Telangana State Industrial Infrastructure Corporation Ltd. (TSIIC)

DRAFT CONCESSION AGREEMENT

FOR

CONSTRUCTION, OPERATION AND MAINTENANCE OF 480 KLD COMMON EFFLUENT TREATMENT PLANT (CETP) WITH ZERO LIQUID DISCHARGE (ZLD) FACILITY AT INDUSTRIAL PARK, PASHAMYLARAM (V), PATANCHERU (M), SANGA REDDY DIST., TELANGANA ON DESIGN, BUILD, FINANCE, OPERATE & TRANSFER (DBFOT) BASIS
Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
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Construction, operation and maintenance of 480 KLDC Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis

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CONCESSION AGREEMENT

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

BETWEEN

1. Telangana State Industrial Infrastructure Corporation Limited (TSIIC), represented by its ----------- and having its principal offices at 6th Floor, Parishrama Bhavanam, Fateh Maidan Road, Basheerbagh, Hyderabad – 500 004 (hereinafter referred to as the "AUTHORITY" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of ONE PART;

AND

2. ---------------------------------------------, a company incorporated under the provisions of the Companies Act, 2013 with CIN ---------------- represented by ------------, the Authorized Signatory, as authorized vide Board Resolution dated -----------and having its registered office at --------------------------, (hereinafter refer to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the SECOND PART;

WHEREAS:

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
A. With a view to establish sustainable environmental infrastructure and as a better approach for Pollution Control and Prevention practices, setting up of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility along with development of all allied infrastructure at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy (Dist.), Telangana (the “Project”) was mooted by the Cluster of Pharma Bulk Drug Industrial Units of Pashamylaram Industrial Park, Hyderabad with the financial support from the Government. Telangana State Industrial Infrastructure Corporation Limited (the “Authority”), being the nodal agency for establishment of Industrial Parks in the State of Telangana, has accordingly decided to develop and operate/maintain the Project under Public Private Partnership (PPP) framework by engaging private entity on “Design, Build, Finance, Operate & Transfer (DBFOT)” basis, and to carry out the bidding process for selection of the Concessionaire to whom the Project may be awarded in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into.

B. The Authority had accordingly invited proposals by its Request for Proposals dated **** (the “Request for Proposals” or “RFP”) for shortlisting of bidders for construction, operation and maintenance of the above referred Project on DBFOT basis and had shortlisted certain bidders including, inter alia, {the selected bidder / consortium comprising ----------- and (collectively the “Consortium”) with ----------- as its lead member (the “Lead Member”)}. 

C. The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposals” or “RFP”) from the bidders for undertaking the Project.

D. After evaluation of the bids received, the Authority had accepted the bid of ----------- {the Selected Bidder/ Consortium} and issued its letter of award No. *** dated *** (hereinafter called the “LOA”) to the (selected Bidder Consortium) requiring, inter alia, the execution of this Concession Agreement within 15(fifteen) days of the date of issue thereof.

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

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

G. The Authority has (agreed to the said request of the selected bidder / Consortium and the Concessionaire, and has) accordingly agreed to enter into this Concession Agreement with the
NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions
The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 34) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation
1.2.1. In this Agreement, unless the context otherwise requires,

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

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

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

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

e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

f) references to “construction” or “build” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
Telangana State Industrial Infrastructure Corporation Ltd.  
Request for Proposal  
Bid Document  
Draft Concession Agreement

g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

h) any reference to day shall mean a reference to a calendar day;

i) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Hyderabad are generally open for business;

j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

k) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;

l) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

m) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

n) references to the “winding-up”, “dissolution”, “insolvency”, or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

o) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

p) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;

q) the Schedules and Recitals to this Agreement and the Request for Proposals (“RFP”) form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
r) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and

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

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof. The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

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

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

1.3. Priority of Agreements and errors/discrepancies

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

   a. this agreement; and
   b. all other agreements and documents forming part hereof.

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

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

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

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

   c. between any two Schedules, the Schedule relevant to the issue shall prevail; and
d. Between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: SCOPE OF WORK

2.1. Scope of Work

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

a. Design, supply, erection and commissioning of all equipment required for setting up of 480 KLD capacity Zero Liquid Discharge (ZLD) based Common Effluent Treatment Plant (CETP) in the Industrial Park, Pashamylaram in accordance with the Scope of Work as defined in Schedule B of the Concession Agreement. The scope also includes all necessary civil works for foundations & structures, and such other activities including commissioning of all equipment;

b. Operation & maintenance of the complete works of ZLD based CETP and all appurtenant structures and allied works during the Concession Period;

c. Collect user charges from industrial units towards treatment of their wastewater, charges for supply of recycled water, as per the Tariff structure firmed up by Tariffs Review Committee and any other revenue as approved by the Authority;

d. Solvent recovery and revenue generation through the same; and

e. Perform and fulfill such other obligations incidental to the proposed activities.

2.2. Role & Responsibilities of the Concessionaire

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

a. can develop the CETP using any appropriate technology as approved by the Technical Committee for treatment of effluents from pharmaceutical units. However, the primary source of fuel for the CETP shall be electricity only. The Concessionaire can use any tested technology in India and are encouraged to use cost effective latest advanced technologies as appropriate for the Project. The treatment and disposal of effluent shall be in compliance to applicable stipulations of MOEF&CC and consent to establish Order as received from the TSPCB;

b. As a general guideline, it is suggested that the treatment scheme includes primary treatment followed by steam stripper, a Multiple Effect Evaporator (MEE) and ATFD followed by biological treatment and tertiary treatment utilizing RO process. The RO permeate is to be reused for utilities such as boiler make up etc., and RO reject is sent to MEE with maximum of the recovery.

c. Responsible for all Permissions & Clearances which include Environment (Protection) Act, 1986, the Air (Prevention and Control) Pollution Act 1981 and Water (Prevention and Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
d. shall take measures to comply with the provisions laid down under Noise pollution (Regulatory and Control) Amendment Rules, 2010 dated 11.01.2010 issued by MoEF& CC, GoI to control the noise to the prescribed levels and as amended from time to time;

e. To provide fire protection measures and safety equipment at the Project site;

f. Trained manpower to be deployed to operate the systems and to ensure that they always wear personal protective equipment such as gloves, face masks to avoid injuries and health risks; and

g. To monitor the quality of the treated wastewater continuously for the parameters as stipulated in the consent order of the Telangana SPCB and submit the report to the Operations Committee/Authority on a monthly basis highlighting any deviations, if any.

ARTICLE 3: GRANT OF CONCESSION

3.1. The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein for 30 (thirty) years including the exclusive right, license and authority to construct, operate and maintain the Project (the “Concession”), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. The commencement of Concession Period is from the date of signing of the Concession Agreement and the Concessionaire can accordingly, commence construction of Project Works.

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

a. access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

b. finance and construct the Project. The Construction Period is 6 (six) months from signing of this Agreement;

c. manage, operate and maintain the Project and regulate the use thereof by third parties;

d. demand, collect and appropriate User Chargesthereof;

e. perform and fulfill all of the Concessionaire’s obligations under and in accordance with this Agreement;
ARTICLE 4: OBLIGATIONS OF THE CONCESSIONAIRE

4.1. Obligations of the Concessionaire

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

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

4.1.3. The Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

4.1.4. It shall establish a suitable quality control mechanism to ensure compliance with the Project requirements and in accordance with the provisions of the Agreement (the “Quality Assurance Plan” or “QAP”).

4.1.5. The Concessionaire can enter into a contract with any firm / company for construction of the Project. However, the Concessionaire is responsible to the Authority for the performance of its obligations as per the terms of the Agreement.

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

   a. keep in force and effect such Applicable Permits in conformity with Applicable Laws;

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

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

   d. ensure and procure that its contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire’s obligations under this Agreement;
4.2. **Obligations relating to Project Agreements**

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

4.2.2. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority and / or Lenders Representative to step into such Agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). Further, it is clarified that in case both the Authority and Lenders’ Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality.

4.2.3. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements; and procure and deliver to the Authority an acknowledgement and undertaking, in a form acceptable to the Authority, from the counterparty(ies) of each of the Project Agreements, whereunder such counterparty(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

4.3. **Obligations relating to Change in Ownership**

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
4.3.1. The Concessionaire was pre-qualified and short-listed on the basis of its technical and financial capacity and shall, until the 2nd (second) anniversary of the date of Commercial Operation Date (COD) of the Project, hold entire equity share capital of the subscribed and paid-up equity of the Concessionaire. Additionally, the Concessionaire shall also acknowledge and shall hold that:

i. the Lead member, until the 10th anniversary of the date of Commercial Operation of the Project, hold equity share capital representing not less than 51% (fifty one per cent) of the subscribed and paid-up equity of the Concessionaire;

ii. Other Constituent Member, until the 2nd anniversary of the date of Commercial Operation of the Project, hold equity share capital representing not less than 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire;

iii. For any breach of the above two conditions, i.e., Clause 4.3.1 (i) & (ii), by the Concessionaire, the Agreement shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Construction Performance Security/Operation Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Concession Agreement or otherwise.

4.3.2. The Concessionaire shall not undertake or permit any Change in Ownership, except with prior written approval from the Authority. Provided further that any such request made under this Clause 4.3 and/or Article 34, at the opinion of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders. Subject to the provisions of Clause 4.3.1 of the Agreement, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

4.4. **Sole purpose of the Concessionaire**

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

**ARTICLE 5: OBLIGATIONS OF THE AUTHORITY**

5.1. **Obligations of the Authority**

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

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
ARTICLE 6: REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

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

c. (the selected bidder / Consortium Members and its) Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with the terms of this Agreement;

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

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

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

g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

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

j. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 4.3 and that the Consortium Members, together with their Associate, hold entire 100% of the issued and paid up Equity for a period of 2 (two) years from the date of commercial operation of the Project; and subject to approval from the Senior Lenders and the Authority, after the expiry of 2 (two) years from the date of commercial operations of the Project, the Member of the Consortium who is not the Lead Member can exit the SPV, subject to the other Member of the Consortium (the Lead Member) continue to hold at least 51% of the subscribed and paid-up equity share capital in the SPV until the 10th anniversary of the Commercial Operation Date (COD) of the Project.

Provided further that any such request made under this Clause 6.1(j) and / or Article 34, at the opinion of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders.

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

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

m. all information provided by the {selected bidder/Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
n. all undertakings and obligations of the Concessionaire arising from the Request for
Proposals or otherwise shall be binding on the Concessionaire as if they form part of this
Agreement.

6.2. Representations and Warranties of the Authority
The Authority represents and warrants to the Concessionaire that:

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

b. this Agreement constitutes a legal, valid and binding obligation enforceable against it in
accordance with the terms hereof; and

c. it has and valid right to the Site, and has power and authority to grant a license in respect
thereto to the Concessionaire.

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

ARTICLE 7: DISCLAIMER

7.1. Disclaimer
7.1.1. The Concessionaire acknowledges that prior to the execution of the Agreement, the
Concessionaire has carefully examined and made an independent evaluation of the Scope of
Work for the Project, the Site conditions, and such other information as provided in the RFP
document or obtained, procured or gathered otherwise, and has determined to its satisfaction
the accuracy or otherwise thereof and the nature and extent of risks, challenges and hazards as
are likely to arise or may be faced by it during the course of performance of its obligations. The
Authority makes no representation whatsoever, express, implicit or otherwise, regarding the
accuracy, correctness, reliability and/or completeness of any assessment, assumptions,
statement or information provided by it and the Concessionaire confirms that it shall have no
claim whatsoever against the Authority in this regard.

7.1.2. The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error
in or relating to any of the matters set forth in Clause 7.1.1 above and hereby acknowledges and
agrees that the Authority shall not be liable for the same in any manner whatsoever to the
Concessionaire, the selected bidder and its Associates or any person claiming through or under
any of them.
7.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in the RFP document shall not vitiate the Agreement or render it voidable.

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

ARTICLE 8: PERFORMANCE SECURITY

8.1. Construction Performance Security

8.1.1. The Concessionaire shall, for the performance of its obligations provide the Authority prior to signing of Agreement, an irrevocable and unconditional guarantee from a Bank acceptable to the Authority for an amount of Rs.1,90,00,000 (Rupees one crore ninety lakhs only) and in the form set forth in this concession Agreement, Schedule D.


Upon occurrence of a Default, or failure to meet any conditions as spelt out in the Agreement, the Authority shall without prejudice to its other rights and remedies in the Agreement or in law, be entitled to encash and appropriate the relevant amounts from the Construction Performance Security /Operations Performance Security, as the case may be, as Damages for such Concessionaire Default(s) or failure(s) to meet the service levels as detailed in this Agreement. Upon such encashment and appropriation from the Construction Performance Security/ Operations Performance Security, as the case may be, the Concessionaire shall, within 15 (fifteen) days thereof, replenish in case of partial appropriation, to its original level the Construction Performance Security /Operations Performance Security, as the case may be, and in case of appropriation of entire Construction Performance Security /Operations Performance Security, provide a fresh Construction Performance Security/ Operations Performance Security, as the case may be, as aforesaid failing which the Authority shall be entitled to terminate the Agreement in accordance with Article 26.

8.3. Release of Performance Security

The Construction Performance Security shall remain in force and effect till 1 (one) year from the issuance of Project Completion Certificate; provided, however, that the Construction Performance Security shall not be released if the Concessionaire is in breach of this Agreement, and till such time the breach is cured. Upon request made by the Concessionaire for release of the Construction Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 8.3 and on furnishing a fresh Operations Performance Security for an amount of Rs. 95,00,000 (Ninety five lakh only) towards Operations Performance Security, the Authority shall release the Performance Security forthwith.

The initial validity of the BG towards Operations Performance Security shall be for three years and a fresh BG shall have to be submitted every three years at least fifteen days prior to the expiry of the Operations Performance Security in force. In case of non-submission of fresh BG, the Authority shall have the right to forfeit the Operations Performance Security in force without notice.
ARTICLE 9: PROJECT COMMENCEMENT DATE

9.1. Project Commencement Date (PCD)

9.1.1. The Project Commencement Date (PCD) shall be the date of signing of the Concession Agreement, i.e., the date of concluding the Agreement is the Project Commencement Date (PCD).

9.1.2. The Concessionaire shall have to submit within 15 (fifteen) days from the date of signing of the Agreement, the Project implementation plan with the bar chart / MS Project chart for execution of the work clearly outlining the program for procurement of electro-mechanical equipment, material, fabrication works, supply and deployment of labour for completing the Project as per the scheduled Construction Period.

ARTICLE 10: ACCESS TO SERVICE AREA

10.1. The Site

The Site of the Project, shall comprise the real estate as described in Schedule A provided by the Authority for setting up of ZLD based CETP as a licensee on entering into a Land Lease Agreement with IALA, Patancheru, TSIIC. On signing of the Land Lease Agreement, the Site for the Project in respect of which the right is provided and granted by the Authority as a licensee under and in accordance with the Agreement (the "Site") shall be handed over. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule A. Further Lease Rental of Rs. 1000 per acre per annum shall be charged on the extent of land provided to the Concessionaire for development of the Project. The land allocated for the Project is 3.86 acres out of 5 acres of land allocated for development of common infrastructure. Please note that the allotted land also houses development of common infrastructure covering:

1) Analytical (Quality Testing) Lab.
2) R&D Lab
3) Pilot Plant; and
4) Social Infrastructure.

The construction of Buildings for Analytical / R & D Lab and Pilot Plant is already completed and procurement of equipment / machinery for the labs / Pilot Plant is in process.

10.2. License and access to the Site

10.2.1. In consideration of the Project, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Project Commencement Date, leave and license rights in respect of all the land (along with any constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A, on an "as is where is" basis, free of any Encumbrances, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, heritaments or premises or any part thereof belonging to or in any way appurtenant thereto.
10.2.2. It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub licensees, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of the Agreement.

10.2.3. It is expressly agreed that:

a. geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement, any archaeological discoveries shall belong to and vest in the Authority or the concerned Government instrumentality and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and

b. mining rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

ARTICLE 11: CONSTRUCTION OF THE PROJECT

11.1. Obligations prior to commencement of Construction Works

Prior to commencement of Project works, the Concessionaire shall:

a. appoint its representative duly authorized to deal with the Authority in respect of all matters or arising out of or relating to this Agreement;

b. submit the engineering designs & drawings within 20 (twenty) days of signing of this Agreement with the following details to the Authority for approval:

➢ Process description, process calculations, and hydraulic calculations;
➢ Master drawing schedule,
➢ Drainage design,
➢ While submitting the Designs & Drawings, the Concessionaires shall have to provide Master Plan (CETP facilities layout plan) for CETP land area of 3.86 acres clearly demarcating the Plant components within the overall land of 5 acres.
➢ Pipelines’ design,
➢ Process flow diagram,
➢ Hydraulic flow diagram,
➢ Hydraulic model,
➢ Mass balance diagram,
➢ Process and instrumentation diagram,
➢ Single line diagram,
➢ Electrical load list,
➢ Pump head calculations and pump characteristics,
➢ Other good for construction drawings (GFC),
➢ Methodology of disposal of hazardous waste generated from CETP,
➢ Methodology for treatment and disposal of toxic materials; and
➢ Solvent recovery methods and management.

The Project implementation shall be as per approved drawings & design by the Authority.

c. submit its work plan, construction methodology, procurement, quality assurance procedures and the construction time schedule for completion of the Project;

d. make its own arrangements for procurement of materials / equipment / tools, software programs, etc., needed for the construction;

e. submit its proposed ‘Quality Assurance Plan’ which shall include the following:

i. Organization structure, duties and responsibilities of concerned staff, operating procedures, inspection methodology and Documentation;

ii. Quality control mechanism including sampling and testing of works executed, the list of Project Acceptance Tests and their interpretation of results, test frequencies, acceptance criteria, testing facilities and tie up if any, recording, reporting, interpretation of test results, checklist for the activities, standard formats for testing and calibration; and shall take approval of the Authority; and

iii. Internal quality audit system.

f. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of work on the Project under and in accordance with this Agreement.

11.2. Drawings

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

a. the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence, as is consistent with the Project Completion Schedule, three copies each of all Designs & Drawings to the Authority’s Engineer-in-Charge along with proof checking of the same by reputed Independent Institutions as per instructions of the Authority and the charges in this regard shall have to be borne by the Concessionaire;

b. by submitting the Designs & Drawings for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga Reddy dist., Telangana on PPP Basis
engineering, including field construction criteria related thereto, are in conformity with the
Scope of Work, Applicable Laws and Good Industry Practice and in no case, Authority shall be
liable for its correctness;

c. Within 10 (ten) days of the receipt of the Drawings, the Authority’s Engineer-in-Charge shall
review the same and convey its observations to the Concessionaire regarding their conformity
or otherwise with the Scope of Work.

d. No review and/or observation of the Authority’s Engineer-in-Charge, and/or its failure to review
and/or convey observations on any Design & Drawings shall relieve the Concessionaire of its
obligations and liabilities under the Agreement in any manner nor shall the Authority be liable
for the same in any manner; and

e. Any change in the basic design and structure of the Project is subject to approval of the same by
the Authority. The Authority shall permit the changes, if it is satisfied that the changes are going
to benefit the Project.

11.3. Environment, Health and Safety (EHS) Plan
11.3.1. Within 30 (thirty) days from the Project Commencement Date, the Concessionaire shall prepare
and submit 3 (three) hard copies and a soft copy of the EHS Plan to the Operations Committee /
Authority. The EHS Plan shall set out the health, safety and environmental policies, guidelines
and procedures to be followed by the Concessionaire in undertaking the Project and shall
include a comprehensive Site safety assurance plan developed in accordance with Applicable
Laws, Applicable Permits, the EHS Standards (including International Finance Corporation (IFC)
Performance Standards) and Good Industry Practices.

11.3.2. Based on Operations Committee’s review, the Authority shall provide comments, if any, on the
submitted EHS Plan to the Concessionaire or notify its approval within 20 (twenty) days from the
date of receipt of the EHS Plan. The Authority may require the Concessionaire to amend or
modify the EHS Plan if it identifies any deficiencies or shortcomings in the EHS Plan. Thereafter,
the Concessionaire shall submit the revised EHS Plan to the Authority for its approval.

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

11.4. Construction of the Project
11.4.1. On or after the Project Commencement Date, the Concessionaire shall undertake construction
of the Project at the Site as per the Scope of Work and in conformity with the approved Designs &
Drawings by the Authority. The completion of 6(Six) months from the Project Commencement
Date shall be the scheduled date for completion of the Project (the “Scheduled Completion
Date”) and the Concessionaire shall agree and undertake to complete the Project on or before
the Scheduled Completion Date;
11.4.2. In the event the Project is not completed within 120 (one hundred twenty) days from the Scheduled Completion Date, unless the delay is due to the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate the Agreement after giving a formal notice 15(fifteen) days in advance; and

11.4.3. Any supplies and services which might not have been specifically mentioned in this Agreement but are necessary for the design, supply, install & commission the Project, shall be procured; and

11.4.4. Within 30 (thirty) days of the Project Completion Date, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 3 (three) hard copies 2 set of soft copies or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Plant and setback lines, if any, of the structures forming part of the Project.

11.5 Monitoring of construction
11.5.1. During construction of the Project, the Concessionaire shall furnish monthly progress reports to the Engineer-in-Charge on the progress of Construction Works, i.e., planned v/s actual progress highlighting the delays along with reasons for delay, EHS standards followed, any shortcomings, near-miss incidence and shall also give such other relevant information as may be required by the Authority. The monthly progress reports shall be submitted no later than 7 (seven) days after the close of each month;

11.5.2. Samples of all products to be used shall be submitted to the Authority. Any damage during construction, to any part of the work, for any reasons, due to rain, storm, or neglect of the Concessionaire, shall be rectified by the Concessionaire, in an approved manner;

11.5.3. During the Construction Period, the Engineer-in-Charge or his/her representative shall inspect the Project at least once in a month and make a report of such inspection the defects or deficiencies, if any, with particular reference to the Scope of Work, the progress of construction, the status of compliance with the Construction Plan and Designs and Drawings. It shall send a report within 7 days of such inspection to the Concessionaire and upon receipt thereof, the Concessionaire shall rectify and remedy the defects and the deficiencies, if any, stated in the Inspection Report. However, such inspections or the submission of Inspection Report by the Engineer-in-Charge shall not relieve or absolve the Concessionaire of its obligations and liabilities, as per the provisions of the Agreement, in any manner whatsoever;

11.5.4. All equipment/machinery/software programs/ applications covered under the Project shall be subjected to inspection / testing by the Engineer-in-Charge or his/her representative on completion & commissioning; and

11.5.5. If the Project In-Charge of the Authority has reasonably determined that the rate of progress of works is such that the Project is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Project-in-Charge in reasonable detail about
the steps it proposes to take to expedite the progress and the period within which it shall achieve COD.

11.6. Suspension of unsafe Construction Works

11.6.1. The Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if, in the reasonable opinion of the Authority, such work threatens the safety of the passersby. Provided, however, that in case of an Emergency, the Authority may suo-moto issue the notice referred to hereinabove.

11.6.2. The Concessionaire shall, pursuant to the notice under Clause 11.6.1, suspend the construction works or any part thereof for such time and in such manner, as may be specified by the Authority, and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Project In-Charge to inspect such remedial measures forthwith and after the inspection, the Project In-Charge shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 11.6 shall be repeated until the suspension hereunder is revoked.

11.6.3. Subject to the provisions of Clause 25.6, all reasonable costs incurred for maintaining and protecting the construction works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

11.6.4. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Chief Engineer of TSIIC shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled and shall extend such Project Completion Schedule dates. In the event that the Scheduled Completion Date is extended pursuant hereto, the construction Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 12: COMPLETION CERTIFICATE

12.1. Tests

12.1.1. At least 15 (fifteen) days prior to the likely completion of the Project, the Concessionaire shall notify the Authority's Engineer-in-Charge likely completion and its intent to subject the Works to Tests. The Tests shall be conducted in presence of Concessionaire’s representative to witness the Tests. The Concessionaire shall provide such assistance as the Engineer-in-Charge may require for conducting the Tests.

12.1.2. The Engineer-in-Charge or his/her representative shall observe, monitor and review the results of the Tests to determine compliance of the Project with the provisions of the Concession Agreement, Applicable Laws and Good Industry Practice and if it is reasonably anticipated or determined in any of the Tests that the performance of the system or any part thereof does not meet the Environmental Standards, the Authority has the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. For the Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis.
avoidance of doubt, it is expressly agreed that the Concessionaire may have to carry out additional Tests, if required, in accordance with Good Industry Practice, for determining the compliance of the Project with Environmental Standards.

12.1.3. After placement of all systems, components and equipment as described in the approved Designs & Drawings, it shall be tested to prove satisfactory performance and/or fulfillment of functional requirements. It shall not show any sign of defect at individual equipment level and also for the system as a whole.

12.1. Completion Certificate

Upon completion of works and the Project Engineer or his/her representative determining the tests to be successful, it shall put the Project facilities to Trial Operations for 7 (seven) days or as per Good Industry Practice or such longer period as may be deemed necessary to determine whether the Project Facilities meet the Environmental Standards and KPIs as detailed in Schedule C of the Agreement on a continuous basis and it is fit and ready to be placed for treatment and disposal of effluent and Sludge in accordance with this Agreement for operations. During the Trial Operations, the Engineer-in-Charge or his/her representative shall monitor the performance of the Project Facilities on a regular basis and test the compliance of Treated effluent and by-products with the Discharge Standards. On successful completion of Trial Operations, the Engineer-in-Charge forthwith will issue a certificate about the Project completion (the “Completion Certificate”). The Project shall be deemed to be complete when the Completion Certificate is issued.

ARTICLE 13: ENTRY INTO COMMERCIAL SERVICE

13.1. Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 12, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “COD”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to collect the applicable Tariff from the Users and any other revenue in accordance with the provisions of this Agreement.

13.2. Damages for delay

Subject to the provisions of 11.4, if COD does not occur prior to the 30th (thirtieth) day after the Scheduled Project Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority at the rate of 0.05% (zero point zero five per cent) of the amount of Construction Performance Security for delay of each day until COD is achieved.

ARTICLE 14: OPERATION AND MAINTENANCE

14.1. Operations and Maintenance (O & M) obligations of the Concessionaire

14.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws
and Applicable Permits, and confirm to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

a. procuring and ensuring safe, smooth and uninterpreted use of the Project, including prevention of loss or damage thereto, during normal operating conditions;

b. uninterrupted power supply to ensure proper functioning of the Plant along with electrical and electronic equipment /appliances;

c. providing security personnel for handling emergency situations;

d. implementing a safety & security plan in consultation and in coordination with the Operations Committee/ Authority;

e. carrying out required repairs and maintenance of all the civil, electrical, mechanical, hardware, systems, furniture, and any other accessories at periodic intervals at its own cost;

f. Replacement of spare parts shall be done as per the OEM manual of the equipment / machinery.

g. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;

h. preventing, with the assistance of concerned law enforcement agencies, any encroachments on to the Project;

i. will have to remove any person employed on the work if so desired by the Authority for misconduct, misbehavior, or for such other reasons.

j. operation and maintenance of all Project Facilities, control and administrative systems necessary for efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;

k. to maintain sufficient stock of the consumables required for smooth and efficient operations; and

l. comply with Safety Requirements in accordance with Article 15;

14.1.2. The Concessionaire shall in consultation with the Operations Committee / Authority evolve an operation and maintenance manual (the “O &M Manual”) for the regular work plan, the methodology for collection of Wastewater/effluent and disposal of treated sludge and preventive maintenance of the Plant in conformity with the provisions of this Agreement, Safety Requirements and Good Industry Practice. The O & M Manual has to be submitted to the Operations Committee/ Authority not later than 90 (ninety) days from signing of the Concession Agreement. It should show detailed operation procedures including a list of do’s & don’ts.

14.2. Key Performance Indicators

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
14.2.1. The performance in service delivery shall be monitored by the Authority and same shall be monitored vis-à-vis the Concessionaire’s Key Performance Indicators (KPIs) as detailed in Schedule C of this Agreement. In this regard, the Authority shall appoint Operations Committee (the “Operations Committee”) which shall be formed with the Zonal Manager, Patancheru Zone, TSIIC along with one member from Concessionaire and two from PCIPL. Such Committee shall meet once in a month to discuss operational issues. If so required, a third party for monitoring of the performance of the Concessionaire, may be formed on the advice of the Operations Committee; and

14.2.2. In the event that the Concessionaire fails to repair or rectify any defect or deficiency in service in adhering to minimum Service Levels; it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, as set forth hereunder:

i. General or pre-schedule shutdown of the Plant for maintenance and servicing shall be as detailed in O & M Manual. In case of any break down beyond the permitted pre-schedule shutdown, from the date and time of breakdown complaint registered, it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, to be calculated at 0.05% (zero point zero five per cent) of the amount of Operations Performance Security per day till such time it is rectified.

ii. In addition to the Damages that will be levied for non-adherence to Key Performance Indicators and the Damages shall also be recovered in case of the following deficiencies:

- Untreated/partially treated wastewater/effluent is released into the environment; Damages at Rs. 15,000/- (rupees fifteen thousand only) per event shall be recovered by the Authority; and

- Complaints will be referred to the Concessionaire by the Authority and the complaints are to be attended to within 24 hours or as directed by the Authority. In case of any delay beyond the specified period therein, it shall be deemed to be in breach of the Agreement and the Authority shall be entitled to recover Damages, to be calculated at Rs.3000 (rupees three thousand) per complaint shall be recovered.

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

14.3. Authority’s right to take remedial measures

14.3.1. In the event the Concessionaire does not maintain and/or repair any defect or deficiency or any part thereof in conformity with the O & M Requirements, or the Maintenance Manual, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Project In-Charge, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to
recovery of the aforesaid cost, a sum equal to 10% (ten per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

14.4. Monitoring of Operations and Maintenance
14.4.1. During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Operations Committee / Authority and the Project In-charge a monthly report stating in reasonable detail the condition of the Project Assets and the Project Facilities, machinery/systems including its compliance or otherwise with the O&M Requirements and the Maintenance Manual, which shall also cover test results of effluent characteristics of both inlet and treated wastewater/effluent and treated sludgeand shall promptly give such other relevant information as may be required by the Operations Committee / Project In-charge.

14.4.2. The Project In-Charge shall inspect the Project at least once a quarter. It shall make a report of such inspection (the "O & M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the O & M Requirements, Maintenance Manual and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

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

ARTICLE 15: SAFETY REQUIREMENTS
15.1. Safety Requirements
The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In this regard, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment at the CETP in consultation with the Authority.

ARTICLE 16: FINANCIAL CLOSE
16.1. Financial close
16.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 90 (ninety) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 60 (sixty) days, subject to payment of Damages to the Authority in an amount calculated at the rate of 0.05% (zero point one per cent) of the Construction Performance Security for each day’s delay until achievement of Financial Close, provided that the Damages specified herein shall be payable every 7 (seven) days in advance; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely due to Force Majeure.

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
16.1.2. The concessionaire shall upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

16.2. Termination due to failure to achieve Financial Close
16.2.1. Notwithstanding anything to the contrary contained in this agreement, but subject to Clause 16.1.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 16.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have being waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

16.2.2. Upon Termination under Clause 16.2.1, the Authority shall be entitled to encash the Construction Performance Security and appropriate the proceeds thereof as Damages.

ARTICLE 17: LAND LEASE RENTALS
17.1. Land Lease Rentals

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority every year by way of a land lease rental (the “Land Lease Rental”) a sum of Rs.1000 (rupees one thousand) per acre per annum as per the provisions of Land Lease Agreement. The Land Lease is co-terminus with Concession Period.

ARTICLE 18: GRANT
18.1. Grant
18.1.1. The Authority agrees to provide to the Concessionaire cash support by way of an outright grant of Rs. 2.16 crores (Rupees two crore sixteen lakh only), in accordance with the provisions of this Article 18 (the “Grant”). The Grant available to the Project is from Government of India and shall be provided to the Concessionaire on receipt of the same from Government of India.

18.1.2. The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 18.2.

18.2. Equity Support
18.2.1. Subject to the conditions specified in this Clause 18.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “Equity Support”).

18.2.2. Equity Support shall be due and payable to the Concessionaire only after it has expended 80% of the committed Equity, and shall be disbursed only after the Concessionaire expends 50% of the Total Project Cost as per Financing Agreements or the Total Project Cost as submitted by the Construction, operation and maintenance of 480 KLDC Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
Concessionaire to the Authority. The Authority shall disburse the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars and an auditor certificate to that effect.

18.2.3. In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such time Concessionaire Default has been cured by the Concessionaire.

ARTICLE 19: USER CHARGES

19.1. Collection and appropriation of Charges

19.1.1. Subject to and in accordance with this Agreement, Applicable Laws and Good Industry Practice; on and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate revenue:

a. from the Users for the treatment of effluent at the approved Tariff for different COD ranges and as specified in Clause 19.4;

b. on selling of recycled water to the Units situated within the Industrial Park at the approved rates;

c. on selling of treated Sludge;

d. on selling of recovered Solvent through treatment process; and

e. any other end product as approved by the Authority.

For avoidance of doubt, the revenue is divided into: 1). revenue on Regulated Services; and 2). revenue on Non-regulated Services. The Charges on the Regulated Services shall be as per the provisions of this Agreement only and for all Non-regulated Services, the Concessionaire is free to fix the Charges and/or as negotiated by the Concessionaire with the third parties. The Regulated Services are effluent treatment charges and charges for sale of recycled water;

19.2. Minimum Demand Guarantee

To reduce demand risk for the Concessionaire, an agreement with Pashamylaram Common Infrastructure Private Limited, (the Take or Pay Agreement) shall be signed for allowing the Concessionaire to collect fixed Membership Fee and one month advance towards Operational expenses. Pashamylaram Common Infrastructure Pvt. Ltd., (PCIPL) shall collect the fixed Membership Fee from its members (the industrial units of the Pashamylaram Industrial Park) and deposit the same with the Concessionaire. TSIIC will also be a signatory for this tripartite agreement.

The Membership Fee amount shall be used as a deposit towards Minimum Demand Guarantee and in case of demand falling short of 30% of the installed capacity (480 KLD) in any financial year, the Concessionaire has the right to collect the shortfall from Membership Fee. In such eventuality, the Pashamylaram Common Infrastructure Pvt. Ltd., (PCIPL) has to make good the shortfall amount within 30 days of such recovery by the Concessionaire.
19.3. **Advance towards Operational Expenses**
Additionally, PCIPL has to deposit with the Concessionaire one month advance towards Operational expenses, the amount as decided by the Operations Committee. Such advance is returnable on expiry of five years from Commercial Operations Date (COD) and subject to approval of the same by the Operations Committee. For the sake of clarity, the Operations Committee may permit extension of holding the Advance for a maximum further period of five years, subject to review of the same every year.

19.4. **Fixed Tariff (all inclusive)**
The User Charges for treatment of effluent is as detailed hereunder:

<table>
<thead>
<tr>
<th>Chemical Oxygen Demand (COD) Range (mg/l)</th>
<th>Fixed Rate per KL {as quoted in the Bid} (Rs./KL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-6,000</td>
<td>**</td>
</tr>
<tr>
<td>6001-10,000</td>
<td>**</td>
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<tr>
<td>10,001-25,000</td>
<td>**</td>
</tr>
<tr>
<td>25,001-50,000</td>
<td>**</td>
</tr>
<tr>
<td>50,001-80,000</td>
<td>**</td>
</tr>
</tbody>
</table>

The User Charges for supply of recycled water is as per the rates as fixed by the Tariff Review Committee every year.

19.5. **Revision of User Charges**
19.5.1. The Parties hereto acknowledge and agree that the Charges on Regulated Services shall be revised every year and effective date for such first revision shall be one year from Commercial Operation Date (COD) for the Project and every one year thereafter. The Fixed Tariff for treatment of effluent shall be revised by 5% every year and revision in User Charges for supply of recycled water shall be as decided by the Operations Committee.

Additionally, Pashamylaram Industrial Park at a future date may go in for different source of energy generation such as solar power, cogeneration, etc., and that may result into substantial reduction in the cost of electricity to end users including the Concessionaire. Therefore, in case of change in cost of electricity (increase/decrease) year on year is beyond 5% with respect to the applicable electricity charges as on COD/preceding revision date, the revised Tariff in such case shall take into consideration the change in cost of electricity and for the sake of clarity, the formula for revision of Tariff in such case shall be as detailed hereunder:

- Revised Tariff for Low TDS (COD Range <=10,000 mg/l) = Tariff Fixed for earlier period X (1+5%) ± Any % change in fuel beyond annual increase/decrease of 5% (Year on Year) X Fuel Weightage @ 30% X Tariff Fixed for earlier Period; and

- Revised Tariff for High TDS (COD Range >10,000 mg/l) = Tariff Fixed for earlier period X (1+5%) ± Any % change in fuel beyond annual increase/decrease change of 5% (Year on Year) X Fuel Weightage @ 50% X Tariff Fixed for earlier Period.
19.5.2. For all the Regulated Services, the Concessionaire shall not revise, display or collect any amounts in excess of the Charges payable as per the provisions of this Agreement. In the event that any excess amounts are collected by or on behalf of the Concessionaire, the Authority can issue a notice to the Concessionaire for refund of such excess amounts to the Authority along with Damages equal to 20% thereof.

19.6. **Tariff Review Committee**

19.6.1. To protect the interests of the Concessionaire, a Tariff Review Committee (the “Tariff Review Committee”) shall be formed where one from Concessionaire, representatives (not more than two) from Pashamylaram Common Infrastructure Pvt. Ltd and the Managing Director, TSIIC would be the members. The Tariff Review Committee, during the Concession Period, shall meet once in a year or when it is necessitated due to abnormal variations in input costs for Plant operations to firm up the Tariff. In case it is required, the Concessionaire shall have to share books of accounts to the Tariff Review Committee. The Tariff Review Committee can either approve the applicable Tariff as per the provisions of the Concession Agreement or fix a different Tariff for such periods as it may deem fit, if so warranted, taking into consideration the abnormal variations in input costs. For the sake of clarity, it is noted that the subsequent revisions in normal circumstances shall be as per the provisions of the Concession Agreement only.

19.6.2. The Concessionaire, 3 (three) months prior to Scheduled Completion Date, shall have to submit Tariff Review Committee, Plant operational costs giving complete break up of all the input costs per KL of effluent treatment along with three competitive quotations obtained in this regard. For the sake of clarity and for avoidance of doubt, any expenses towards maintenance of plant & machinery shall not be considered as operational input costs. The Tariff Review Committee shall review the costs submitted by the Concessionaire, and if so required, may obtain fresh quotations for the input costs to validate the quotes submitted and to arrive at the input costs as on that day which shall become the base reference costs (the “Base Reference Costs”) for any feature revision. The Tariff Review Committee shall ascertain any feature abnormal variations in input costs for Plant operations with reference to this Base Reference Costs only and to firm up the Tariffas it may deem fit.

**ARTICLE 20: ESCROW ACCOUNT**

20.1. **Escrow Account**

20.1.1. Not later than 30 (thirty) days from Project Commencement Date, the Concessionaire, shall have to open and establish Escrow Account with a bank (the “Escrow Bank”) acceptable to the Authority in accordance with the Agreement read with the Escrow Agreement. On Financial Close, the Concessionaire has to either execute a supplemental escrow agreement making Lenders’ Agent as a party to the Escrow Agreement or substitute the existing Escrow Agent with another one acceptable to the Lenders’ Agent by entering into a fresh Escrow Agreement.

20.1.2. The nature and the scope of the Escrow Account are, as described in the agreement (the “Escrow Agreement”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, if any, which shall be substantially in the form set forth in Schedule E.
20.2. Deposits into Escrow Account
The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

a. all funds constituting the Financial Package;

b. all revenues from or in respect of the Project, including the proceeds of any deposits, capital receipts or insurance claims; and

c. all payments by the Authority, after deduction of any outstanding payments.

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

a. all taxes due and payable by the Concessionaire for and in respect of the Project;

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

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

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

e. Any amounts due and payable to the Authority;

f. Monthly proportionate provision of Debt Service due and payable in an Accounting Year;

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

h. Any reserve requirements set forth in the Agreement or in the Financing Agreements; and

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

20.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 20.3.1, except with the prior written approval of the Authority.

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

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

b. Percentage of Debt Due as per the terms of this Agreement;

c. Outstanding payments due to the Authority;

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

e. Retention and payments relating to the liability for defects and deficiencies set forth in Article 30;

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

g. Outstanding Subordinated Debt, if any;

h. Incurred or accrued O & M Expenses;

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

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

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 20.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 27.

20.4.2. The provisions of this Article 20 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 20.4.1 have been discharged.

ARTICLE 21: INSURANCE

21.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the "Insurance Cover"). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a coinsured.

21.2. Notice to Authority

Construction, operation and maintenance of 480 KLDC Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
Not later than 15 (fifteen) days from Project Commencement Date, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 21. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

21.3. Evidence of Insurance Cover
All insurances obtained by the Concessionaire in accordance with this Article 21 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 30 (thirty) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

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

21.5. Waiver of subrogation
All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 21 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

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

21.7. Application of insurance proceeds
The proceeds from all insurance claims, except life and injury: shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair, reconstruction,
reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

21.8. **Compliance with conditions of insurance policies**

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

**ARTICLE 22: ACCOUNTS AND AUDIT**

22.1. **Audited accounts**

22.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including all User Charges and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

**ARTICLE 23: FORCE MAJEURE**

23.1. **Force Majeure**

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

23.2. **Non-Political Event**

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

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

b. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) days.
hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 23.3;

c. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

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

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

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

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

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

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

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

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

a. Change in Law, if as a result of Change in Law, the Concessionaire suffers an increase in costs and/or reduction in reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 50 (rupees fifty) lakhs in any Accounting Year;

b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors; or

c. any event or circumstance of a nature analogous to any one of the foregoing.

23.5. Duty to report Force Majeure Event

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
23.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith.

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

23.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with weekly reports containing information as required by Clause 23.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

23.6. Effect of Force Majeure Event on the Concession

23.6.1. Upon the occurrence of any Force Majeure Event prior to the Financial Close, the period set forth in Clause 16.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

23.6.2. At any time after the Financial Close, if any Force Majeure Event occurs:

- a. before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. after COD, whereupon the Concessionaire is unable to collect Charges despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of User Charges on account thereof.

23.7. Allocation of costs arising out of Force Majeure

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

23.7.2. Upon occurrence of a Force Majeure Event after the Financial Close, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

- a. upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; and
- b. upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be allocated and paid as follows:

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis

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

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

23.7.3. Save and except as expressly provided in this Article 23, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

23.8. Termination Notice for Force Majeure Event
If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 23, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

23.9. Termination Payment for Force Majeure Event
23.9.1. If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due, less Insurance Cover.

23.9.2. If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to Debt Due, less Insurance Cover and 100% (one hundred percent) of Adjusted Equity.

23.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 26.3.2 as if it were an Authority Default.

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

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

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

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

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

ARTICLE 24: COMPENSATION FOR BREACH OF AGREEMENT

24.1. Compensation for default by the Concessionaire
Subject to the provisions of Clause 24.4, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 24.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or any consequential losses incurred by the Authority.

24.2. Compensation for default by the Authority
Subject to the provisions of Clause 24.4, in the event of the Authority being in material default or breach of this Agreement at any time after the Project Commencement Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

24.3. Compensation to be in addition
Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
Compensation payable under this Article 24 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

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

ARTICLE 25: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

25.1. Suspension upon Concessionaire Default
Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect User Charges, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice.

25.2. Authority to act on behalf of Concessionaire
25.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Charges and revenues under and in accordance with this Agreement. The Authority shall be entitled to recover the amount for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses that may be specified elsewhere in this Agreement.

25.2.2. During the period of Suspension hereunder, all assets and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 25.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

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

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

25.5. Termination
25.5.1. At any time during the period of Suspension under this Article 25, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subjective to the rights of the Lenders’ Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 25.4, the Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 26.

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

ARTICLE 26: TERMINATION
26.1. Termination for Concessionaire Default

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

a. the Construction Performance Security / Operations Performance Security has been encashed, as the case may be, and appropriated by the Authority in accordance with Clause 8.2 and the Concessionaire fails to replenish or provide fresh Construction Performance Security / Operations Performance Security, as the case may be, within a Cure Period of 21 (twenty one) days;
b. subsequent to replenishment or furnishing of fresh Construction Performance Security / Operational Performance Security, as the case may be, in accordance with Clause 8.2, the Concessionaire fails to cure the Concessionaire Default, for which whole or part of the Construction Performance Security / Operational Performance Security, as the case may be, was appropriated, within a cure period of 45 (forty five) days;

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

d. COD does not occur within the period specified in Clause 11.4.2;

e. the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

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

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

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

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

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

k. a Change in Ownership has occurred in breach of the provisions of Clause 4.3;

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

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

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

o. the Concessionaire has been, or in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
p. a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Project Commencement Date; and

iii. each of the Project Agreements remains in full force and effect;

q. any representation and warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

r. the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

s. the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

26.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 26.1.3.

26.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 26.1.2 to inform the Lenders’ Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the
date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders’ Representative to exercise the Senior Lenders’ right of substitution in accordance with the Substitution Agreement.

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

26.2. Termination for Authority Default
26.2.1. In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 60 (sixty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “Authority Default”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

a. the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

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

c. the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

26.2.2. Without prejudice to any other rights or remedies which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

26.3. Termination Payment
26.3.1. Upon Termination on account of a Concessionaire Default during the Construction Period but after Financial Close the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 75% (seventy five per cent) of the Debt Due, less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and during Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due, less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges
that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to Financial Close.

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

   a. Debt Due; and
   b. 110% (one hundred and twenty per cent) of the Adjusted Equity.

26.3.3. Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars.

26.3.4. The Concessionaire expressly agrees the Termination Payment under this Article 26 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

26.4. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

   a. be deemed to have taken possession and control of the Project forthwith;
   b. take possession and control of all materials, stores, implements, equipment, systems used or being used in the development of the Project;
   c. be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the office or any part of the Project; and
   d. require the Concessionaire to comply with the Divestment Requirements set forth in Clause 27.1.

26.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 26.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money Damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 27: DIVESTMENT OF RIGHTS AND INTEREST

27.1. Divestment Requirements

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
27.1.1. Upon Termination, the Concessionaire shall comply with and confirm to the following Divestment Requirements:

a. notify to the Authority forthwith the location and particulars of all Project Assets;

b. deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

c. cure all defects and deficiencies in the Project Assets so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all the Project Assets shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;

d. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance including all programs and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;

e. transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturer’s warranties in respect of any product or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

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

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

27.2. Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate (the “Vesting Certificate”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights,
27.3. Divestment Costs
27.3.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
27.3.2. In the event of any Dispute relating to matters covered by and under this Article 27, the Dispute Resolution Procedure shall apply.

ARTICLE 28: ASSIGNMENT AND CHARGES

28.1. Restrictions on assignment and charges

28.1.1. Subject to Clauses 28.2 and 28.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.1.2. Subject to the provisions of Clause 28.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.2. Permitted assignment and charges
The restraints set forth in Clause 28.1 shall not apply to:

a. liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;

b. mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;

c. assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

d. liens or encumbrances required by any Applicable Law.

28.3. Substitution Agreement

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
28.3.1. The Lenders’ Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the “Substitution Agreement”) to be entered into amongst the Concessionaire, the Authority and the Lenders’ Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule F.

28.3.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 90 (ninety) days to the Concessionaire for curing such breach.

28.4. Assignment by the Authority
Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 30 (thirty) days' notice to the Concessionaire, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 29: LIABILITY AND INDEMNITY
29.1. General indemnity
The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the “Authority Indemnified Persons”) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any Users, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority Indemnified Persons.

29.2. Indemnity by the Concessionaire
29.2.1. Without limiting the generality of Clause 29.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

   a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

   b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
29.2.1. Without limiting the generality of the provisions of this Article 29, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project.

29.3. Notice and contest of claims
In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 29 (the “Indemnified Party”) it shall notify the other Party (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

29.4. No consequential claims
Notwithstanding anything to the contrary contained in this Article 29, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

29.5. Survival on Termination
The provisions of this Article 29 shall survive Termination.

ARTICLE 30: RIGHTS AND TITLE OVER THE SITE

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

30.2. Access rights of the Authority and others
30.2.1. The Concessionaire shall allow free access to the Site at all times for the Representatives and the Project In-Charge, and for the persons duly authorized by the Authority to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the
Concessionaire shall provide to such persons’ reasonable assistance necessary to carry out their respective duties and functions.

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

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

ARTICLE 31: DISPUTE RESOLUTION

31.1. Dispute resolution

31.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 31.2.

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

31.2. Conciliation
In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Managing Director, Telangana State Industrial Infrastructure Corporation Limited and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 31.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 31.3.

31.3. Arbitration

31.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 31.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 31.3.2. Such arbitration shall be held in accordance with the rules (the “Rules”) as may be
mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Hyderabad and the language of arbitration proceedings shall be English;

31.3.2. There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules;

31.3.3. The parties, shall select their respective arbitrators within 30 days from the date of commencement of the arbitration proceedings and in case any single party fails to do so then the other party’s arbitrator becomes the sole arbitrator;

31.3.4. The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 31 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay;

31.3.5. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated; and

31.3.6. 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.

ARTICLE 32: REDRESSAL OF PUBLIC GRIEVANCES

32.1. Complaints Box

32.1.1. The Concessionaire shall keep a box (the “Complaint Box”) at the Project Site open to public access at all times for lodging of complaints, if any (the “Complaint”);

32.1.2. In addition to the provisions of Clause 32.1.1, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and responses thereto.

32.2. Redressal of complaints

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

32.2.2. Within seven days of the close of each month, the Concessionaire shall have to send the Authority the complaint file in electronic form (at the authorized email address). Upon perusal of the complaint file, the Authority may, in its discretion, advice the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.
ARTICLE 33: MISCELLANEOUS

33.1. Governing law and jurisdiction

The Agreement shall be governed by the laws of India, including but not limited to laws of Government of Telangana and Telangana State Industrial Infrastructure Corporation Limited extant rules and regulations in force and as amended from time to time; and the Courts in Hyderabad shall have exclusive jurisdiction in all matters under the Agreement.

33.2. Depreciation

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

33.3. Delayed Payments

33.3.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless and otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay at the rate of 12% (twelve per cent), and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

33.4. Waiver

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

a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

b. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

c. shall not affect the validity or enforceability of this Agreement in a manner.

33.5. Liability for review of Documents and Drawings

Express extent expressly provided in this Agreement:

a. no review, comment or approval by the Authority or its Representative of any Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
33.6. **Survival**

33.6.1. Termination shall:

a. not relieve the Concessionaire of any obligations hereunder which expressly or by implication survive Termination hereof; and

b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

33.7. **Entire Agreement**

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

33.8. **Severability**

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

33.9. **No partnership**

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

33.10. Third Parties
This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

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

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

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

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

ARTICLE 34: DEFINITIONS

34.1. Definitions

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

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

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

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

c. after the 2nd (second) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.4% (zero point four per cent) thereof at the commencement of each month following the 2nd (second) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date:

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

“Affected Party” shall have the meaning set forth in Clause 23.1.

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

“Applicable Laws” means all laws brought into force and effect by Telangana State Government or the Government of India (GOI) including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this RFP document and the exercise, performance and discharge of respective rights and obligations of the parties hereunder, as may be in force and effect during the subsistence of this RFP document and the subsequent contract to be signed by the selected bidder with TSIIC at the end of bidding process;

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

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

“Associate” or “Affiliate” means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power of direct the management and policies of such person, whether by operation of law or by contract or otherwise);
“Authority” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;
“Authority Default” shall have the meaning set forth in Clause 26.2.1;
“Authority Indemnified Persons” shall have the meaning set forth in Clause 29.1;
“Authority Representative” or “Representative” means such person or persons as may be authorized in writing by the Authority to act on its behalf under the Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under the Agreement;
“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);
“Base Reference Costs” shall have the meaning as set forth in Clause 19.6.2;
"Bid" means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the provisions thereof;
"Bid Security" means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;
“COD” or “Commercial Operation Date” shall have the meaning as set forth in Clause 13.1;
“Change in Law” means occurrence of any of the following after the date of Bid:
   a. the enactment of any Indian or State law;
   b. the repeal, modification or re-enactment of any existing Indian /State law;
   c. the commencement of any Indian /State law which has not entered into effect until the date of Bid;
   d. a change in the interpretation or application of any Indian/State law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
   e. any change in the rates of any of the Taxes that have a direct effect on the Project.
“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and ten years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire
during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be), in the proportion of the equity holding of {the selected bidder/Consortium Members} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership.

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

“Completion Certificate” shall have the meaning as set forth in Clause 12.2;

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

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

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

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

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

“Concessionaire Default” shall have the meaning as set forth in Clause 26.1.1;

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

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

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

a. commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default as specified in such notice;

b. not relieve any Party from liability to pay Damages or compensation under the provisions of the Agreement; and

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

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

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

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

a. the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “Principal”) but excluding any part of the principal that had fallen due for repayment six months prior to the Transfer Date; and

b. all accrued interest, financing fees and the charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due six months prior to the Transfer Date and (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender;

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

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

“Dispute” shall have the meaning set forth in Clause 31.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 31;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 27.1;

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

“Drawings” means drawings, tracings or prints thereof, calculations and documents pertaining to the Project and shall include ‘as built’ drawings of the Project.
"EPC Contract" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 10.1;

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

“Equity Support” shall have the meaning as set forth in Clause 18.2.1;

“Financial Close” means the fulfilment of all conditions’ precedent to the initial availability of funds under the Financing Agreements;

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

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

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

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

“Force Majeure” or Force Majeure Event” shall have the meaning ascribed to it in Clause 23.1;

“GOI” means the Government of India;

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills,
diligence, efficiency, reliability and prudence which are generally and reasonably expected from
a reasonably skilled and experienced operator encouraged in the same type of undertaking as
envisaged under this Agreement and which would be expected to result in the performance of
its obligations by the Concessionaire in accordance with the Agreement, Applicable Laws and
Applicable Permits in reliable, safe, economical and efficient manner;

“Government” means the Government of Telangana;

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

“Grant” shall have the meaning as set forth in Clause 18.1.1;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article
29;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article
29;

“Indirect Political Event” shall have the meaning as set forth in Clause 23.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances
taken out by the Concessionaire pursuant to Clause 21, and includes all insurances required to
be taken out by the Concessionaire under Clause 21.1 but not actually taken, and when used in
the context of any act or event, it shall mean the aggregate of the maximum sums insured and
payable or deemed to be insured and payable in relation to such act or event;

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

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

“Land Lease Rental” shall have the meaning set forth in Clause 17.1;

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

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP)
with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M),
Sanga reddy dist., Telangana on PPPBasis
“LOA” or “Letter of Award” means the letter of award referred to in Recital (D);

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

“O & M Manual” shall have the meaning ascribed to it in Clause 14.1.2;

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

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

“Non-Regulated Services” for the purpose of this Agreement, means the services which are not regulated by the Authority and as such the User Charges are as fixed by the Concessionaire or as negotiated by the Concessionaire with the third parties from time to time;

“Non-Political Event” shall have the meaning set forth in Clause 23.2;

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

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

“O & M Inspection Report” shall have the meaning as set forth in Clause 14.4.2;

“Operations Committee” shall have the meaning as set forth in Clause 14.2.1;

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

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

“PCIPL” or “Pashamylaram Common Infrastructure Private Limited” means the Special Purpose Vehicle (SPV) which was formed by cluster of industrial pharma units located in the Industrial Park.
Telangana State Industrial Infrastructure Corporation Ltd.  
Request for Proposal  
Bid Document  
Draft Concession Agreement  

Park, Pashamylaram to represent the Industrial Units for the CETP and allied environmental infrastructure;

“Performance Security” shall have the meaning set forth in Clause 8.1;

“Political Event” shall have the meaning as set forth in Clause 23.4;

"Preservation Costs" shall have the meaning as set forth in Clause 11.6.3;

“Project” means the construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (Village), Patancheru (Mandal), Sanga reddy (District), Telangana in accordance with the provisions of the Agreement; and includes all works, services, systems, software and supporting infrastructure relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O & M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services or for collecting Charges involving a consideration of upto Rs.75 (seventy five) lakhs;

“Project Acceptance Tests” means the standard tests as proposed by the Concessionaire as part of Quality Assurance Plan and as accepted by the Authority for monitoring of construction and for determining the completion of the Project by the Authority;

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

“Project Commencement Date” means the date on which the Concession Agreement is signed between the Concessionaire and the Authority, and such date shall be the date of commencement of the Concession Period;

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

“Recycled Water” means the water which is obtained after the treatment of the effluent;

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

“Regulated Services” for the purpose of this Agreement, means the services which are regulated by the Authority and as such the User Charges for such services are as fixed by the Authority from time to time;

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

“Safety Requirements” shall have the meaning set forth in Clause 16.1.1;

“Scheduled Completion Date” shall have the meaning as set forth in Clause 11.4.1;

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

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, Original Equipment Manufacturer (OEM) who has supplied the Plant & Machinery and agreeable to differ its payment dues by converting the dues into a loan as per the terms and conditions as may be mutually agreed between the Concessionaire and the effluent Plant Supplier, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Concessionaire;

“Service Level Requirements” shall have the meaning as set forth in Schedule D;

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

“State” means the State of Telangana;

“Substitution Agreement” shall have the meaning set forth in Clause 28.3.1;

“Suspension” shall have the meaning set forth in Clause 25.1;

“Tariff Review Committee” shall have the meaning as set forth in Clause 19.6.1;

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

“Termination” means the expiry or termination of this Agreement and the Contract hereunder;
“Termination Notice” means the written communication issued in accordance with this Agreement by one Party to the other Party terminating the Agreement;

“Termination Payment” means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; For the avoidance of doubt, it is agreed that within a period of 30 (thirty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing the Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the product arrived at by subtracting Debt Due from Total Project Cost;

“Total Project Cost” means the lowest of:

a. The capital cost of the Project, as set forth in the Financial Package; and
b. The actual capital cost upon completion of the Project as certified by an auditor.

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

“User” means a person who uses the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“User Charges” means the payment made by the Users/third parties for availing the services, or for any other purpose to the Concessionaire;

“Vesting Certificate” shall have the meaning as set forth in Clause 27.2.

“Works” shall mean the works to be executed in accordance with the Contract or part thereof and shall include additional, altered or substituted works as required for the purpose of completion of the Project.

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

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

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of For and on behalf of
THE AUTHORITY OF [***] by: CONCESSIONAIRE by:

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
ANNEXURE B
SCOPE OF WORK

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
1. **Scope of Work**

1.1. The Scope of Work for the Project is as detailed hereunder:

1. Development of the Common Effluent Treatment Plant (CETP) of 480 KLD capacity with ZLD facility including SCADA and other real time online Monitoring System with all supporting infrastructure and all appurtenant structures and allied works. The Construction Period is 6 (six) months from signing of the Concession Period for completion of the Project. The scope also includes all necessary civil works, foundations, and such other activities including commissioning of all equipment;

2. Operate & Maintain entire works of ZLD based CETP along with all the appurtenant structures and allied works during the Concession Period.

3. Real time sampling of effluents at CETP (inlet and outlet parameters) and Real time online Monitoring systems at CETP, duly integrating the same with TSPCB / TSIIC systems for monitoring & ensuring compliance on the inlet and outlet characteristics of effluents to ZLD as per the prevailing regulations.

4. Provide for covered storage facility for sludge generated by CETP and periodically transfer/dispose the sludge to a site designated as per prevailing regulations. It is clarified that disposal of sludge (as per the stipulated guidelines of MoEF&CC and TSPCB) is also under the scope of the Concessionaire.

5. Provide treated water (Recycled water) to industrial units on pay for use basis.

6. Collect user charges from industrial units towards treatment of their wastewater, charges for supply of recycled water, as per the Tariff structure firmed up by the Tariff Review Committee.

7. Collection, storage and treatment of Toxic materials and collection of user charges towards treatment of toxic materials.

8. Solvent recovery and revenue generation through same.

9. Installation and management of Central Command & online monitoring system.

10. Construction activities include all the civil works and structural steel fabrication as required for the CETP as per approved layout, hydraulic profile and drawings. The Concessionaire may get the drawings vetted from reputed Independent Institutions as per instructions of Authority whose cost shall be borne by the Concessionaire.

11. To carry out necessary geo technical studies at the location for construction before start of civil construction works.

12. Complete interconnecting piping between units including supply of all materials like Pipes, fittings, valves, flanges, gaskets, nuts & bolts and necessary materials required for pipe supports and associated civil works.

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPP Basis
13. All the electrical & instrumentation works including supply, erection & commissioning of Motor Control Centre (MCC) panel, Programmable Logic Controller (PLC) control panel, field instruments, transformers, DG sets, with suitable outgoing feeder, automatic power factor controlling panel and power factor improving capacitors, local push buttons stations, etc., as per standards. The scope also includes all necessary civil works like construction of foundation for panels, cable trenches, cable supports, yard lighting poles, earth pits, fencing around the transformer yard, lighting fixtures and required number of sockets in indoor areas as required;

14. All work to be planned, designed and executed based on latest IS codes of practice and best engineering practices.

15. The CETP shall be designed and constructed for all weather operations and will be able to handle variable input loads.

16. To install and operate required CCTV covering treatment facility area.

17. To provide sufficient drainage system within the area allocated to CETP for storm water.

18. The works also include construction of
   - Office Room,
   - Store Room(s) for storing chemicals & spares,
   - MCC Panel Room,
   - PLC Room; and
   - To establish and operate laboratory for testing the influent and effluent as per protocols for testing, and testing of bio-solids as per WHO/other applicable norms, for the Project.

19. The Authority is in the process of procuring the following lab equipment / instruments and the same will be handed over to the Concessionaire for its use during the Concession Period and any other equipment as required shall have to be purchased by the Concessionaire:

<table>
<thead>
<tr>
<th>S No.</th>
<th>Equipment Description</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>pH meter</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>TDS Meter</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>COD Apparatus</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>BOD apparatus</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Muffle furnace</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Hot Air Oven</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Analytical balance</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>Fume Hood</td>
<td>6</td>
</tr>
<tr>
<td>9</td>
<td>Filtration setup</td>
<td>3</td>
</tr>
<tr>
<td>10</td>
<td>Hot Plate</td>
<td>4</td>
</tr>
<tr>
<td>11</td>
<td>Stirrer</td>
<td>6</td>
</tr>
<tr>
<td>12</td>
<td>Distillation Set Up</td>
<td>1</td>
</tr>
<tr>
<td>13</td>
<td>Spectrophotometer</td>
<td>3</td>
</tr>
</tbody>
</table>

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
1.2. General Conditions
The general conditions with regards to the effluent being handed over at the Site are:

1. Effluents being sent to the CETP will comprise process effluents and non-process effluents such as washings, boiler blow down, cooling tower bleed off, DM plant regeneration, laboratory, domestic effluents etc.

2. The Effluents being collected at the CETP from the manufacturing units are expected to have TDS and COD of greater than 50,000 mg/litre.

3. The effluent/wastewater delivered at the Project Site for treatment contains pharmaceutical drugs (APIs and excipients) from production/manufacturing, chemicals and solvents from quality control and oil and grease from utility and maintenance and may contain both inorganic industrial wastewater and organic industrial wastewater;
The Concessionaire shall ensure that the Availability of the Project Facilities to convey, accept and treat the effluent up to its Design Capacity except during Force Majeure. Provided that during the period of a scheduled maintenance that is undertaken as per the approved scheduled maintenance program or as notified and approved by the Authority, the Concessionaire shall ensure that the Availability is at least at 90% of the Design Capacity. In case of deviation from this Key Performance Indicator (KPI), the Authority is entitled to recover Damages at Rs. 3000 (Rupees five thousand) per day.

2. **Treated Effluent Characteristics**

2.1. As per the Environment (Protection) Amendment Rules, 2015 notified by Ministry of Environment, Forest and Climatic Change notification dated 1st January 2016, the Concessionaire shall have to adhere to the following quality standards for the Zero Liquid Discharge based Common Effluent Treatment Plant:

<table>
<thead>
<tr>
<th>S No</th>
<th>Particulars</th>
<th>Parameter</th>
<th>Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Inlet Quality Standards</td>
<td>It should be as prescribed by Telangana State Pollution Control Board for general parameters, and heavy metals as per design of CETP and local needs &amp; conditions.</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Treated effluent Quality Standards</td>
<td>General Parameters</td>
<td>Maximum Permissible Values (in milligram/litre except for pH and temperature)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Into inland surface water</td>
</tr>
<tr>
<td>1</td>
<td>pH</td>
<td></td>
<td>6-9</td>
</tr>
<tr>
<td>2</td>
<td>Biological Oxygen Demand, BOD₃, 27° C</td>
<td>30</td>
<td>100</td>
</tr>
<tr>
<td>3</td>
<td>Chemical Oxygen Demand (COD)</td>
<td>250</td>
<td>250</td>
</tr>
<tr>
<td>4</td>
<td>Total Suspended Solids (TSS)</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>5</td>
<td>Fixed Dissolved Solids (FDS)</td>
<td>2100*</td>
<td>2100*</td>
</tr>
<tr>
<td>1</td>
<td>Temperature, °C</td>
<td>Shall not exceed more than 5° C above ambient water temperature</td>
<td>Shall not exceed more than 5° C above ambient water temperature</td>
</tr>
<tr>
<td>2</td>
<td>Oil &amp; Grease</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>3</td>
<td>Ammonical-Nitrogen</td>
<td>50</td>
<td>NS*</td>
</tr>
<tr>
<td>4</td>
<td>Total Kjeldahl Nitrogen (TKN)</td>
<td>50</td>
<td>NS*</td>
</tr>
<tr>
<td>5</td>
<td>Nitrate-Nitrogen</td>
<td>10</td>
<td>NS*</td>
</tr>
<tr>
<td>6</td>
<td>Phosphates, as P</td>
<td>5</td>
<td>NS*</td>
</tr>
<tr>
<td>7</td>
<td>Chlorides</td>
<td>1000</td>
<td>1000</td>
</tr>
<tr>
<td>8</td>
<td>Sulphates, as SO₄</td>
<td>1000</td>
<td>1000</td>
</tr>
<tr>
<td>9</td>
<td>Sulphides, as S</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>10</td>
<td>Phenolic Compounds (as C₆H₅OH)</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>11</td>
<td>Total Res. Chlorine</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

Construction, operation and maintenance of 480 KLDC common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
Notes:

1. *Maximum permissible Fixed Dissolved Solids (FDS) contribution by constituent units of the CETP shall be 1000 milligram / litre. In cases where Fixed Dissolved Solids (FDS) concentration in raw water used by the constituent units is already high (i.e., more than 110 mg/litre then the maximum permissible value for Fixed Dissolved Solids (FDS) in treated effluent shall be accordingly modified by Telangana State Board and as intimated.

2. In case of discharge of treated effluent on land for irrigation, the impact on soil and groundwater quality shall be monitored twice a year (pre- and post-monsoon) by the Concessionaire. For combined discharge of treated effluent and sewage on land for irrigation, the mixing ratio with sewage shall be as prescribed by Telangana State Board.

2.2. The treated effluent Quality Standards have to comply with the Standards as defined in 2.1 above or the Standards as mentioned in Telangana State Pollution Control Board (TSPCB) Consent Order, whichever is more stringent.

2.3. If treated effluent has one or more characteristics different from the defined general / specific Parameters in this Schedule C of the Agreement, the following shall apply:

- In case such parameters are defined in Telangana State Pollution Control Board (TSPCB) Consent Order, the same shall be applicable; and

- In case such parameters are not defined in TSPCB Consent Order but defined in Environment (Protection) Amendment Rules, 2015 notified by Ministry of Environment, Forest and Climatic Change notification dated 1st January 2016, the same shall be applicable.

2.4. The Concessionaire shall have to comply with the above treated effluent Quality Standards as amended, modified, supplemented, extended or re-enacted by Ministry of Environment, Forest

### Table

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<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>12</td>
<td>Zinc</td>
<td>5</td>
</tr>
<tr>
<td>13</td>
<td>Copper</td>
<td>3</td>
</tr>
<tr>
<td>14</td>
<td>Trivalent Chromium</td>
<td>2</td>
</tr>
<tr>
<td>15</td>
<td>Manganese</td>
<td>2</td>
</tr>
<tr>
<td>16</td>
<td>Nickel</td>
<td>3</td>
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<tr>
<td>17</td>
<td>Arsenic</td>
<td>0.2</td>
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<tr>
<td>18</td>
<td>Cyanide, as CN</td>
<td>0.2</td>
</tr>
<tr>
<td>19</td>
<td>Vanadium</td>
<td>0.2</td>
</tr>
<tr>
<td>20</td>
<td>Lead</td>
<td>0.1</td>
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<tr>
<td>21</td>
<td>Hexavalent Chromium</td>
<td>0.1</td>
</tr>
<tr>
<td>22</td>
<td>Selenium</td>
<td>0.05</td>
</tr>
<tr>
<td>23</td>
<td>Mercury</td>
<td>0.01</td>
</tr>
<tr>
<td>24</td>
<td>Bio-assay Test</td>
<td>As per Pharma/Bulk Drug Industry Standards</td>
</tr>
</tbody>
</table>

*NS – Not specified.
Telangana State Industrial Infrastructure Corporation Ltd.  
Request for Proposal 
Bid Document 
Draft Concession Agreement 

and Climatic Change as per the Environment (Protection) Rules, 1986 and/or Consent Order of TSPCB, as applicable.

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

To 
The Chief Engineer, 
Telangana State Industrial Infrastructure Corporation Limited (TSIIC), 
5th Floor, Parishramabhavan, 
Fateh Maidan Road, Basheerbagh, 
Hyderabad – 500 004.

WHEREAS ----(Name and address of M/s XXXX Ltd), hereinafter referred to as “the Concessionaire”, has undertaken setting up of Common Effluent Treatment Plant of 480 KLD capacity with ZLD facility and allied infrastructure in accordance with the provisions of the Concession Agreement, and includes all works, services and equipment relating to or in respect of the Scope of Work as defined therein in the Concession Agreement dated .............with Telangana State Industrial Infrastructure Corporation Limited (hereinafter referred to as “the AGREEMENT”)

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

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

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

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis

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Notwithstanding anything to the contrary we agree that your decision as to whether the Concessionaire has made any such default or defaults and the amount or amounts to which you are entitled by reasons thereof will be binding on us and we shall not be entitled to ask you to establish your claim or claims under Construction Performance Guarantee but will pay the same forthwith on your demand without any protest or demur.

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

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

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

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

In order to give full effect to the guarantee herein contained, you shall be entitled to act as if we were your principal debtors in respect of all your claims against the Concessionaire hereby guaranteed by us as aforesaid and we hereby expressly waive all our rights of surety and other rights, if any, which are in any way inconsistent with any of the provisions of Construction Performance Guarantee. Subject to the maximum limit of our liability as aforesaid, Construction Performance Guarantee will cover all your claim or claims against the Construction from time to time arising out of or in relation to the Agreement and in respect of which your claim in writing is lodged on us before expiry of three months from the date of expiry of Construction Performance Guarantee.
Any notice by way of demand or otherwise hereunder may be sent by special courier, telex, fax or registered post to our local address as aforesaid and if sent by post it shall be deemed to have been given when the same has been posted.

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

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

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

Notwithstanding anything contained herein:

i. Our liability under this guarantee shall not exceed Rs.------------------ (Rupees ........................ only);
ii. This guarantee shall be valid upto.............. ; and

We are liable to pay the guaranteed amount or any part thereof under this guarantee only and only if you serve upon us a written claim or demand at ------- (place) on or before ...... (mention period of the guarantee as found under clause ii. above plus claim period).

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

Dated this .... day of 2021.

For and on behalf of

BRANCH MANAGER
(SEAL, ADDRESS, PLACE)
SCHEDULE –E
(See Clause 20.1.2)
ESCROW AGREEMENT

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

AMONGST

1. ....................... LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....................... (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. .......................name and particulars of Lenders’ Representative and having its registered office at ..................acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. .......................name and particulars of the Escrow Bank and having its registered office at .......................(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. Telangana State Industrial Infrastructure Corporation Limited represented by its Chief Engineer and having its office at 6th Floor, ParishramaBhavanam, Fateh Maidan Road, Basheerbagh, Hyderabad - 500004 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

A. The Authority has entered into a Concession Agreement dated ......................with the Concessionaire (the “Concession Agreement”) for establishment and operation/maintenance of Zero Liquid Discharge based Common Effluent Treatment Plant at Pashamylaram Industrial Park, Patancheru (Mandal), Sanga reddy (District), Telangana (the “Project”) on design, build, finance, operate and transfer (the “DBFOT”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

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

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

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

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

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

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

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

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

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

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

2. **ESCROW ACCOUNT**

2.1. **Escrow Bank to act as trustee**

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. **Acceptance of Escrow Bank**

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

2.3. **Establishment and operation of Escrow Account**

2.3.1. Within 30 (thirty) days from the date of the Concession Agreement, the Concessionaire shall open and establish the Escrow Account with the ......................... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders’ Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

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

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

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

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

a. all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;

b. all funds received by the Concessionaire from its share-holders, in any manner or form;

c. any revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and

d. all proceeds received pursuant to any insurance claims.

3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.
3.2. **Deposits by the Authority**
The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

a. Grant as per the provisions of the Concession Agreement and any other monies disbursed by the Authority to the Concessionaire;

b. all revenues collected by the Authority in exercise of its rights under the Concession Agreement; and

c. Termination Payments:

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

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

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

4. **WITHDRAWALS FROM ESCROW ACCOUNT**

4.1. **Withdrawals during Concession Period**

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

a. all taxes due and payable by the Concessionaire for and in respect of the Project;

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

c. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
d. O&M Expenses and other costs and expenses incurred by the Authority in accordance with
the provisions of the Concession Agreement, and certified by the Authority as due and
payable to it;

e. Any amounts due and payable to the Authority;

f. monthly proportionate provision of Debt Service due in an Accounting Year;

g. all payments and Damages certified by the Authority as due and payable to it by the
Concessionaire pursuant to the Concession Agreement;

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

i. any reserve requirements set forth in the Concession Agreement and in the Financing
Agreements; and

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

4.1.2. No later than 30 (thirty) days prior to the commencement of each Accounting Year, the
Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders’
Representative, details of the amounts likely to be required for each of the payment obligations
set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with
prior written approval of the Lenders’ Representative, if fresh information received during the
course of the year makes such modification necessary.

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

a. all taxes due and payable by the Concessionaire for and in respect of the Project;

b. 90% (ninety per cent) of Debt Due;

c. all payments and Damages certified by the Authority as due and payable to it by the
Concessionaire pursuant to the Concession Agreement, including any claims in connection
with or arising out of Termination;

d. retention and payments arising out of, or in relation to, liability for defects and deficiencies
set forth in Article 26 of the Concession Agreement;

e. outstanding Debt Service including the balance of Debt Due;

f. incurred or accrued O&M Expenses;
g. any other payments required to be made under the Concession Agreement; and

h. balance, if any, in accordance with the instructions of the Concessionaire:

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

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

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

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

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

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

5.3. Communications and notices
In discharge of its duties and obligations hereunder, the Escrow Bank:
a. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

c. shall, within 5 (five) business days after receipt, deliver a copy to the Lenders’ Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

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

5.4. No set off
The Escrow Bank agrees not to claim or exercise any right of set off, banker’s lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

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

6. ESCROW DEFAULT
6.1. Escrow Default

6.1.1. Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

a. the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

b. the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
c. the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

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

7.2. Substitution of Escrow Bank
The Concessionaire may, by not less than 30 (thirty) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

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

8. SUPPLEMENTARY ESCROW AGREEMENT

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

9. INDEMNITIES

9.1. General indemnity

9.1.1. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders’ Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

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

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

9.2. Notice and contest of claims

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

10. DISPUTE RESOLUTION

10.1. Dispute resolution

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

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

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

11.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

d. consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3. Priority of agreements

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

11.4. Alteration of terms

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

11.5. Waiver

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

a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

c. shall not affect the validity or enforceability of this Agreement in any manner.

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

11.6. **No third party beneficiaries**

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

11.7. **Survival**

11.7.1. **Termination of this Agreement:**

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

11.8. **Severability**

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

11.9. **Successors and assigns**

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

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

11.11. Language

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

11.12. Authorised representatives

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

11.13. Original Document

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

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

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

(Signature)

(Name)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
For and on behalf of
ESCRROW BANK by:

For and on behalf of
Telangana State Industrial Infrastructure Corporation Limited

by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:
1. 
2.

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

SCHEDULE –F
(See Clause 28.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

1. Telangana State Industrial Infrastructure Corporation Limited, represented by its Chief Engineer
and having its office at 6th Floor, Parishrama Bhavanam, Fateh Maidan Road, Basheerbagh,
Hyderabad - 500004 (hereinafter referred to as the “Authority” which expression shall, unless
repugnant to the context or meaning thereof, include its administrators, successors and
assigns).

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

3. .................... name and particulars of Lenders’ Representative and having its registered office at
.................... acting for and on behalf of the Senior Lenders as their duly authorised agent with
regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the
“Lenders’ Representative” which expression shall, unless repugnant to the context or meaning
thereof, include its successors and substitutes);

WHEREAS:

A. The Authority has entered into a Concession Agreement dated .................. with the
Concessionaire (the “Concession Agreement”) for establishment and operation/maintenance of
Zero Liquid Discharge based Common Effluent Treatment Plant (the “Project”) at Pashamylaram
Industrial Park, Patancheru (Mandal), Sanga reddy (District), Telangana and a copy of which is
annexed hereto and marked as Annex-A to form part of this Agreement.

Construction, operation and maintenance of 480 KLD Common Effluent Treatment Plant (CETP)
with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M),
Sanga reddy dist., Telangana on PPP Basis
B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

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

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

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

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

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.
1.2.1. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

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

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

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

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

   3.2. Substitution upon occurrence of Financial Default
   3.2.1. Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “Notice of Financial Default”) along with particulars thereof and send a copy to the Authority for its information and record.

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

   3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing
Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 26 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders’ Representative at the end of 180 (one hundred and eighty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders’ Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days’ time to the Lenders’ Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

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

3.4. Procedure for substitution

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders’ Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company’s assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders’ Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and
if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders’ Representative shall request the Authority to:

a. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;

b. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

c. enter into a Substitution Agreement with the Lenders’ Representative and the Nominated Company on the same terms as are contained in this Agreement.

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

3.5. Selection to be binding

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

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

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

5. **TERMINATION OF CONCESSION AGREEMENT**

5.1. **Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders’ Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 27 of the Concession Agreement.

5.2. **Termination when no Nominated Company is selected**

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

5.3. **Realisation of Debt Due**

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

6. **DURATION OF THE AGREEMENT**

6.1. **Duration of the Agreement**

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

a. Termination of the Agreement; or

b. no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. **INDEMNITY**

7.1. **General indemnity**

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

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

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

8. DISPUTE RESOLUTION
8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with rules as may be mutually agreed by the Parties and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

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

9. MISCELLANEOUS PROVISIONS
9.1. Governing law and jurisdiction
This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Hyderabad shall have jurisdiction overall matters arising out of or relating to this Agreement.

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

d. consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3. Priority of agreements

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

9.4. Alteration of terms

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

9.5. Waiver

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

a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

c. shall not affect the validity or enforceability of this Agreement in any manner.
9.5.2. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

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

9.7. Survival
9.7.1 Termination of this Agreement:

a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

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

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

9.10. Notices
All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and email address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall
promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

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

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

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

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

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

(Signature) 
(Name) 
(Designation) 

SIGNED, SEALED AND DELIVERED

For and on behalf of

Telangana State Industrial Infrastructure Corporation Limited by:

(Signature) 
(Name) 
(Designation) 

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders’ Representative:

Construction, operation and maintenance of 480 KLDCommon Effluent Treatment Plant (CETP) with Zero Liquid Discharge (ZLD) facility at Industrial Park, Pashamylaram (V), Patancheru (M), Sanga reddy dist., Telangana on PPPBasis
In the presence of:

1. 
2. 

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