- (iii) The Mobilization Advance shall be deducted in 8 equal instalments from the Construction Payments to be made to the Concessionaire upon progressive completion of the Payment Milestones.
- (iv) However, the Concessionaire is liable to pay a simple interest at the rate of 8% on the Mobilization Advance, if the Payment Milestones are not achieved by the Concessionaire in accordance with the agreed Construction Plan and for the reasons entirely attributed to the Concessionaire. The interest shall be payable for the period between the actual Payment Milestone and agreed Payment Milestone and only on the differential progress percentage between the actual progress and scheduled progress for that particular milestone. The interest amount shall be deducted along with the Mobilization Advance from the Construction Payments.

(e) Milestone Construction Payments

- (i) Subject to this Clause 9.3(e), for the Facilities, the Construction Payments will be paid by NMC to the Concessionaire in the following 8 equal instalments (**Payment Milestones**) (after adjusting the Mobilization Advance (and the interest payable if any as per clause 9.3(d)(iii)):
 - (A) 1st instalment of 12.5% of the Construction Payment, upon the issuance of the first Milestone Completion Certificate; First Milestone Completion Certificate will be divided into two instalments, The first instalment of 6.25% shall be paid upon submission of Basic Engineering Package for the Nashik STPs and the second instalment of 6.25% shall be paid upon approval of Basic Engineering Package for the Nashik STPs
 - (B) 2nd instalment* of 12.5% of the Construction Payment, upon the issuance of the second Milestone Completion Certificate; Second Milestone Completion Certificate shall be achievement of 12.5% physical progress;;




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (C) 3rd instalment of 12.5% of the Construction Payment, upon the issuance of the third Milestone Completion Certificate; Third Milestone Completion Certificate shall be achievement of 37.5% physical progress;
- (D) 4th instalment of 12.5% of the Construction Payment, upon the issuance of the fourth milestone Completion Certificate; Fourth Milestone Completion Certificate shall be achievement of 50% physical progress;
- (E) 5th instalment of 12.5% of the Construction Payment, upon the issuance of the fifth Milestone Completion Certificate; Fifth Milestone Completion Certificate shall be achievement of 62.5% physical progress;
- (F) 6th instalment of 12.5% of the Construction Payment, upon the issuance of the sixth Milestone Completion Certificate; Sixth Milestone Completion Certificate shall be achievement of 75% physical progress;
- (G) 7th instalment of 12.5% of the Construction Payment, upon the issuance of the seventh Milestone Completion Certificate; Seventh Milestone Completion Certificate shall be achievement of 87.5% physical progress;
- (H) 8th instalment of 12.5% of the Construction Payment, upon the issuance of the Construction Completion Certificate; Eighth Milestone Completion Certificate shall correspond to the relevant Construction Completion Certificate (i.e. achievement of 100% physical progress) successful trial run and commissioning of individual facilities.

- (ii) For the Facility, within 7 days of issuance of the Milestone Completion Certificate for a Payment Milestone, the Concessionaire shall submit an Invoice to NMC for the amount of the Construction Payment linked to such Payment Milestone along with the KPI Adherence Report. Any Invoice raised by the Concessionaire for the Construction Payments shall be accompanied by a copy of the relevant Milestone Completion Certificate issued by NMC.



Concessionaire


EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik
Executive Engineer

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

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

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

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

(iv) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 20 (*Dispute Resolution*).

(v) A certificate issued by NMC in accordance with Clause 9.3(e)(iii) shall be referred to as a **Payment Certificate**.

(vi) If, within 10 days from the date of receipt of an Invoice, NMC does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by NMC, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to NMC) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.

(vii) Immediately upon receipt of a Payment Certificate from NMC in accordance with Clause 9.3(e)(iii) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.3(e)(vi), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.

(viii) Notwithstanding anything to the contrary in this Agreement, NMC shall have no obligation to issue a Payment Certificate unless:

(A) the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;



- (B) the Concessionaire Applicable Permits for construction of the Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
- (C) there is no subsisting Concessionaire Event of Default.

(f) Adjustments in Construction Payments in case of Partial Termination:

Subject to the Clause 9.3 of this Agreement, in the case of Partial Termination of a Facility (as per Clause 14.8 (a)) during its Construction Period:

- (i) the Bid Project Cost of the relevant Facilities in a STP will be adjusted in accordance with 15.8(b), to not include the Bid Project Cost of such affected Facility, quoted by the Concessionaire in its Financial Proposal.
- (ii) the Milestone Payments to be provided by NMC to the Concessionaire for the relevant Facilities in a STP will be adjusted for such relevant revised Bid Project Cost.
- (iii) The Concessionaire shall be paid the Construction Payments in Rupees. However, if, in the Financial Proposal, the Selected Bidder specified any percentage of the Bid Project Cost which it would want to receive in a foreign currency during the Construction Period, then the Construction Payments corresponding to such percentage of the Bid Project Cost shall be paid to the Concessionaire in the relevant foreign currency. For the purpose of payment in a foreign currency, the exchange rate shall be as applicable on the actual date of purchase of foreign currency by NMC. Related bank charges if any for the purchase of foreign currency shall be considered as part of Construction Payments. It is clarified that the aggregate Construction Payments due to the Concessionaire shall not exceed 50% of the Bid Project Cost, as quoted by the Selected Bidder in Rupees and adjusted for inflation as per Clause 9.3(c), on account of a percentage of the Bid Project Cost being paid to the Concessionaire in foreign currencies. Rupees

9.4 O&M Payments

- (a) During the O&M Period, NMC shall be required to make the O&M Payments in Rupees to the Concessionaire for the Nashik Facilities comprising the Capex Annuity, the interest on the reducing balance of Nashik Facilities Bid Price LESS Construction Payments and the O&M Charges in accordance with this Clause 9.4.
- (b) Calculation of Completion Cost




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (i) The Completion Cost for the Facilities will be the aggregate of (A) – (H) below, for the Facilities:
- (A) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the first Payment Milestone;
 - (B) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the second Payment Milestone;
 - (C) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the third Payment Milestone; and
 - (D) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the fourth Payment Milestone.
 - (E) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the fifth Payment Milestone;
 - (F) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the sixth Payment Milestone;
 - (G) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the seventh Payment Milestone; and
 - (H) 12.5% of the Bid Project Cost for the Facilities adjusted for the Price Index Multiple as applicable on the Reference Index Date preceding the date of the Invoice for the eighth Payment Milestone.
- (ii) Nashik Facilities Bid Price LESS Nashik Facilities Payment Milestones will be paid in quarterly instalments during the O&M Period as Capex Annuity..
- (c) On and from the COD and during the O&M Period, NMC shall deposit the O&M Payments in the Escrow Account such that the Escrow Account is funded at all times with the Capex Annuity (along with interest) and the O&M Charges for the next 2 years for the Nashik Facilities.



(d) Adjustment in O&M Charges

- a. The O&M Charges shall be adjusted during the O&M Period to reflect the variation in the O&M Price Index occurring after the Reference Index Date immediately preceding the Bid Due Date and shall be in accordance with the Concession Agreement.
- b. All Invoices to be submitted by the Concessionaire to NMC for the quarterly O&M Charges shall be the product of the applicable O&M Charges for the relevant quarter and the Price Index Multiple applicable on the date of the Invoice.

(e) Capex Annuity

- a. The Capex Annuity shall be payable in 100 equal quarterly instalments during the O&M Period.
- b. Interest shall be payable on the reducing balance of Nashik Facilities Bid Price LESS Construction Payments for the Facilities, at the compounded interest rate of the SBI MCLR plus 3% per annum. Such interest shall be due and payable quarterly along with each instalment of the Capex Annuity. The Parties agree that such interest shall be calculated on the basis of the number of days for which the relevant rate of the SBI MCLR was applicable during the period of calculation.

For the avoidance of doubt, the interest shall be calculated on compound interest basis for the purpose of payment.

(f) O&M Charges

- a. The O&M Charges for the Nashik Facilities for the first quarter after COD will be calculated on the basis of the O&M Charges quoted by the Selected Bidder in the Financial Proposal for the first month from the COD. The O & M Charges will be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the first Invoice for the O&M Payments in accordance with the Concession Agreement.
- b. For each subsequent quarter of the O&M Period, the O&M Charges will be adjusted for the Price Index Multiple applicable on the Reference Index Date preceding the date of the relevant Invoice for the O&M Payments.

(g) Power Charges

- a. The Power Charges for the Facilities will be directly paid by NMC subject to a cap of Guaranteed Energy Consumption quoted by the Selected Bidder.




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

b. The Power Charges for any given quarter of the O&M Period will be directly paid by NMC

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

(B) If there is any interruption in the supply of power from the grid, and the Concessionaire uses backup power supply from the DG Sets, then NMC will reimburse for the same.

(I) the Concessionaire's Representative and NMC shall jointly take readings from the meters installed at the DG Sets to determine the number of units of energy consumed from the DG Sets for O&M of the Facility;

(II) the number of units of energy consumed from the DG Sets (determined as per (I) above) shall be adjusted such that the aggregate of the total number of units consumed from the grid and the total number of units consumed from the DG Sets shall not exceed the Guaranteed Energy Consumption for the Facility (**Adjusted DG Set Units**);

(III) the quantity of diesel consumed to generate the Adjusted DG Set Units in the relevant quarter shall be calculated by NMC based on the rated specific fuel consumption of the DG Sets specified by the manufacturers of the DG Sets; and will be reimbursed.

(IV) Deleted.

(C) For each Facility, the Concessionaire shall be liable to pay liquidated damages to NMC for any units of energy consumed beyond the Guaranteed Energy Consumption (whether from the grid or from the DG Sets) for such Facility (**Power Consumption Liquidated Damages**), which will be calculated as follows:

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

Power Consumption Liquidated Damages: (Number of power units consumed in the relevant quarter – Guaranteed



Concessionaire

Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Energy Consumption for such quarter) * [Power Unit Rate]
* 0.25

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

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

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


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

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

The Power Charges incurred by the Concessionaire during such quarter for power drawn from the grid or the DG Sets, subject to the cap of the Power Charges based on the Guaranteed Energy Consumption for the relevant Facility will be directly paid by NMC.

If the Invoice is not accompanied with the supporting documents specified at (A) and




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik


(B) above, NMC shall not be required to process such Invoice.

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

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

- (j) Any dispute between the Parties in relation to a disputed Invoice will be settled in accordance with Article 21 (*Dispute Resolution*).
- (k) A certificate issued by NMC in accordance with Clause 9.4(i) shall be referred to as a Payment Certificate.
- (l) If, within 10 days from the date of receipt of an Invoice, NMC does not dispute an Invoice, then the Invoice shall be deemed to have been accepted by NMC, and the Concessionaire shall have the right to issue instructions to the Escrow Bank (with a copy to NMC,) to release the amounts specified in the Invoice, upon the expiry of the 10-day period.
- (m) Immediately upon receipt of a Payment Certificate in accordance with Clause 9.4(i)(a) or upon receipt of instructions from the Concessionaire in accordance with Clause 9.4(l), the Escrow Bank shall release the amount specified in the Payment Certificate or if no Payment Certificate has been issued, then the amount specified in the relevant Invoice, in accordance with the Escrow Agreement.
- (n) Notwithstanding anything to the contrary in this Agreement, NMC shall have no obligation to issue a Payment Certificate unless:
- a. the insurances to be obtained by the Concessionaire in accordance with Clause 11.2 are valid and in effect;




Executive Engineer
EXECUTIVE ENGINEER
Public Works Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



- b. the Concessionaire Applicable Permits for O&M of the Facilities are in full force and effect, unless the withdrawal or cancellation of any Applicable Permit is not attributable to the Concessionaire's failure to comply with Applicable Laws;
- c. there is no subsisting Concessionaire Event of Default.

(o) Adjustments to the O&M Payments in case of Partial Termination:

Subject to the Clause 9.4 of this Agreement, in the case of Partial Termination of a Facility (as per Clause 14.8 (a)) during its relevant Construction /and O&M Period:

- a. the Bid Project Cost and O&M Charges of the relevant Facilities, will be adjusted in accordance with 14.8(b), to not include the Bid Project Cost and O&M Charges of such affected Facility, quoted by the Concessionaire in its Financial Proposal.
 - (i) the Capex Annuity to be provided by NMC to the Concessionaire, for the relevant Facilities, will be computed as below:
 1. the relevant Completion Cost shall be adjusted based on revised Bid Project Cost, excluding the affected Facilities
 2. the relevant Capex Annuity will be computed as Balance Completion Cost over 300 months for the relevant Facilities.
- b. the O&M Charges to be provided by NMC to the Concessionaire, for the relevant Nashik Facilities, will be adjusted for such revised O&M Charges
- c. the Power Charges to be provided by NMC to the Concessionaire, for the relevant Nashik Facilities, will be reimbursable for each of the unaffected Facilities subject to the cap of Guaranteed Energy Consumption for such Facilities for the relevant month

9.5 Escrow Account

- (a) Prior to the Effective Date, the Concessionaire, NMC and the Escrow Bank shall enter into the Escrow Agreement, shall open the Escrow Account with the Escrow Bank, linked with NMC GST Account, in accordance with the Escrow Agreement, which shall be operational until the expiry of the Term. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, NMC's obligation to deposit the Construction Payments and the O&M Payments in accordance with this agreement with the Escrow Bank and terms of withdrawal of amounts from the Escrow Account.
- (b) Minimum Escrow Balance
 - (i) NMC shall deposit an amount equivalent to the first 4 Nashik Facilities Payment




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Milestones prior to the Effective Date. From the Effective Date and during the Construction Period, NMC shall ensure that the Escrow Account is funded with an amount equivalent to the next 4 Nashik Facilities Payment Milestones for the Nashik Facilities; and

- (ii) 1 quarter prior to the relevant COD and during the O&M Period, NMC shall deposit into the Escrow Account, by an agreed date towards the beginning of each calendar quarter, an amount equivalent to the O&M Payments (comprising Capex Annuity along with interest and the O&M Charges) for the next 8 quarter for the relevant Facilities

The Minimum Escrow Balance

If at any time during the Construction Period or the O&M Period, the balance in the Escrow Account falls below the Construction Period Minimum Escrow Balance or the O&M Period Minimum Escrow Balance, NMC shall promptly, and in any event, no later than 30 days of such occurrence, fund the Escrow Account such that the Construction Period Minimum Escrow Balance or the O&M Period Minimum Escrow Balance (as applicable) is maintained. A failure to maintain the Construction Period Minimum Escrow Balance for 60 days or the O&M Period Minimum Escrow Balance for 90 days will be treated as an NMC Event of Default and the consequences set out in Article 16 shall follow.

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

The escrow bank shall share the monthly account statements and details of all key transactions with the developer on its mentioned email id.

For sake of clarity, payments from escrow account to parties other than Concessionaire, which would cause the escrow balance to reduce below Minimum Escrow Account shall not be allowed.

The escrow bank shall require written authorization from Concessionaire also, for any payment to any party (incl. NMC itself) other than the Concessionaire, from the escrow account.

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

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

9.6 Taxes and Royalties

- (a) The Construction Payments and the O&M Payments are inclusive of all Taxes.



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

An NMC'S BANKER Guarantee is proposed as a payment security mechanism to support NMC's ongoing payment obligations to the Concessionaire during the O&M Period (that is, after the COD) through the Escrow Account. The NMC'S BANKER Guarantee would backstop an irrevocable revolving standby Letter of Credit (L/C) procured by NMC in consultation with NMC'S BANKER. This L/C would provide liquidity support for those O&M Period payment obligations of NMC for the entire duration of the O&M Period. The Escrow Bank may draw on the L/C to make a quarterly O&M Period payment to the Concessionaire if, as of the due date of such payment, the balance in the Escrow Account is insufficient to make that payment from the Escrow Account. The maximum amount available for draw under the L/C will be capped at the equivalent of 6 months of O&M Period payment. (See the form of Escrow Agreement set out as Schedule 3 to the Concession Agreement.)

- (g) Any Taxes payable in relation to the Nashik Facilities Site shall be borne by NMC.

9.7 Default Interest

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



90


EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

9.8 Right of Set-Off

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

10. FINANCING ARRANGEMENTS AND SECURITY

10.1 Financing and Bankability Support

- (a) The Parties acknowledge that for the purposes of implementing the Project, the Concessionaire may require Financial Assistance from the Lenders. To this end, NMC shall co-operate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders.
- (b) In case of a Concessionaire Event of Default, NMC, acknowledge that the Lenders will have a right to substitute the Concessionaire in accordance with Clause 16.2 and the Substitution Agreement. NMC will suspend its right to step- in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their substitution rights under Clause 16.2.
- (c) The Concessionaire shall maintain books of accounts recording all its receipts (including fees and other revenues derived/collected by it from or on account of any of the Facilities 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.

10.2 Security Creation

- (a) The Concessionaire shall be entitled to create Security over all of its rights, title and interests in and to the Concession Agreement and the Escrow Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to NMC,.
- (b) The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Clause 11.2 and/or grant Security over the proceeds of such insurance.




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



- (c) Except for any Security created by operation of law and any Security created pursuant to this Clause 10.2, the Concessionaire shall not be entitled to create any other Security over the Concession Agreement, the Escrow Agreement or insurance policies taken by it in favour of any third Persons, without the prior written consent of NMC, which consent NMC may deny in its sole discretion.
- (d) The Concessionaire shall not be entitled to create any Security over the Site or any part thereof, or any of the Facilities or the Power Plant, if any, whether in favour of the Lenders or any third Persons.

11. INSURANCE AND INDEMNITIES

11.1 Indemnity and Limitation of Liability

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

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

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



obligations of the Concessionaire.

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

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

(c) Limitation of liability

(i) Notwithstanding anything to the contrary contained in this Contract, the maximum overall liability of any Party under this Agreement shall not exceed INR 14,75,55,00,000.00 (Rupees One Thousand Four Hundred Seventy Five Crores and Fifty Five Lakhs Only) .

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

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




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (H) health hazard, bodily injury or loss of life.
- (iii) The Parties agree and acknowledge that the provisions of this Clause 11.1(e) in respect of limitation and exclusion of liabilities is an agreed allocation of risk between the Parties, the sufficiency of which the Parties hereby agree and acknowledge.
- (f) The provisions of this Clause 11.1 shall survive the termination of this Agreement.

11.2 Insurance

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

Insurances during the Construction Period

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

Insurances during the O&M Period

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

- (i) loss, damage or destruction of the Facilities, at replacement value;
- (ii) comprehensive third-party liability insurance including injury to or death of personnel of NMC or others caused by the Project;
- (iii) the Concessionaire's general liability arising out of the Project;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Facilities, the Concessionaire and its employees, including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.
- (b) The level of insurance to be maintained by the Concessionaire after repayment of




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of the Lenders' dues, in accordance with the Financing Documents.

- (c) The Concessionaire shall, within 30 days of the Effective Date, provide a notice to NMC, setting out information in respect of the insurances that it proposes to effect and maintain. Within 15 days of receipt of such notice, NMC may require the Concessionaire to effect and maintain such other insurances as it may deem necessary, and in the event of any difference or disagreement relating to any such insurance, the provisions of Article 21 (*Dispute Resolution*) shall apply.
- (d) The Concessionaire shall purchase insurance from reputable Indian and/or international companies licensed to operate in India, at competitive terms, and shall maintain the insurances on terms consistent with Good Industry Practices. Within 15 days of obtaining any insurance cover, the Concessionaire shall furnish to NMC, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance.
- (e) Each insurance policy shall contain the following endorsements:
 - (i) NMC shall be additional insured under all policies maintained by the Concessionaire in relation to the Site and the Project, against loss or damage;
 - (ii) the insurers shall waive all rights of subrogation against NMC;
 - (iii) the insurance policy may not be cancelled or materially changed by the insurer without giving 45 days' prior written notice, except in the case of non-payment, in which case it will be 10 days' prior written notice, to NMC; and
 - (iv) NMC shall not be responsible for payment of any insurance premium.
- (f) Any changes in the insurances which impact the Site or the Project will need the prior written consent of NMC, which consent shall not be unreasonably withheld.
- (g) The Concessionaire shall apply proceeds from all insurance claims, except life and injury, for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Documents.
- (h) If the Concessionaire fails to procure or maintain any insurance required pursuant to this Clause 11.2 which is required to be obtained for the Site or the Project, NMC shall have the right to procure and maintain such insurance in accordance with the requirements of this Clause 11.2 and charge the full cost thereof to the




Executive Engineer
ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Concessionaire.

12. OWNERSHIP INFORMATION

12.1 Ownership Information

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

S. No	Name of the shareholder	No. of shares held	Nature of the shares [Equity/Preference]	Value of the shares held [INR]	Share holding [in %]
1.	Vishvaraj Environment Limited	99,999	Equity Share	9,99,990	99.99%
2.	Sidhaarth Arun Lakhane (Nominee on behalf of Vishvaraj Environment Limited)	1	Equity Share	10	00.01%
		1,00,000		10,00,000	100%

13. CHANGE IN LAW

13.1 Change in Law

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

13.2 Consequences of Change in Law

- (a) The Concessionaire shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.
- (b) If a Qualifying Change in Law occurs, then the Concessionaire shall notify NMC, of such Qualifying Change in Law along with details of:
 - (i) any necessary change in the Construction Plan, the O&M Manual or the Technical Specifications on the basis of which construction works and O&M services are required to be undertaken for the Facilities;
 - (ii) any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - (iii) any extension of the Scheduled Payment Milestone Completion Date or the



Scheduled Construction Completion Date, to account for the delay, if any, resulting from the Qualifying Change in Law; and/or

- (iv) any increase in Costs that will result from the Qualifying Change in Law.
- (c) As soon as practicable and in any event, within 30 days from the receipt of any notice from the Concessionaire under Clause 13.2(b) above, the Parties shall agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Concessionaire can mitigate the effect of the Qualifying Change in Law, including:
 - (i) providing evidence that the Concessionaire has used reasonable endeavors (including, where practicable, the use of competitive quotes) to minimise any increase in Costs or oblige the Subcontractors to minimise any increase in Costs;
 - (ii) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for construction or O&M of STP which are similar to the Facilities; and
 - (iii) demonstrating to NMC that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of time could not reasonably be expected to be mitigated or recovered by the Concessionaire.
- (d) If the Parties fail to agree on the consequences of the Qualifying Change in Law within 30 days from the receipt of any notice from the Concessionaire under Clause 13.2(b) above, the dispute will be finally settled in accordance with the dispute resolution procedure set out in Article 21 (Dispute Resolution).
- (e) If the Concessionaire has complied with Clause 13.2 (c) above and the Parties mutually agree or it is determined in accordance with Clause 13.2 (d) above, that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:
 - (i) the Concessionaire shall be not bear any Costs resulting from any one or more Qualifying Change in Law events, and
 - (ii) for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,
 - (A) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Limit; or

(B) an appropriate adjustment in the O&M Charges.


- (f) If the Concessionaire has complied with Clause 13.2(c) above and the Parties mutually agree or it is determined in accordance with Article 21 that the Concessionaire will suffer any delay as a result of the occurrence of a Qualifying Change in Law, then the Concessionaire shall be entitled to an extension of time in accordance with Clause 7.11(b).
- (g) The quantum of relief (whether extension of time or compensation) that the Concessionaire shall be entitled to under this Clause 13.2 shall be as agreed by the Parties or as determined in accordance with Article 21, provided always that:
- (i) the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and
 - (ii) the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.
- (h) Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall not be entitled to any schedule relief and/or compensation or adjustment in the Bid Project Cost or the O&M Charges due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which is not attributable to a Delay Event.
- (i) If a Fundamental Change in Law occurs, then,
- (i) the affected Party may notify the other Parties of the effects of such Fundamental Change in Law on the validity and enforceability of this Concession Agreement or on the rights of the Concessionaire under this Agreement; and
 - (ii) any Party may propose amendments to the Concession Agreement, which would make the Concession Agreement compliant with Applicable Laws, while enabling the Parties to achieve their commercial objectives.

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

14. FORCE MAJEURE

14.1 Force Majeure Events




Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:
- (i) beyond the reasonable control of the Affected Party;
 - (ii) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
 - (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.

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

(i) Non-Political Force Majeure Events

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

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

- (A) heavy rainfall;
- (B) quantum of the Sewage being more than the Design Capacity;
- (C) characteristics of the Sewage being beyond the Influent Standards;



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

(ii) Indirect Political Force Majeure Events

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

(iii) Direct Political Force Majeure Events

- (A) occurrence of a Fundamental Change in Law in accordance with Clause 13.2(i);
- (B) compulsory acquisition in national interest or expropriation of the Site; and




 EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

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

14.2 Notice of Force Majeure Events

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

14.3 Excuse of Performance



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

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

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

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

14.4 No Liability for Other Losses

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

14.5 Resumption of Performance

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

14.6 Allocation of costs during a Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event prior to the COD, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.
- (b) Upon occurrence of a Force Majeure Event post the COD, the Concessionaire shall be entitled to continue receiving the Capex Annuity (along with interest) and the O&M Charges during the subsistence of the Force Majeure Event.

14.7 Termination due to Force Majeure Event

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

If a Non-Political Force Majeure Event continues for a period of period of 120 days




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

Notwithstanding anything contained in this Clause 14.7:

- (i) if the Nashik Facilities are affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the 120 days' period stipulated for a Non-Political Force Majeure Event;
- (ii) if the Nashik Facilities are affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Nashik Facilities to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.
- (iii) any partial termination under this Clause 14.7(a) must be with the prior approval of NMC.

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

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

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

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

If a Force Majeure affects only one or more Facility(ies) but not all the Facilities, then, this Concession Agreement may be partially terminated in accordance with Clause 14.8 to exclude the Facility(ies) affected by the Force Majeure Event, with the prior approval of the NMC.

14.8 **Partial Termination**



a. Partial Termination due to a Total Casualty, an Indirect Force Majeure Event, or a Direct Political Force Majeure Event of one or more Facility(ies) but not all the Facilities

If at any time during the Construction Period, or the O&M Period, due to a Total Casualty, an Indirect Political Force Majeure Event, or a Direct Political Force Majeure Event, one or more Facility(ies) but not all the Facilities are affected, then, this Agreement shall be amended to exclude the Facility(ies) from the Scope of Work. Any Partial Termination under this Clause 14.8 must be with the prior approval of the NMC. This Agreement and all rights and obligations of the Parties under this Agreement shall continue in full force and effect with respect to the other unaffected Facilities. Upon exclusion of the affected Facility(ies) from the scope of this Agreement, the Concessionaire shall:

- (i) hand over to the NMC the relevant part of the Site and the affected Facilities on an "as is where is" basis; and
- (ii) remove from the relevant part of the Site all employees, workmen, assets, equipment and materials, if any.

b. Consequences of Partial Termination

Upon the exclusion of any affected Facility(ies) from the scope of this Agreement as per Clause 14.8 (a) above

- (iii) the cost quoted by the Concessionaire for such affected Facility(ies) will be reduced from the relevant Bid Project Cost and/or the relevant O&M Charges for the corresponding Facilities. Adjustments to the relevant Construction Payments and relevant O&M Payments, and Variation Order, as applicable, for the unaffected Facilities in case of such Partial Termination shall be as per the Clause 9.3 (f) and Clause 9.4 (o) respectively.
- (iv) the Termination Compensation for the affected Facility(ies) in case of such Partial Termination shall be as per Clause 17.4 for such Facility(ies).

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

15. SUSPENSION

15.1 Suspension by the Concessionaire

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



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

(b) Mitigation, Resumption and Termination

- (i) The Concessionaire shall make best endeavors to:
 - (A) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Clause 15.1(a)(i) above. Notwithstanding anything to the contrary contained in this Agreement, if NMC, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



mitigate the effects of the Emergency, NMC shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire; and

- (B) resume the construction or O&M services of the Facility within 24 hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Clause 15.1(a)(i) or such longer period as may be approved by NMC, and notify NMC of the resumption of the works or services.
- (ii) Without prejudice to Clause 15.1(b)(i):
 - (A) if suspension of the construction or O&M of a Facility pursuant to Clause 15.1(a)(i) continues for a period of 60 days, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Clause 16.1; and
 - (B) if suspension of the construction or O&M of a Facility pursuant to Clause 15.1(a)(i) continues for a period of 60 days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 14 shall apply.

15.2 Suspension by NMC

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

- (i) At any time during the Term, NMC may suspend, whether partially or wholly, the construction or O&M of a Facility, in any of the following events or circumstances:
 - (A) upon the occurrence of an Emergency; or
 - (B) if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the O&M Manual or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).
- (ii) The Concessionaire acknowledges that suspension of the construction of the Facilities during the Construction Period pursuant to Clause 15.2(a)(i) shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire.
- (iii) In case of suspension of the performance of the O&M services pursuant to



Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Clause 15.2(a)(i) for reasons attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, less the Liquidated Damages payable by the Concessionaire for failure to operate the Facility pursuant to Clause 15.2(a)(i). The Concessionaire shall not be entitled to the O&M Charges for the period during which it suspends the performance of the O&M services pursuant to Clause 15.2(a)(i).

(iv) In case of suspension of the performance of the O&M services pursuant to Clause 15.2(a)(i) for reasons not attributable to the Concessionaire, the Concessionaire shall be entitled to continue to receive the Capex Annuity along with interest, and the O&M Charges, for the period during which it suspends the performance of the O&M services pursuant to Clause 15.2(a)(i).

(b) Mitigation, Resumption and Termination

(i) The Concessionaire shall make best endeavors to:

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

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

(ii) Without prejudice to Clause 15.2(b)(i):

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



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

16. EVENTS OF DEFAULT

16.1 Concessionaire Events of Default

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

- (a) failure of the Concessionaire to complete the construction of a Facility by the expiry of the Grace Period;
- (b) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement;
- (c) failure of the Concessionaire to achieve successful completion of Trial Operations of a Facility in accordance with Clause 7.12;
- (d) failure of the Concessionaire to remedy any reduction in Availability within 3 days of receipt of a notice from NMC in accordance with Clause 8.12(a)(v);
- (e) for any Facility, failure of the Concessionaire to cure a Third Breach within 20 days from the Third Breach Notice or a failure to comply with the Discharge Standards results in occurrence of a Third Breach more than 3 times in a continuous 12 month period, in accordance with Clause 8.12(b)(iii)(D);
- (f) for any Facility, failure of the Concessionaire to achieve the KPIs for 2 consecutive days, 32 times in a continuous 12-month period;
- (g) for any Facility, failure of the Concessionaire to achieve the KPIs for 1 day, 64 times in a continuous 12-month period;
- (h) suspension of the construction or O&M of a Facility pursuant to Clause 15.1(a)(i) (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 days;
- (i) suspension of construction or O&M of a Facility pursuant to Clause 15.2(a)(i)(A) (to



the extent the Emergency is attributable to the Concessionaire) or a suspension pursuant to Clause 15.2(a)(i)(B), for a continuous period of 60 days;

- (j) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Facilities and such breach, if capable of being remedied, is not remedied within 30 days of issuance of written notice from NMC specifying such breach and requiring the Concessionaire to remedy the same;
- (k) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect;
- (m) failure of the Concessionaire to maintain a valid Mobilization Advance Guarantee in accordance with Clause 5.21;
- (n) breach by the Concessionaire of its obligations under Article 4 (*Site and Asset Ownership*), 10.2 (*Security Creation*) or 23.12 (*Assignment*);
- (o) Deleted;
- (p) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit;
- (q) failure of the Concessionaire to comply with any Applicable Law;
- (r) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Clause 11.2;
- (s) the Concessionaire entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or administrator in respect of the Concessionaire, its business and assets or any restructuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or
- (t) the breach of the Concessionaire's obligations under or the occurrence of an 'event of default' or analogous event under the Financing Documents or the Escrow Agreement, or termination of the Financing Documents, or the Escrow Agreement (for reasons attributable to the Concessionaire).
- (u) failure of the Concessionaire to meet the obligations in Clause 3.2(d) and 3.2(e) of the RFP document.




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



- (v) failure of the Concessionaire to meet the obligations in Clause 2.4(c) of this Concession Agreement.

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

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

16.3 NMC's Events of Default




Executive Engineer, **ENGINEER**
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

- (a) a breach by NMC of Clause 23.12 (b) (*Assignment*);
- (b) a breach by NMC of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct or operate and maintain a Facility and such breach, if capable of being remedied, is not remedied within 30 days of a notice being given by the Concessionaire;
- (c) failure to achieve successful completion of Trial Operations due to the reasons set out in Clause 7.12(j) by the Scheduled COD;
- (d) a breach by NMC of its obligations under Clause 7.8(g) or Clause 8.5(d), in relation to its rights, title and interest in the Site; or
- (e) any representation made or warranties given by NMC under this Agreement being found to be false or misleading in any material respect.

16.4 Additional NMC 's Events of Default

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

- (a) a failure by NMC , to pay any undisputed amounts due and payable for 90 consecutive days, notwithstanding service of a formal written demand by the Concessionaire;
- (b) a failure by NMC , to maintain the Minimum Escrow Balance for a period of 90 days;
- (c) a breach by NMC , of Clause 23.12 (b) (*Assignment*); or
- (d) any representation made or warranties given by NMC , under this Agreement being found to be false or misleading in any material respect.

16.5 Notice of Intent to Terminate upon occurrence of a NMC Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a NMC Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



reasonable detail the grounds on which termination is sought.

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

16.6 If an Event of Default affects only one or more Facility(ies) but not all the Facilities, then, a partial termination of this Agreement to exclude the Facility(ies) affected by the Event of Default shall not be permitted and any termination of this Agreement will be for the entire Project, i.e., all the Facilities.

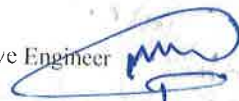
17. CONSEQUENCES OF TERMINATION

17.1 Consequences of termination or partial termination of the Agreement post the Effective Date but prior to the Construction Completion Date:

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

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



Executive Engineer 
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Mumbai Municipal Corporation

17.2 Deleted

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

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

- a. the Concessionaire shall cease all work in relation to O&M of the Facilities and the Power Plant, if any;
- b. the Concessionaire shall take all necessary steps to safeguard and protect the Facilities, the Power Plant, if any, and all other equipment, materials and goods on the Site;
- c. the Concessionaire shall hand over the Site, the Facilities and the Power Plant, if any, to NMC or its nominee in accordance with the Hand-back Requirements set out in Clause 19.3.

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

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

- (a) the Concessionaire shall hand over the Site, the Facilities and the Power Plant, if any, to NMC on an "as is where is" basis and to the extent relevant, in accordance with the Hand-back Requirements set out in Clause 19.3;
- (b) in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, NMC shall (or shall require the Project Engineer) to assess the Cost of the construction work undertaken by the Concessionaire in relation to the Facilities as on the date of the notice of termination under Clause 14.7 and based on such assessment, pay the Termination Compensation in accordance with Clause 18.4.

17.5 **Accrued Rights and Liabilities**

- (a) Notwithstanding anything to the contrary contained in this Agreement, any termination of this Agreement shall be without prejudice to the accrued rights of a Party, including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of a Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- (b) Nothing in Article 16 or this Article 17 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.




Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

18. TERMINATION COMPENSATION

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

(a) For a NMC Event of Default

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

- (i) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by NMC as on the date of the Notice of Intent to Terminate;
- (ii) 100% Debt Due;
- (iii) 150% OF Equity infused

LESS

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

(b) For a Concessionaire Event of Default

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

- (i) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by NMC as on the date of the Notice of Intent to Terminate;
- (ii) 100% Debt Due;
- (iii) 100% OF Equity infused




EXECUTIVE ENGINEER
Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

LESS

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

18.2 Deleted.

18.3 Termination Compensation for Termination post the COD

(a) For a NMC Event of Default

If the Agreement is terminated post the COD for a NMC Event of Default, NMC shall be liable to pay to the Concessionaire the aggregate of:

- (i) Construction Payments that remaining outstanding on the date of the Notice of Intent to Terminate;
- (ii) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (iii) NPV of 15% of O&M revenue, discounted at rate of SBI MCLR+3%, for unexpired portion of Concession period.
- (iv) Capex Annuity for the unexpired portion of the O&M Period;

LESS

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

(b) For a Concessionaire Event of Default

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

- (i) Construction Payments that remain outstanding on the date of the Notice of Intent to Terminate;
- (ii) O&M Payments due to the Concessionaire as on the date of the Notice of Intent to Terminate;
- (iii) Capex Annuity payments for post COD facilities for the unexpired portion of the O&M period as specified.

LESS

- (iv) any amounts due and payable by the Concessionaire under this Agreement



(including Availability Liquidated Damages and any amount payable under Clause 19.2).

18.4 **Termination Compensation for Termination due to a Force Majeure Event**

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

- (i) If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non- Political Force Majeure Event, prior to the COD:
- (A) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by NMC as on the date of the notice of termination under Article 14.7;
 - (B) 100% Debt Due;
 - (C) 150% of Equity Infused

LESS

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

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

- (A) Construction Payments that remain outstanding on the date of the notice of termination in case of facilities under Article 14.7;
- (B) O&M Payments due to the Concessionaire as on the date of the notice of termination under Article 14.7;
- (C) NPV of 15% of O&M revenue, discounted at rate of SBI MCLR+3%, for unexpired portion of Concession period.
- (D) Capex Annuity payments for post COD facilities for the unexpired portion of the O&M period as specified.

LESS

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

(b) Direct Political Force Majeure

- (i) If the Agreement is terminated due to a Direct Political Force Majeure Event, prior to the COD, NMC shall be liable to pay to the Concessionaire:
- (A) Construction Payments due to the Concessionaire for Payment Milestones completed and certified by NMC as on the date of the notice of termination under Clause 14.7;
 - (B) 100% Debt Due;
 - (C) 150% of Equity Infused



LESS

- (D) any unadjusted Mobilization Advance (and interest if any);
 - (E) any insurance proceeds received and retained by the Concessionaire; and
 - (F) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages and any amount payable under Clause 19.2).
- (ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the COD, NMC shall be liable to pay to the Concessionaire:

- (A) Construction Payments that remain outstanding on the date of the notice of termination under Clause 14.7;
- (B) NPV of 15% of O&M revenue, discounted at rate of SBI MCLR+3%, for unexpired portion of Concession period.
- (C) Capex Annuity payments for post COD facilities for the unexpired portion of the O&M period as specified.

LESS

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

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

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




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- Facility(ies)); and
- c. if the partial termination occurs due to a Direct Political Force Majeure Event, then , NMC shall be liable to pay to the Concessionaire the amounts set out in Clause 18.4(b) (to the extent relevant to the affected Facility(ies) and subject to the stage at which the partial termination occurs)
- 18.6 For the purposes of calculating the Termination Compensation payable to the Concessionaire pursuant to this Clause 18, the Concessionaire shall provide a certificate to NMC from its Lenders confirming the amount of the Debt Due as on the date of the Notice of Intent to Terminate.
- 18.7 All Termination Compensation required to be paid by NMC to the Concessionaire shall be paid within 120 days of handover of the Site, the Facilities and the Power Plant, if any, to NMC in accordance with Article 19.
- 18.8 Deleted
- 18.9 The provisions of this Article 18 shall survive the termination of this Agreement.

19. TRANSFER UPON THE EXPIRY OR ON TERMINATION

19.1 Transfer of the Site and the Facilities

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

19.2 Inspection of the Site and the Facilities

- (a) No later than 30 days from the end of the 14th year of the O&M Period or 30 days from the date of termination of the Agreement, as the case may be, NMC shall or shall cause the Project Engineer to carry out a survey of the Site, the Facilities and the Power Plant, if any, to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life stipulated in the Technical Specifications.
- (b) NMC shall notify the Concessionaire at least 7 days prior to the date on which it wishes to carry out the survey of the Site, the Facilities and the Power Plant, if any.
- (c) If the survey carried out by NMC or the Project Engineer shows that the




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Concessionaire has not or is not complying with its obligations under this Agreement, then NMC shall notify the Concessionaire of the rectification and/or maintenance work which is required to ensure that the condition of the Site, the Facilities and the Power Plant, if any, is restored to the Hand-back Conditions.

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


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

19.3 Hand-back Requirements

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

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




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

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

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

20. VARIATION

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

20.2 NMC Proposed Variation

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




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

by the Concessionaire, the Concessionaire shall incorporate or address, in writing, NMC's comments and submit a revised proposal.

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

20.3 Concessionaire Proposed Variation

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




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, NMC's comments.

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

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

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

20.6 No Variation shall invalidate this Agreement.

21. DISPUTE RESOLUTION

21.1 Amicable Settlement

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

21.2 Dispute Resolution by Arbitration

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

21.2.2 (a) The Arbitration Panel shall be constituted with three Arbitrators; each Party shall




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

select one Arbitrator, and the third Arbitrator shall be appointed by the two Arbitrators so selected.

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

21.3 Survival

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




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



22. REPRESENTATIONS AND WARRANTIES

22.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Parties that:

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

22.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to NMC that:

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



Executive Engineer

EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Appointed Date as applicable;

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

22.3 NMC's Representations and Warranties

NMC represents and warrants to the Concessionaire, that:

- (a) it is duly organized, validly existing and in good standing under the laws of India;
- (b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- (c) it has taken all necessary approvals to execute this Agreement (including any approval required under the Maharashtra Regional and Town Planning (MRTP) Act) and perform its obligations under this Agreement;




Executive Engineer
EY, ENGINEER
Public Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



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

22.4 NMC's Representations and Warranties

NMC represents and warrants to the Concessionaire that:

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

22.5 Acknowledgement




EXECUTIVE ENGINEER
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Parties. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of a Party under this Agreement.
- (c) NMC, NMC Related Parties, or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by NMC to the Concessionaire; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

23. MISCELLANEOUS

23.1 Survival

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

23.2 Entire Agreement

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

23.3 Non-exhaustive Remedies



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

23.4 Notices

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

NMC:

Attention: Executive Engineer
Address: Office of the Executive Engineer,
Public Health Engineering Department (Sewerage)
Nashik Municipal Corporation, Nashik
Rajiv Gandhi Bhavan, Sharanpur Road Nashik.
Email: supengnmc@gmail.com

KUMBH WASTE WATER MANAGEMENT PRIVATE LIMITED:

Attention: Naveen Patekar
Address: 116A, 11th Floor, Maker Chamber
VI, 220, Nariman Point, Mumbai, Mumbai-
400021, Maharashtra
Tel: 022 - 712 - 6644888
Fax: +91-712-2552511
Email: kwwmpl@vishvaraj.in

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




Executive Engineer
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

- (c) Each Party may change the above address by prior written notice to the other Parties.

23.5 Governing Law and Jurisdiction

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

23.6 Counterparts

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

23.7 Language

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

23.8 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Associates (including NMC Related Parties, and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.
- (b) This Clause 23.8 shall not apply to Confidential Information, which:
- (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
- (ii) is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
- (iii) was obtained from a third party (other than one disclosing it on behalf of a



Party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to the Party, which disclosed the information;

- (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
- (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- (vi) is disclosed by the Concessionaire to its Associates or the permitted assignees and transferees;
- (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisors or consultants of any persons to whom a Party is entitled to disclose Confidential Information under this Clause 23.8(b);
- (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- (xii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

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

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 23.8(a) shall,
 - (i) at the time of making such disclosure, inform its representatives and Associates of their obligation of confidentiality pursuant to this Agreement and ensure their




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

compliance; and

- (ii) be liable for any breach of such obligations by such representatives and Associates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 23.8(b)(v) above, such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Associate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.
- (e) The recipient party agrees that it, its Associates and representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavors to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
 - (ii) destroy, and use all reasonable endeavors to procure that any third party to whom the recipient party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

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

23.9 Amendments

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by all the Parties.
- (b) A Party may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment by the other Parties, to determine whether it should be amended by mutual agreement provided




Executive Engineer
EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or review and whether or not any such discussions or review take place.

23.10 Waivers and Consents

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

23.11 Severability

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

23.12 Assignment

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




Executive Engineer

perform the obligations of NMC under this Agreement, as the case may be; and

- (iv) has sufficient financial standing or financial resources to perform the obligations of NMC under this Agreement, as the case may be.

23.13 No Agency or Partnership

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

23.14 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement, the Substitution Agreement and the Escrow Agreement.
- (b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement, the Substitution Agreement and the Escrow Agreement.

23.15 Reservation of Rights

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

23.16 Third Parties

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

23.17 Waiver of sovereign immunity

NMC, unconditionally and irrevocably:




EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik



- (a) agree that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agree that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this 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 NMC with respect to its assets; and
- (c) consent to the enforcement of any judgment or award against them in any such proceedings.

23.18 Fraud and Corruption

- (a) Bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, are required to observe the highest standard of ethics during the Bid Process. Notwithstanding anything to the contrary contained in this RFP, NMC may reject a Bid without being liable in any manner whatsoever to the Bidder, if it determines that a Bidder has, directly or indirectly or through an agent, engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice in or affecting the Bid Process
- (b) Without prejudice to the rights of NMC under Clause (a) above, in the event that a Bidder is found by NMC to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any corrupt, fraudulent, coercive, undesirable or restrictive practice during the Bid Process, such Bidder will not be eligible to participate in any tender or request for qualification issued by NMC for 5 years, from the date such Bidder is found by , NMC to have directly or indirectly or through an officer, employee, agent or advisor engaged or indulged in any of the activities mentioned above
- (c) For purpose of this contract, NMC:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - (iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party
 - (iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party³⁰ or the property of the party to influence improperly the actions
 - (v) undesirable practice means:
 - (A) establishing contact with any Person connected or employed or engaged by the NMC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid Process; or




EXECUTIVE ENGINEER
 Executive Engineer
 Public Health Engineering (Sewerage)
 Nashik Municipal Corporation, Nashik

(vi) restrictive practice means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating full and fair competition in the Bid Process.

23.19 Inspection and Audit

The Concessionaire shall permit and shall cause its Subcontractors and sub consultants to permit, the NMC to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by NMC if requested by NMC. The Concessionaire's and its Subcontractors' and sub consultants' attention is drawn to Clause 23.18 which provides, inter alia, that acts intended to materially impede the exercise of the NMC's inspection and audit rights provided for under Sub- Clause 23.18 constitute a prohibited practice subject to contract termination.

In witness whereof the Parties³¹ hereto have signed this Agreement on this 08th day of July 2025.

The Executing Agency – NASHIK MUNICIPAL CORPORATION (NMC)

By:


EXECUTIVE ENGINEER
Public Health Engineering (Sewerage)
Nashik Municipal Corporation, Nashik

Name: *Mrid Gahesh Digambar.*

Title: Executive Engineer, PHED (Sewerage), NMC.

KUMBH WASTE WATER MANAGEMENT PRIVATE LIMITED (CONCESSIONAIRE)

By:




Name: Naveen Putekar

Title: Authorized Signatory, Kumbh Waste Water Management Private Limited.

Concessionaire

Executive Engineer