CONCESSION AGREEMENT

THE GOVERNOR OF THE STATE OF TAMIL NADU

and

TIRUPUR MUNICIPALITY

and

NEW TIRUPUR AREA DEVELOPMENT CORPORATION LTD.
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THIS AGREEMENT is made on this the Eleventh day of February, 2000

BETWEEN:

THE GOVERNOR OF THE STATE OF TAMIL NADU for and on behalf of the Government of the State of Tamil Nadu, Chennai, India (hereinafter “GOTN” which expression shall, unless the context otherwise requires, include its successors) acting through the Secretary, Department of Municipal Administration and Water Supply and

TIRUPUR MUNICIPALITY, a body corporate having perpetual succession formed under the Tamil Nadu District Municipalities Act, 1920 having its principal office at Tirupur, acting through the Commissioner, Tirupur Municipality (hereinafter “TM” which expression shall, unless the context otherwise requires, include its successors); and

NEW TIRUPUR AREA DEVELOPMENT CORPORATION LIMITED, a Public Limited Company incorporated under the Companies Act, 1956 and having its registered office at 66,Appachi Nagar Main Road, Kongu Nagar, Tirupur- Tamil Nadu -641607 (hereinafter “NTADCL”, which expression shall, unless the context otherwise requires, include its subsidiaries and successors)
WHEREAS:

A. Tirupur is a municipal town, located 50 kilometres east of the city of Coimbatore in the State of Tamil Nadu, and is spread over an area measuring approximately 27 square kilometres and has emerged as India’s leading cotton knitwear export centre, accounting for the bulk of all Indian exports in this sector.

B. Despite its emergence as an export centre, the town of Tirupur suffers from inadequate levels of infrastructure. The inadequate levels of water supply and absence of Sewage collection, off-take and treatment systems, in particular, have been impeding the growth of industries and degrading the environment in and around Tirupur.

C. Tirupur Exporters Association (hereinafter “TEA”), which is a society registered under the Societies Registration Act, 1860 of the various owners of industrial units manufacturing cotton textiles in and around Tirupur, supported a plan for development of infrastructure facilities, particularly those relating to water treatment and supply and Sewage off-take and treatment for the enhancement of the productivity and export potential of the industrial units established within and outside the municipal limits of Tirupur.

D. In furtherance of the same, TEA made various representations to GOTN agreeing to finance, develop and promote the plan for development of infrastructural facilities in and around Tirupur. GOTN, desirous of upgrading the infrastructure facilities of Tirupur, mandated the Tamil Nadu Corporation for Industrial Infrastructure Development Limited (hereinafter “TACID”) to identify infrastructure projects so as to enhance Tirupur’s export and industrial potential.

E. TACID formulated an integrated Tirupur Area Development Plan (“TADP”), in 1993-94, for the Tirupur Local Planning Area (“TLPA”) which envisages several schemes including those relating to services of treatment and supply of potable water in Service Area and off-take, treatment and disposal of Sewage in Tirupur Municipality. TEA in order to increase the productivity of the various industrial units supported the implementation of the proposed schemes relating to services of treatment and supply of potable water and off-take, treatment and disposal of Sewage envisaged in TADP.

F. GOTN with a view to leverage its own resources decided to associate other Persons for the implementation of the infrastructure schemes envisaged in the TADP. TACID and TEA, therefore, approached Infrastructure Leasing and Financial Services Limited (“IL&FS”), which is a non banking financial services company, having as one of its objectives the financing, assisting and promoting commercial infrastructure projects. TACID and TEA sought IL&FS’ advice and assistance to develop an appropriate framework for implementation of schemes under TADP and to determine the extent to which the schemes identified in TADP could be executed on a commercial basis, with minimum recourse to budgetary allocations and facilitate financing and structuring transactions for the successful implementation of schemes under TADP, with priority to the schemes relating to water supply and Sewage off-take, treatment and disposal.
G. The scope of implementation of the schemes envisages:

(a) Supply of Potable Water to Way Side Villages;

(b) Supply of Potable Water to TM for Domestic and Non Domestic Purpose;

(c) Offtake, treatment and disposal of Sewage from TM, including Low Cost Sanitation Facilities within TM;

(d) Supply of Potable Water to industries in the Service Area;

H. In furtherance of the implementation of the TADP, a Memorandum of Understanding was signed on 25th August, 1994 between TACID, TEA and IL&FS.

I. In order to achieve the above objective, NTADCL has been incorporated on 24th February, 1995 as a public limited company under the Indian Companies Act, 1956 with initial equity participation from Gol, TACID (representing GOTN), TEA and IL&FS.

J. Since NTADCL, would be inter-alia facilitating maintenance of environmental standards and provision of Potable Water, and Sewage and Low Cost Sanitation Facilities within Tirupur and the Service Area, GOTN and TM have agreed to grant NTADCL a Concession, to provide the Services and for that purpose to develop, finance, design, construct, operate, maintain and transfer on strictly commercial principles on an integrated basis, the Water Treatment and Supply Facilities and Sewage Treatment Facilities including the right to draw water from the River Cauvery for the period thereof.

K. Upon the grant of Concession, NTADCL undertakes, either by itself or through its subsidiaries, to implement the project, on strictly commercial principles on an integrated basis, to:

(a) Provide a water abstraction, treatment and distribution service by undertaking to develop, finance, design, construct, own, operate, maintain and transfer to GOTN or its Nominee, the Water Treatment Facility for the purpose of supply of Potable Water to TM and other Purchasers, outside the jurisdiction of TM at the Water Offtake Points;

(b) Provide Sewage offtake, treatment and disposal service by undertaking to develop, finance, design, construct, own, operate, maintain and transfer to GOTN or its Nominee, the Sewage Treatment Facility, for the purpose of offtaking, treating and disposing Sewage, delivered by TM at the Sewage Offtake Points;

(c) Develop, design, finance and construct the Water Distribution System and the Sewerage System, which would be transferred to TM by NTADCL upon the issuance of the Construction Completion Certificate

L. GOTN and TM recognise that the Viability of the project is primarily dependent on the levy and collection of Charges on the Purchasers in relation to the quantum of water supplied by NTADCL or Sewerage offtaken for treatment and disposal by NTADCL.

M. The Parties hereto have agreed that NTADCL shall recover the Total Cost of Project along with Returns during the period of the Concession. In the event of any shortfall,
the term of the Concession shall stand appropriately extended, so as to ensure recovery of the outstanding Total Cost of Project and Return due thereon during the extended period of the Concession.

N. GOTN shall issue notifications under the Tamil Nadu District Municipalities Act, 1920, and under the Tamil Nadu Water Supply and Drainage Board Act, 1970, specifying NTADCL as the entity with exclusive rights to abstract raw water, develop, finance, design, construct, own operate and maintain the Water Treatment Facility, pipelines and waterworks in order to provide Water Treatment and Supply Services within the Service Area. GOTN has represented and assured NTADCL that the project shall be performed in its entirety and shall not be truncated, abridged, severed or taken over in whole or in part by GOTN or TM or the Tamil Nadu Water Supply and Drainage Board or any other instrumentality of the State during the term of the Concession or any extension thereof in accordance with the terms of this Agreement.

O. GOTN has granted the authorisations and permissions to TM under the Tamil Nadu District Municipalities Act 1920 to enter into various agreements relating to the Project, with NTADCL, and has received no-objection letters or resolutions from TM under section 125(2) of the Tamil Nadu Municipalities Act, 1920.

P. The Parties hereto have agreed that notwithstanding any Change in Law or extension of municipal limits; the exclusive rights granted to NTADCL for water supply, and Sewage offtake, treatment and disposal shall continue during the term of the Concession or any extension thereof without termination of the Concession and without disturbing or in any manner affecting the security rights, charges or encumbrances, existing in relation to the Project.

Q. GOTN and TM have agreed that NTADCL shall abstract Raw Water from River Cauvery up to a maximum of 250 MLD as set out hereinafter and shall allocate out of the abstracted quantity of Raw Water, up to a maximum of 48.70 MLD of Raw Water for Domestic and Non Domestic Purposes within the TM, up to a maximum of 165 MLD for Industrial Units for Non Domestic Purposes outside TM in the Service Area and up to a maximum of 36.30 MLD of Raw Water for Domestic Purposes to Wayside Panchayat Unions along the main water transmission line and villages in the Tirupur Local Planning Area. GOTN and TM have also agreed that NTADCL has the absolute right to re-allocate the above-mentioned quantities of Raw Water in the event that stated quantities for Domestic Purpose are not off taken or not paid for by the TM and Way-Sided Villages to other Purchasers within the Service Area. NTADCL shall be liable to supply the net quantity of Potable Water remaining after deduction in quantity of Transmission Losses from the abstraction point to the Water Offtake Points. NTADCL shall, at its sole discretion supply or otherwise dispose of the Potable Water remaining after the offtake of the contracted quantity of Potable Water by TM, Way-side Villages and the Industrial Units.

R. The Parties have agreed that NTADCL shall undertake the project on a Finance, Design, Build, Supervise, Own, Operate, Transfer ("BOOT") basis and enter into this Agreement on the terms and conditions set out herein.
“Change in Law” Means occurrence of any of the following events after the execution of this Agreement:

(a) enactment of any new Indian Law or Directive;

(b) the repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Indian Law or Directive;

(c) the commencement of any Indian Law or Directive which has not yet come into force;

(d) the change in interpretation or application of any Indian Law or Directive;

(e) the imposition of a requirement for a Clearance not required on the date of this Agreement;

(f) after the date of grant of any Clearance, a change in the terms and conditions attaching to such Clearance or the attachment of any new terms and conditions to a Clearance;

(g) any Clearance not being granted on a timely basis on an application therefor having been duly made; or

(h) any Clearance previously granted ceasing to remain in full force and effect, or if granted for a limited period not being renewed on a timely basis on an application therefor having been duly made, or being renewed on terms adverse to NTADCL.

“Charge” Means, as the context may require, either or both of the Water Charge and the Sewage Charge.

“Clearance” Means any consent, license, approval, permit, ruling, exemption or other authorisation of whatsoever nature which is required to be granted by any Competent Authority, and/or any registration or filing with a Competent Authority which is required from time to time, to undertake, implement and operate and maintain the Project.

“Commercial Operations” Means, in relation to any Service, the provision of the concerned Service by the levy of the applicable Charge.
“Competent Authority”
Means any agency, legislative, judicial or
effective authority, department, ministry, public or
statutory Person (such as Tamil Nadu Pollution
Control Board, Tamil Nadu Electricity Board, etc)
whether autonomous or not, of the Government of
India or GOTN or TM or any other sub-division or
instrumentality of any thereof.

“Commercially Non-
viable”
Means the inability to achieve Viability

“Concession”
Means the rights granted by GOTN and TM to
NTADCL under this Agreement.

“Concession
Commencement Date”
Means the earlier of issuance of (a) Certificate of
Partial Compliance or (b) Certificate of
Compliance.

“Concession Period”
Means the period, as determined under Article 5.

“Condition Precedent”
Means the conditions set out in Article 6.

“Construction Budget”
Means the budget, from time to time, prepared by
NTADCL in accordance with Section 14.6(a) and
containing a budget for the Cost of Construction
and Other Costs of Commissioning.

“Construction
Contract”
Means collectively or singularly as the context may
require all the contracts in force in relation to the
Water Treatment Facility or part thereof and/or the
Sewage Treatment Facility or part thereof and/or
the System or part thereof, for the design,
engineering, procurement, construction,
completion, testing and commissioning thereof, to
be entered into between NTADCL and the
Construction Contractors, and the relevant
Construction Contract shall be construed
accordingly.

“Construction
Commencement Date”
Means, in relation to the Project or part of any
thereof, the date NTADCL commences
construction thereof and such date shall not be later
than 90 days after Financial Close.

“Construction
Completion Certificate”
Means, in relation to any Facility and/or System or
part of any thereof, the certificate in respect thereof
issued by the Independent Engineer, in accordance
with Article 12.

“Construction Defects”
Means the defects in the System attributable to the
construction of the System and certified as such
defect by the Independent Engineer and does not
include defects attributable to the operations and
maintenance of the System
"Construction Period" Means, in relation to the Project, the period commencing on the Construction Commencement Date and terminating on the expiry of 36 months from the Construction Commencement Date or such extended periods as may be allowed to NTADCL as per Section 13.4 of this Agreement.

"Construction Contractor" Means the Contractor under the relevant Construction Contract/s.

"Consumables" Means the materials specified as such in the Construction Budget or in the Operations Budget or both, as the case may be, which shall be material that are used, required, employed, consumed, dissolved, melted, liquefied or combusted, for testing, commissioning of the Facilities and/or the System, and, on a regular basis for safe operation and maintenance of the Facilities.

"Contractors" Means the Construction Contractor/s and/or the O&M Operator/s, as the context may require.

"Cost of Construction" Means all payments made or committed to be made by NTADCL, towards construction of the concerned Facility and/or the System so as to enable NTADCL to fulfill its obligations under this Agreement, up to the Operations Date(s), and the date of issue of the Final Construction Completion Certificate and which payments are not attributable to the Breach of NTADCL.

"Cost of Consumables" Means the payments made or committed to be made towards Consumables, as included in the Construction Budget and/or Operations Budget or as otherwise approved by the Independent Engineer as being reasonably necessary or appropriate for the testing, commissioning of the Facilities and/or the System and/or operation and maintenance of the Facilities.

"CPI" Means, at any date, the Consumer Price Index on such date as published by the Reserve Bank of India or in the Economic Survey of India or any successor publication thereto in the event that such index is no longer available or has been withdrawn, any successor or alternative index as agreed to by the Parties.
“Debt Service” means, for any period, the sum of (a) the aggregate amount of all principal, interest and other charges accrued on all outstanding amounts advanced by the Lenders that is due and payable during such period, (b) all Lease rentals due and payable, (c) all hire purchase installments due and payable and (d) the aggregate amount of all fees, costs, expenses, commitment charges, indemnification charges indemnification payments and other amounts that are due and payable by NTADCL.

“Directive” means any policy, present or future requirement, instruction, direction, order, rule or regulation of any Competent Authority which is legally binding or which should customarily be observed by a reasonable and prudent owner, designer, constructor or operator or, user or transferor involved in projects such as the Project and any modification, extension or replacement thereof as applicable from time to time.

“Dispute Settlement Body” shall have the meaning ascribed thereto in Article 29.

“Domestic Purpose” means, the supply of Potable Water to a residential premises, or a part thereof, from which no commercial, industrial or manufacturing activity is being conducted and the Potable Water is used for domestic/household requirements.

“Easementary Rights” means all easements, reservations, rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real property, which are necessary or appropriate for the conduct of activities of NTADCL related to the Project.

“Encumbrances” means any encumbrance such as a mortgage, charge, pledge, lien, hypothecation, security interest or other obligation or restriction and shall also include without limitation physical or legal obstruction, encumbrances and encroachments on the Sites and Site for System where applicable herein.

“ESAR’ or ‘Environmental and Social Assessment Report” means the summarised report specifying the environment and social impact of the Project, which has been appended hereto as Schedule N

“Electricity Rate” means the effective unit rate of electricity per kilowatt hour purchased by NTADCL from the Tamil Nadu State Electricity Board or any other successor body, or from any other source.

“Event of Default” means a NTADCL Event of Default, or a GOTN Event of Default or a TM Event of Default, as the context may require.
"Existing Price" means for any year, the Prices as determined under this Agreement for the previous financial year ending on March 31.

"Existing System" means the existing water distribution system as set out in Schedule R owned, operated and maintained by TM within the Jurisdiction of TM to supply water from sources other than River Cauvery as on the date made available by TM in accordance with the Transition Plan to NTADCL.

"Facilities" means the Water Treatment Facility and the Sewage Treatment Facility, and Facility means either of them.

"Final Construction Completion Certificate" means a certificate issued by the Independent Engineer under Article 12 upon completion of all part of the Works and achievement of the tests on completion, as set out in Schedule C.

"Financial Close" means the date on which the Financing Agreements relating to the Project have been executed and delivered by all the parties thereto.

"Financing" means the aggregate amounts to be provided by way of loan, Lease finance, hire purchase finance or otherwise to NTADCL by the Lenders for the development, establishment, financing, design, construction testing and commissioning, upgrading, implementation, operation, maintenance and transfer of the Project and shall include all related financial charges, fees and expenses of all kinds relating to the Project.

"Financing Agreements" means, collectively, the loan agreements, Lease agreements, hire purchase agreements, notes, indentures, Security Agreements or arrangements, guarantees, acceptable letters of credit and other agreements evidencing any obligation of NTADCL, and other necessary undertakings required pursuant to the respective terms thereof, relating to the Financing or any refinancing for the Project or any portion thereof, in each case as amended, supplemented or otherwise modified hereafter from time to time.

"First Operations Date" means the date from which NTADCL commences provision of the Water Treatment and Supply Service by levy of the applicable Charge on the Purchasers thereof.

"Force Majeure" shall have the meaning ascribed thereto in Article 21.

"GOI" means the Government of India, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of India.
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<td>&quot;GOTN&quot;</td>
<td>Means Government of Tamil Nadu, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Tamil Nadu.</td>
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<tr>
<td>&quot;GOTN Event of Default&quot;</td>
<td>Means the events of default on the part of GOTN specified in Article 24.</td>
</tr>
<tr>
<td>Hazardous Waste</td>
<td>Means any hazardous or toxic substances, materials or waste, as defined or regulated pursuant to Hazardous Wastes (Management and Handling) Rules, 1995 as in force from time to time</td>
</tr>
<tr>
<td>&quot;Independent Auditor&quot;</td>
<td>Means the firm of chartered accountants appointed by NTADCL under the provisions of Article 16.</td>
</tr>
<tr>
<td>&quot;Independent Engineer&quot;</td>
<td>means the firm of engineers appointed by NTADCL under the provisions of Article 12.</td>
</tr>
<tr>
<td>&quot;Industrial Units&quot;</td>
<td>means those commercial or industrial or manufacturing establishments receiving the Water Treatment and Supply Services either directly from NTADCL, if outside the jurisdiction of TM or through TM if within the jurisdiction of TM for Non-Domestic Purposes.</td>
</tr>
<tr>
<td>&quot;Initial Price&quot;</td>
<td>Means the Prices as on the first Operations Date</td>
</tr>
<tr>
<td>&quot;Interconnection Facilities&quot;</td>
<td>means as the context may require, the facilities listed in Schedule B hereto.</td>
</tr>
<tr>
<td>&quot;Law&quot;</td>
<td>Includes any Constitutional provision, statutes, laws, decrees, ordinances, subordinate legislations, orders, rules or regulations having the force of law in India and rules of civil and common law and equity.</td>
</tr>
<tr>
<td>&quot;Landed Cost&quot;</td>
<td>means the Total Cost of Project as on the date of issuance of Final Construction Completion Certificate.</td>
</tr>
<tr>
<td>&quot;Lease&quot;</td>
<td>means the transfer of interest by GOTN/ TM to NTADCL to enjoy such property on certain terms and include both movable and immovable property.</td>
</tr>
<tr>
<td>&quot;Lenders&quot;</td>
<td>means any Person(s) based in India or abroad providing Financing pursuant to any Financing Agreement, including their agents under any Financing Agreements.</td>
</tr>
<tr>
<td>&quot;Low Cost Sanitation Facilities&quot;</td>
<td>Means the facilities detailed in Schedule W to be provided by NTADCL within the TM.</td>
</tr>
<tr>
<td>&quot;MLD&quot;</td>
<td>means million liters per day.</td>
</tr>
<tr>
<td>&quot;Major Repairs Expenses&quot;</td>
<td>Means all such expenses incurred by NTADCL on the items and / or programs of repair of the Facilities, excluding Operation &amp; Maintenance Expenses, in excess of Rs. 1 crore per annum.</td>
</tr>
</tbody>
</table>
"Material Adverse Effect" means circumstances, which:

(a) render any material right vested in a Party by the terms of this Agreement ineffective or render the exercise thereof Commercially Non-viable; or

(b) adversely affect or restrict or frustrate or render Commercially Non-viable (i) the ability of any Party to observe and perform its obligations under and in accordance with this Agreement or any of the Financing Agreements or any other contract to which it is or is to be a party or (ii) the legality, validity, binding nature or enforceability of this Agreement or any of the other Financing Agreements or any other contract.

"Month" Means an English calendar Month.

"Non Domestic Purpose" Means, in relation to the supply of the Services by NTADCL under this Agreement, the supply of the Service to a location other than an exclusive residential premises which would include without in any manner limiting the generality hereof, provision of Services to commercial, industrial or manufacturing establishments, hotels, or commercial institutions.

"NTADCL Event of Default" means the events of default on the part of NTADCL specified in Article 24.

"Notice of Reference" Shall have the meaning ascribed thereto in Section 29.

"Operations Budget" Means the budget from time to time prepared by NTADCL in accordance with Section 14.6 (c) and containing a budget of the costs and expenses paid, incurred or to be incurred during the Operations Period inclusive of the payments to be made to the O&M Operator and Owner’s Cost.

"Operations Date" means, in relation to a specific Facility or part thereof, the date from which such Facility or part thereof commences provision of the specific Service on a commercial basis by levy of the applicable Charge on the Purchasers thereof.

"Operation Period" means, in relation to a specific Facility or part thereof, the period commencing on the date on which that particular Facility or part thereof passes the Performance Tests until the expiry or prior termination of the Concession Period.
“Operating Year” means each successive period, the first such period commencing on the date on which the Operations Period commences and ending on the next following 31st March, and each subsequent period commencing on the expiration of the previous period and ending on 31st March in the following year.

“Operation and Maintenance Agreement” means the operation and maintenance agreement to be entered into between NTADCL and the O&M Operator for the operation and maintenance of the Facilities including but not limited to the function of maintenance, billing, collection and retention of Charges and other services incidental thereto.

“Operation and Maintenance Expenses” means all costs and expenses, other than the Major Repairs Expenses made or committed to be made by NTADCL in relation to the operation and maintenance of all Facilities or any Facility or part thereof, during the Operations Period.

“O & M Operator” means the Contractor appointed by NTADCL for the operation and maintenance of the Facilities.
"Other Costs of Commissioning" means all costs and expenses of whatever kind incurred in respect of the Project, prior to the later of the Operations Date and the issuance of Final Construction Completion Certificate, other than the Cost of Construction, and separately identified in the Construction Budget or as otherwise approved by the Independent Engineer and the Independent Auditor as reasonably necessary or appropriate to bring the Project safely and efficiently into operation or to satisfy the statutory obligations of NTADCL including but without limitation to: (a) costs incurred by NTADCL in acquisition of land and buildings and rehabilitation and resettlement for the Project, (b) all pre-operative expenses incurred by GOTN, TACID, Tirupur Exporters Association and Infrastructure Leasing & Financial Services Ltd. prior to the Operations Date and issuance of Final Construction Completion Certificate, (c) management overheads such as corporate office expenses, salaries to staff, traveling expenses, administrative overheads and management and legal expenses, (d) expenses incurred by the NTADCL and its shareholders for mobilization of financial resources and/or Project Development, in whatever form for funding the Project, including but not limited to, brokerage, commissions, upfront discounts on debt, merchant banker’s fees, legal fees, publicity and travel expenses, financial advisory charges and other related charges and fees, including interest default interest/penal interest, liquidated damages, charges and fees payable under the Financing Agreement excluding Debt Service, (e) payments made or committed to be made to the O&M Operator up to the end of the Construction Period (f) any duties (including stamp duty and registration charges payable on the Financing Agreements, security agreements or any Site Lease Agreements), taxes, levies, corporate taxes, income Tax, fees and commissions, duly grossed up, (g) costs paid to any Competent Authority including without limitation all payments to the Independent Engineer and the Independent Auditor up to the date of issuance of Final Construction Completion Certificate and (h) costs relating to provision of supporting infrastructure facilities such as electricity, water etc and (i) all costs of the insurance required to be obtained in connection with the Project prior to the Operations Date/s and issuance of Final Construction Completion Certificate.

"Owner’s Cost" means all costs and expenses excluding Debt Service, not attributable to any Breach by NTADCL, as are approved by the Independent Engineer and Independent Auditor and included in
the Operating Budget or variations thereto or as otherwise incurred by the NTADCL for the purposes of this Agreement which are not accounted for elsewhere under this Agreement and as approved by the Independent Engineer and the Independent Auditor as reasonably necessary or appropriate for the Operations and Maintenance of all Facilities or necessarily incurred for meeting statutory obligations of NTADCL and includes, by way of illustration not being limited to: (i) all costs of salaries and other employee compensations; (ii) all premia for insurance; (iii) all taxes and their duties imposed upon or measured by income or receipts and all penalties, interest, additions to tax, expenses and other similar costs associated herewith; (iv) all fees and expenses of consultants and experts retained by NTADCL (including, without limitation, attorney's and accountants fees) in the ordinary course of business; (v) all franchise, licensing, excise, property and other similar costs, fees and charges incurred in order to obtain and maintain all Clearances necessary for the operation and maintenance of all Facilities; (vi) costs of the Independent Engineer and Independent Auditor after issuance of Final Construction Completion Certificate under the terms of Sections 12.1(h) and 16.5 respectively (vii) cost incurred by NTADCL for transfer of Facilities (viii) royalty for Raw Water paid to GOTN under section 2.4 and (ix) any costs resulting as a consequence of an event of Force Majeure under Article 21.

shall have the meaning ascribed thereto in Section 29(1)(b).

means one or all of the parties to this Agreement, as the case may be.

means the standards detailed in Schedule C.

means any individual, company, partnership, joint venture, trust, unincorporated organisation, State, government or local authority or any authority or agency of any thereof or any other legal entity.

means Raw Water treated by NTADCL to the Performance Standards set out in Schedule C and supplied to Purchasers.

means either or collectively the Price of Potable Water and Price of Sewage Treatment as the context may require.
"Price of Potable Water" means the unit rate price, determined and revised periodically by NTADCL in accordance with the terms of this Agreement at which Potable Water shall be supplied by NTADCL to the Purchasers from time to time.

"Prices Review Committee" means the Committee established by NTADCL under the terms of Section 17.5.

"Price of Sewage Treatment" means the unit rate price, determined and revised periodically by NTADCL in accordance with the terms of this Agreement and the BWSA, at which NTADCL shall provide Sewage Offtake and Treatment Service to TM.

"Productivity Gains" means, for any period, additional revenues net of operation and maintenance expenses, Debt Service and Taxes, directly as a result of the Productivity Investments and certified by the Independent Engineer and Independent Auditor, as such.

"Productivity Investments" mean any investments made in the Facility to improve the efficiency and/or capacity of the Facility including facilities for recycling Waste Water.

"Project" means the development, Financing, design, construction, ownership, operation and maintenance and transfer of the Facilities and the design, finance and construction of the System and all activities incidental thereto including without limitation engineering, testing, commissioning and insurance of the Facilities and/or the System and the determination, levy, collection, retention and appropriation of the Charges, for the purposes of providing the Services within the Service Area.

"Prudent Utility Practices" means (in the absence of any express provision in the Technical Requirements or the Performance Standards) the methods and standards, on any particular issue of construction, operation and maintenance of the Facilities (i) of any Competent Authority, and (ii) as would be followed by a prudent and experienced construction contractor and/or operator, in a project of similar nature and magnitude to the Project.

"Purchasers" means collectively TM, Way Side Villages and Industrial Units and other consumers within the Service Area who accept the Services under the BWSA or Service Agreements, as the case may be.
"Raw Water" means the untreated water abstracted from the River Cauvery or such other alternate source (identified in accordance with this Agreement as a drinking water source by the Competent Authority) of the quality specified in Schedule L, for subsequent treatment and supply as Potable Water.

"Reallocated Volume" Shall have the meaning as contained in section 2.4 of this Agreement.

"Returns" means returns on the Total Cost of Project to NTADCL, at the rate of _% per annum net of applicable taxes, calculated in accordance with Article 15.

"Revenue" Means the aggregate of Charges after netting out the taxes, if any, payable on the Charges collected and accruing to NTADCL and actually realised and includes other net revenues realised by NTADCL, but does not include Productivity Gains and Surcharge.

"River Cauvery" means the river Cauvery originating in Karnataka and flowing through the states of Karnataka and Tamil Nadu and flowing into the Bay of Bengal as shown on Map No.A (4) annexed hereto in Schedule A.

"Rupees" "Rs." means the lawful currency from time to time of India.

"Security Agreements" means all the agreements which form part of the security afforded to Lenders pursuant to the Financing Agreements.

"Service Area" means, in relation to the Water Treatment and Supply Service, the area within TM as well as outside the municipal area covered by TLPA and Way Side Villages, which is more particularly demarcated on Map No. A (2) and A(5) annexed in Schedule A hereto and such other area as may hereafter be agreed upon between GOTN and NTADCL and in relation to the Sewage Offtake and Treatment Service means the area within TM where NTADCL offtakes the Sewage from TM for purposes of treatment and disposal at the Sewage Treatment Facility.

"Services" means, as the context may require, either or both of the Water Treatment and Supply Service, or the Sewage Offtake and Treatment Service.
"Service Agreements" means the agreements, other than the BWSA to be entered into by NTADCL with the individual Purchasers, other than TM, in relation to the supply of the Water Treatment and Supply Service, in accordance with the terms of which NTADCL undertakes to supply the Water Treatment and Supply Service to the respective Purchasers.

"Sewage" means the fluids and solids excluding surface drainage, in the Sewerage System, arising from non-industrial consumption of water within TM and of the chemical composition as set out in Schedule L hereto.

"Sewage Capacity Charge" means the amount in Rupees obtained by multiplying the Sewage Minimum Offtake into the Price of Sewage Treatment to be paid by TM to NTADCL for the Sewage Offtake and Treatment Service.

"Sewage Charge" means the amount of money determined, levied, demanded, charged, collected, retained and appropriated by NTADCL from TM in accordance with the terms of this Agreement and the BWSA for provision of the Sewage Offtake and Treatment Service and would be higher of (a) Sewage Capacity Charge or (b) the product of Price of Sewage Treatment and the volume of sewage as registered by the meter/s at the Sewage Offtake Point/s, during the time under consideration.

"Sewage Minimum Offtake" means the minimum volume of Sewage agreed to be provided by TM every day in a month.

"Sewage Offtake Point" means the sewage pumping station as set out in Map A(8) in Schedule A at which point NTADCL offtakes the Sewage from TM for treatment and disposal.

"Sewage Offtake Suspension Period" means the Sewage Offtake Suspension Period as defined in Section 19.3.

"Sewage Offtake and Treatment Service" means the service of offtake, treatment and disposal of Sewage, from the Sewage Offtake Point.

"Sewerage System" shall mean the sewage collection system and Low Cost Sanitation Facilities which shall be designed and constructed by NTADCL in the areas within TM as set out in Schedule A and B.

"Sewage Treatment Facility" means the facilities developed, financed, designed, constructed, owned, operated and maintained by NTADCL for the purpose of Sewage Offtake, for treatment and disposal in accordance with the terms of this Agreement and includes without
limitation all Sewage Offtake Points, Sewage treatment plants, all pumping structures, pipes, buildings and ancillary facilities as described in greater detail in Schedules A and B hereto.

"Shortfall" means, in respect of any calendar quarter interval or part thereof for which amounts available for appropriation by NTADCL are calculated, any shortfall between the amount of the Returns due to NTADCL for such quarter or part thereof as calculated under Article 15 and the amount actually available to be appropriated in the payment of such Returns, as calculated under Article 15.

"Sludge" means the settleable solids arising from treatment of Sewage by the Sewage Treatment Facility or treatment of Raw Water from the Water Treatment Facility, as the context may require.

"Sludge Disposal Site" means the land, spaces and any other surface which has been identified by GOTN or TM and vested with NTADCL, in accordance with the terms of Sections 2.1 and 3.1, upon which the Sludge shall be treated and/or disposed.

"Shareholders Agreement" means the agreement, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, to be entered into by the shareholders of NTADCL governing their inter se rights and relationship as shareholders of NTADCL and regulating the internal functioning of NTADCL.

"Sites" means the land, waterways, water wells and any surface and or sub-surface i.e. below the ground level, including the pipeline routes, on which the Facilities are to be constructed, operated and maintained, as more fully described and identified in Schedule F and indicated in Map No A(3)(1) to A(3)(61) annexed in Schedule A.

"Site for System" means the land, waterways, water wells and any surface and/or sub-surface i.e. under the ground level on which the System is to be constructed, by NTADCL and transferred to TM in accordance with Article 32 herein.

"Site Lease Agreement" means the Lease agreements, to be entered into – between NTADCL and GOTN or TM, as the case may be, in a form and substance reasonably satisfactory to NTADCL and the Lenders pursuant to which GOTN or TM, as the case may be, shall Lease the land comprising the Sites to NTADCL, vesting NTADCL with the title and all rights in relation thereto and with Vacant Possession free from all Encumbrances for the term of this Agreement.
"Substantial Completion" means with respect to a Facility or System, the completion of that Facility or System or part thereof, in all respects except for the completion of minor Works that do not, in any manner whatsoever, affect the safety of the Facility or System, in any material respect, the Commercial Operations thereof or the Purchasers.

"Substitute Entity" means the legal entity nominated by the Lenders, under the terms of this Agreement, and Financing Agreements, to substitute for NTADCL under this Agreement and continue the implementation of the Project.

"Surcharge" Would have the meaning as stated in Section 17.1(e).

"System" Means the Water Distribution System and the Sewerage System, including Low Cost Sanitation facilities, constructed within TM area and transferred to TM in accordance with Article 32 herein.

"TM" means the Tirupur Municipality, a body corporate formed under the Tamil Nadu District Municipalities Act, 1920 and or the municipal area of Tirupur Municipality having its boundaries as set out in Schedule U as the context may require.

"TM Dues" means any amounts due and payable to NTADCL under the terms of the BWSA.

"TM Event of Default" means the Events of Default on the part of TM specified in Article 24.

"Tax" means any tax including income tax, corporate tax, sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and/or levied of any nature whatsoever, whether by GOI or GOTN or TM or Competent Authorities, and wherever and whenever charged, levied or imposed, together with any interest and penalties in relation thereto, within the Republic of India.

"Technical Requirements" means the technical specifications of the Facilities and/or the System specified in Schedule B

"TLPA" means the area as delineated and marked in the Map No. A (2) in Schedule A

"Total Cost of Construction" means the sum of the Cost of Construction of each of the Facilities and the System.

"Total Cost of Project" has the meaning stipulated in Article 15 hereto.

"Transition Plan" means a plan furnished by GOTN and accepted by NTADCL and TM, before the expiry of nine months from the date of execution of this Agreement and includes variations thereto as duly accepted by the Parties to establish appropriate
processes and systems within TM, in order to enable TM to efficiently manage, operate and maintain the System.

"Transmission Losses" means the losses of Raw Water and Potable Water within the Water Treatment Facility in the course of distribution over the Service Area, to the Purchasers, determined in accordance with the provisions of Section 2.9 of this Agreement.

"Vacant Possession" means delivery to NTADCL of possession of the Sites and Site for System and Sludge Disposal Site or any part thereof, free from all Encumbrances, and the grant of all Easementary Rights and all other rights appurtenant thereto, so that NTADCL enjoys complete uninterrupted and quiet possession and control thereof throughout the Concession Period.

"Variations" Means those variations in the Cost of Construction and or the Other Costs of commissioning and or the Owner's Cost and or the Operation and Maintenance Expenses and or the Major Repairs Expenses as are approved by the Independent Engineer and the Independent Auditor.

Viability Means the recovery of the Total Cost of Project and the Returns thereon by NTADCL within a period of thirty years from the first Operations Date.

"Waste Water" means the water separated from the Sewage and resulting from the Sewage Offtake and Treatment Service which may or may not be suitable for reuse for Non Domestic Purposes and not being Potable Water.

"Water Capacity Charge" means the amount in Rupees obtained by multiplying the Water Minimum Offtake and the prevailing Price of Potable Water.

"Water Charge" means the amount of money determined, levied, demanded, charged, collected, retained and appropriated by NTADCL from Purchasers for treatment, distribution and supply of Potable Water and would be the higher of: Water Capacity Charge or the product of Price of Potable Water and volume of Potable Water registered by the meter at the Water Offtake Points during the period under consideration.

"Water Distribution System" Shall mean the water distribution network for distribution of Potable Water which NTADCL shall design and construct within the areas of TM and as set out in Schedule – A & B.

"Water Minimum Offtake" Means the minimum quantity agreed to be offtaken every day by the Purchasers in a Month.
"Water Offtake Point" Means the designated Water Offtake Points at the sites detailed in each of the Service Agreements and BWSA where NTADCL shall deliver Potable Water

"Water Shortage Period" shall have the meaning ascribed thereto in Article 19.

"Water Treatment and Supply Service" Means the service of supply of Potable Water to Purchasers in the Service Area.

"Water Treatment Facility" Means the facilities developed, financed, designed, constructed, owned, operated and maintained by NTADCL for drawal of 185 MLD or such other increased quantity not exceeding 250 MLD as provided in Article 9 of this Agreement, of Raw Water from River Cauvery and for the treatment, distribution and supply of Potable Water to Purchasers, excluding the System within TM, in accordance with the terms of this Agreement and, including without limitation, the intake structures, water drawal pumps, treatment plants, all pumping structures, pipelines, storage reservoirs, Water Offtake Points, water metres and includes other reservoirs, pipes, tankers for distribution of water, buildings and ancillary facilities as are more particularly described in Schedules A and B hereto.

"WPI" means, at any date, the Wholesale Price Index on such date as published by the Reserve Bank of India or in the Economic Survey of India or any successor publication thereto in the event that such index is no longer available or has been withdrawn, any successor or alternative index as agreed to by the Parties.

"Works" means the scope of Works as set out in Schedule K for the design, construction, completion, testing, commissioning, rectifying and remedying of defects and replacements of the Facilities and/or the System, as the context may require.

"Way Side Village" means the villages that have been listed in Schedule M, and to which NTADCL shall supply Potable Water after entering into Service Agreement/s with each of them or with GoTN or its designated agencies, as the case may be, in accordance with the terms of this Agreement.
Section 1.2 Interpretation

1.2.1 The headings in this Agreement are for convenience only and shall not be deemed to be part of this Agreement or be taken into consideration in the interpretation or construction hereof.

1.2.2 Words denoting the singular only also include the plural and vice versa where the context requires and words denoting the masculine shall be construed as including the feminine where the context so requires.

1.2.3 References to any enactment (including any subordinate legislation) are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing the same.

1.2.4 The Recitals shall be taken into account in the interpretation of this Agreement.

1.2.5 The Schedules attached to this Agreement form an integral part of the terms and conditions of this Agreement.

1.2.6 the terms of this Concession Agreement shall prevail over any other contracts.

1.2.7 Wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate or determination by any Person, unless otherwise specified, such notice, consent, approval, certificate or determination shall be in writing and the words “notify”, “endorsed”, “consent”, “approval”, “certify” or “determined” shall be construed accordingly.

1.2.8 Unless otherwise stated any reference to “include” shall mean “include without limitation” and any reference to “including” shall mean “including without limitation

ARTICLE 2
CONCESSION BY GOTN

Section 2.1 Grant of Concession

GOTN hereby grants to NTADCL and NTADCL hereby accepts at its own commercial risks of recovery of Total Cost of Project and Returns thereon in accordance with the terms and conditions of this Agreement, an exclusive Concession to provide the Water Treatment and Supply Service and Sewage Off-take and Treatment Service. In order to enable NTADCL to provide the Services, GOTN hereby further grants NTADCL the exclusive right:

(a) In relation to the Water Treatment and Supply Service:

(i) to abstract Raw Water from the River Cauvery from the Abstraction Area at the Agreed Abstraction Rate upto a maximum of 250(Two hundred and fifty) MLD upon compliance of the conditions set out in Section 9.2 and immediately effective from the Concession Commencement
Date abstract upto a maximum of 185 (one hundred and eighty five) MLD of Raw Water from River Cauvery, without interruption for the Concession Period and/or extensions thereof, in accordance with the provisions of this Agreement, subject only to directions from GOTN to NTADCL on the amount of drawal during Water Shortage Periods;

(ii) to allocate out of the quantity of 185 MLD of Raw Water, 48.70 MLD for Domestic and Non Domestic Purposes within the TM, 100 MLD for Industrial Units outside TM in TLPA for Non Domestic Purposes and 36.30 MLD for Domestic Purposes to Wayside Villages. The year-wise obligation of NTADCL to supply Potable Water to TM and Wayside Villages is set out in Schedule S. NTADCL shall be entitled to supply the additional 65 MLD of Raw Water for Non Domestic Purposes as and when it commences abstraction of pursuant to the terms contained in Section 9.2. NTADCL shall be liable to supply only such volume of the Potable Water remaining after deduction of aggregate Transmission Losses from the Abstraction Area to the Water Off-take Points.

(iii) to reallocate the entire volume or part thereof of Raw Water, allocated as per Section 2.1(a)(ii) herein-above, to Industrial Units outside TM, in the event that TM or Wayside Villages does not Off-take the said quantity or part thereof and/or does not pay the Charges in respect of such volumes. NTADCL, however, shall be obliged to meet the year-wise demand as set out in Schedule S to this Agreement as long as TM and Way side Villages make timely payments to NTADCL and are in compliance of their respective obligations to NTADCL.

(iv) to supply or otherwise dispose off the Potable Water remaining after the off take of the annually contracted quantity by TM, Way Side Villages (in respect of TM and Way Side Villages as set out in Schedule S) and the Industrial Units, at its sole discretion

(v) to treat the Raw Water so drawn and further distribute and sell the Potable Water to the Purchasers in accordance with the standards set out in Schedule C;

(vi) to develop, finance, design, construct, own, operate and maintain, the Water Treatment Facility on the Sites;

(vii) to establish the System in accordance with the provisions of Article 32;

(viii) to fulfill its obligations under this Agreement, NTADCL shall have the right to undertake activities either by itself or through subcontracting arrangements;

(ix) to determine, charge, levy, demand, collect, retain, and appropriate (other than from within the TM) the Water Charge from Purchasers for provision of the Water
Treatment and Supply Service, in accordance with the provisions of this Agreement;

(x) to assist TM, at NTADCL’s discretion, in collection of Water Charges from consumers within the TM, for and on behalf of and in the name of TM and to retain the same.

(xi) to exercise such other rights as GOTN may determine as being necessary or desirable and which it consents to in writing, for the purposes incidental and necessary for the provision of the Services having regard to the needs of TM and Purchasers.

(b) In relation to the Sewage Off-take and Treatment Service:

(i) to undertake the off-take, treatment and disposal of Sewage delivered by TM at the Sewage Off-take Points;

(ii) to develop, finance, design, construct, own, operate and maintain the Sewage Treatment Facility for the purpose of Sewage off-take and treatment;

(iii) to develop, finance, design, construct, own, operate and maintain such number of Sludge Disposal Sites as may be identified and determined by NTADCL during the Concession Period;

(iv) to utilize, supply or otherwise dispose of in the sole discretion of NTADCL, the Waste Water and the Sludge for appropriate consideration or otherwise;

(v) to determine, levy, demand, collect, retain, and appropriate the Sewage Charge from TM for the provision of the Sewage Offtake and Treatment Service;

(vi) to establish the System in accordance with the provisions of Article 32;

(vii) to fulfill its obligations under this Agreement, NTADCL shall have the right to undertake activities either by itself or through subcontracting arrangements;

(viii) to assist TM, at NTADCL’s discretion, in collection of Sewage Charges from consumers within the TM, for and on behalf of and in the name of TM and to retain the same.

(ix) to exercise such other rights as GOTN may determine as being necessary or desirable and which it consents to in writing, for the purposes incidental and necessary for the provision of the Sewage Offtake and Treatment Service having regard to the needs of TM and Purchasers.
Section 2.2 Appointment of Contractors

Without prejudice to the generality of Sections 2.1 (a) (vii) and 2.1 (b) (vii), NTADCL shall have the right to appoint Contractors for the purposes of sub-contracting the design, development, construction, testing, commissioning, financing, operation and maintenance of the Facilities and System, billing and collection in order to enable NTADCL to fulfill the objectives of this Agreement without in any way relieving NTADCL of its obligations as set out in this Agreement.

Section 2.3 Actions in support of the Concession

(a) GOTN hereby agrees on and effective from the date of signing this Agreement:

(i) that it shall not, by itself or through any agency or Person within its jurisdiction or under its control or acting on its behalf, abstract water from the River Cauvery, at the Abstraction Area or within a radius of 500 (five hundred) metres thereof; excluding existing off-takes as on the date of execution of this Agreement

(ii) that it shall not allow or permit any other agency or Person to abstract water from the River Cauvery, at the Abstraction Area or within a radius of 500 metres (five hundred metres) thereof, and shall take all necessary and appropriate actions to cause any such agency or person to cease abstraction, and further that it shall not allow or permit any Person authorised as of the date hereof to increase their rate of abstraction of water from the River Cauvery at the Abstraction Area or within a radius of 500 (Five Hundred) meters thereof, from the volume authorised and shall take all necessary and appropriate action to cause such person to cease to take any action which would have the effect of increasing their rate of abstraction of water from the River Cauvery at the Abstraction Area.

(iii) that it shall not, during a Water Shortage Period, by itself or through any agency or Person within its jurisdiction or under its control or acting on its behalf, allow or permit any Person to, and shall take all necessary and appropriate action to cause such person to cease to conduct any quarrying activity in the river bed within an area of 10 (ten) kilometers upstream (as the river flows) from the Abstraction Area;

(iv) that it shall not, by itself or through any agency or Person within its jurisdiction or control or acting on its behalf, to construct, own, manage, operate and maintain any new facility(ies) in relation to a service similar to any of the Services within the Service Area without first offering the same to NTADCL, unless NTADCL has submitted to GOTN, in writing, within 30 days from receipt of the offer, its refusal to implement the same, provided if such refusal does not come in writing it shall have been deemed to have been refused by NTADCL. Upon refusal by NTADCL, GOTN by itself or through any Person shall not construct,
own, manage, operate and maintain any new facility in relation to a Service similar to any of the Services within the Service Area on terms which are prejudicial to the interests of NTADCL, and so represented by NTADCL to GOTN.

(v) to cause NTADCL to recover the Total Cost of Project together with Returns.

(b) GOTN hereby acknowledges that the alignment of the pipelines and the location of the Facilities and the design thereof are of fundamental importance to the Project and undertakes that it or any Competent Authority within its jurisdiction or control or acting on its behalf shall not require the alteration of such alignment and/or location as proposed by NTADCL, during the Construction Period.

(c) GOTN shall assist NTADCL in preventing theft of Potable Water from the Facilities and Water Distribution System and shall provide, at the request of NTADCL, such police personnel for the purpose of patrolling the pipelines and the Facilities and for providing security at the Sites, the Site for the System, the Sludge Disposal Sites and the Sewerage System. NTADCL shall reimburse GOTN for the costs incurred in connection with the provision of such personnel, pursuant to the request of NTADCL and the same shall be allowed as Owner's Cost.

(d) GOTN hereby undertakes to ensure the maintenance of law and order at the Sites, the Site for the System, and the Sludge Disposal Sites and provide, without costs to NTADCL such police personnel, as may be necessary, for the maintenance or reinstatement of law and order at the Sites and Site for System and further alert and warn NTADCL of any information or intelligence it may receive relating to a threat towards the security of the Facility(ies) and/or the System.

(e) NTADCL shall also be entitled to charge, hypothecate, encumber and mortgage the Facilities, System, Site for System, Sludge Disposal Site, and Revenues and other rights to Lenders and the necessary consents and Clearances of GOTN or any Competent Authority required for the purposes of facilitating the same including without limitation the authority under the Tamil Nadu Land Reform (Fixation of Ceiling on Land) Act, 1961, shall be provided by GOTN or procured from such Competent Authority, subject to the provisions of Law, for NTADCL within two weeks of the necessary application being made or be given in advance at NTADCL’s request.

(f) NTADCL shall be further entitled to distribute Potable Water through tankers within or outside the Service Area in the event of there being unsold Potable Water with NTADCL. Further, in the event the yearwise demand for Potable Water is below the allocated quantity of Raw Water, as set out in the Schedule S, NTADCL shall be entitled to either reduce abstraction proportionately or sell the Potable Water available for Non Domestic Purpose till such time the demand for Potable Water reaches the allocated quantity. NTADCL shall further be entitled to make additional capital investments in creating water distribution network outside TM in the event that it is required to supply Potable Water to Industrial Units at new locations.
within the Service Area for distributing the initial allocation of 185 Mld of Raw Water and such investments shall be added to the Total Cost of Project.

(g) GOTN undertakes that it shall not terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of Article 25 of this Agreement.

(h) GOTN will use its best endeavours to ensure that NTADCL is free to carry out the Works and to enjoy the full benefit of this Agreement and GOTN hereby agrees not to grant any Person access to the Sites and the Site for the System for the purpose of carrying out any construction, building or laying of pipes or wires or planting of trees or for any other purpose whatsoever which might adversely affect the Facilities or the System. NTADCL will notify GOTN of any Impediment of any nature whatsoever, upon becoming aware of the same. GOTN shall act to remove such Impediment immediately following receipt of such notice. All costs, expenses or charges incurred in removing such Impediments, shall be borne and paid for by GOTN. In the event that GOTN fails to remove the Impediments within a period of 30 days after being duly notified, NTADCL may without prejudice to its rights remove the Impediments and seek reimbursement from GOTN. In the event that the said costs and expenses are borne by NTADCL, GOTN shall within a period of 45 days from the date of claim by NTADCL reimburse the amount claimed. GOTN shall indemnify and hold NTADCL harmless from any costs or claims relating to any delay caused as a result of such Impediments. GOTN shall similarly issue directions to TM in relation to the construction, building or laying of pipelines, wires or other similar physical objects, which might adversely affect the Facilities or System.

(i) GOTN hereby undertakes to procure by itself or through any agency or person within its jurisdiction under its control or acting on its behalf that NTADCL shall enjoy complete and uninterrupted possession and control of the Sites, Sludge Disposal Sites and Site for the System during the Concession Period.

(j) GOTN hereby undertakes and agrees not to acquire or take possession of or confiscate or expropriate or requisition the Sites, Sludge Disposal Sites and Site for the System, the Facilities, any rights under this Agreement and/or the interests of the Shareholders in NTADCL otherwise than in accordance with Section 21.9 and further undertakes otherwise not to truncate, abridge or sever the Project in whole or in part or limit, restrict or impede NTADCL's right to develop, establish, finance, design, construct, own, manage, operate and maintain the Facilities or to design and construct the System or provide the Services.
Section 2.4 Royalty for Abstraction of Raw Water

GOTN shall specify annually and NTADCL shall pay such royalty, charge or fee as notified by GOTN for the abstraction of such volume of Raw Water in accordance with the orders of GOTN in force from time to time. For the avoidance of doubt it is clarified that NTADCL would be required to pay royalty on the allocated quantity of 115 Mld for Non Domestic Purposes, from the date of abstraction of Raw Water, not withstanding reduction on the quantity of Raw Water abstracted.

GOTN hereby undertakes that the amount charged for enabling NTADCL to abstract Raw Water for Non Domestic Purposes shall not exceed the charges for the vesting of a similar right of withdrawal of water for Non Domestic Purposes from Cauvery river basin to an entity or Person within the State of Tamil Nadu. GoTN shall, however, be entitled to charge concessional royalty to agencies under the ownership and control of GoTN.

Except as otherwise provided in this Section 2.4, GOTN shall not require any payment by NTADCL in respect of the Concession and shall ensure that any Competent Authority shall not, at any time in the future require any additional payment including without limitation rental or sales tax in relation thereto or increase, in any manner, the amount of rental for the Lease of the Sites under Article 7 and royalty, charge or fee payable by NTADCL to GOTN under this Section 2.4. In the event that any such payment shall be required by GoTN, NTADCL shall have the right to immediately request the Prices Review Committee to consider an increase in the rates of Charges as may be necessary to recover the Total Cost of Project and the Returns due thereon within the period remaining out of 30 years from the first Operations Date, provided the increase in royalty charges results in a Material Adverse Effect.

Section 2.5 Extension of Municipal Limits

In the event that the municipal area or jurisdiction of TM or any other Municipality or authority is increased, under the Tamil Nadu District Municipalities Act, 1920, so as to include within such area: (i) any of the Sites, Facilities, Sludge Disposal Sites or Sites for System or such area that has been acquired by NTADCL in relation to provision of the Services or (ii) any area comprising the Service Area falling outside the TM, GOTN shall, at the same time by notification under the Tamil Nadu District Municipalities Act, 1920 or such other Law as may be necessary, notify that the Sites, Sites for System, Sludge Disposal Sites, Facilities, or such areas specified in this sub-clause above and the provision of the Services to such part of the Service Area as specified above, shall continue to be subject to the Concession given to NTADCL under this Agreement. GOTN shall ensure that the charges or Encumbrances of Lenders over Sites, Sites for System, Sludge Disposal Sites, Facilities or such area that has been acquired by NTADCL in relation to the Project shall continue undisturbed and NTADCL shall continue to exercise complete and unimpeded control thereon. In the event of Breach of this covenant, GOTN without prejudice to the right of NTADCL to terminate this Agreement, indemnifies NTADCL for the losses in Revenues and the
amounts accelerated and declared as due and payable by NTADCL under the Financing Agreements, resulting as a consequence thereof (which losses and amounts shall be calculated by NTADCL and verified by the Independent Auditor).

Section 2.6 Constitution of a Planning Authority

In the event any planning authority is constituted under the provisions of the Tamil Nadu (Town and Country Planning) Act, 1971 for the area comprising the Service Area or any part thereof, GOTN shall ensure that such planning authority recognises the Project and the layout plan thereof as part of any development plan it formulates for such area and shall not require the alteration of the alignment of any pipeline or the Sites or the Facilities or Site for System. Furthermore, GOTN shall not delegate to such planning authority the authority to constitute any project or scheme for the supply of water within the Service Area or any part thereof or offtake of Sewage from TM.

Section 2.7 Supply of Electricity

GOTN hereby undertakes to ensure that before the expiry of fifteen months from the Construction Commencement Date and during the Operations Period, NTADCL shall have access to two sources of uninterrupted supply of electricity of the required specifications, for all the Sites as specified in the agreement to be entered into between NTADCL and TNEB, provided NTADCL is in compliance of its obligations under the above referred agreement. GOTN shall exempt NTADCL from all power cuts. NTADCL shall be relieved of its obligation to supply Potable Water and offtake Sewage to the extent impacted, during periods of failure in supply of electricity to any part of the Facilities, provided however that the failure of supply of electricity is not attributable to an act of omission or commission by NTADCL. In the event that NTADCL is required to make additional investments for continuing to receive electric supply, it shall be entitled to add such investments as and when made, to the Total Cost of Project.

Section 2.8 Regulation of Abstraction of Ground Water

GOTN, in order to ensure the revival of the ground water table in the Service Area, hereby undertakes to, in the line with the regulation proposed to be introduced in this regard, regulate the use and / or abstraction of ground water for Non Domestic Purposes (excluding for agriculture) in the Service Area and within a radius of 30 kms. from the Service Area boundaries, in Erode and Coimbatore Districts for a period of fifteen years from the First Operations Date. GOTN shall undertake such actions and pass or procure the passing by the Competent Authority of such laws, amendments and notifications as may be necessary for the purposes of effecting, implementing and enforcing such a regulation, on or before the First Operations Date.
Section 2.9 Transmission Losses

Each of GOTN and TM recognises and accepts that there shall be a certain volume of Raw Water and Potable Water that shall be lost as Transmission Losses prior to the actual delivery to the Purchasers.

GOTN and TM hereby specify and agree that the obligation of NTADCL to provide a certain volume of Potable Water under the BWSA and Service Agreements shall be subject to the aggregate Transmission Losses computed on a monthly basis from the Abstraction Area upto the respective Water Offtake Points of each Purchaser upto 15% of the quantum of Raw Water abstracted from River Cauvery which shall be permissible and acceptable level of Transmission Losses (“Acceptable Transmission Losses”). Provided however NTADCL continues to undertake reasonable steps and precautions on a best efforts basis so as to minimize the quantum of Transmission Losses.

GOTN and TM hereby acknowledge and agree that if the aggregate volume of Transmission Losses exceeds 15% due to the occurrence of any emergency or damage caused to the Facilities by any third party or any other circumstances beyond the control of NTADCL including without limitation, pilferage or unauthorized excess draws of Potable Water by Purchasers, then such aggregate volume shall be the “Acceptable Transmission Losses” during the subsistence of such circumstances. Provided however NTADCL continues to undertake reasonable steps and precautions on a best efforts basis so as to minimize the quantum of Transmission Losses.

The Independent Engineer shall conduct periodic inspections to determine whether the quantum of Transmission Losses are Acceptable Transmission Losses and ascertain the measures being undertaken by NTADCL to minimize the quantum of Transmission Losses. The Independent Engineer shall comply with the modality of computation of Transmission Losses as set out in Schedule X.

In the event the Independent Engineer determines that the Transmission Losses are not Acceptable Transmission Losses and that such losses have not arisen due to reasons outside the control of NTADCL, NTADCL shall undertake such measures as may be necessary in order to bring the level of such losses within Acceptable Transmission Losses, within a time frame as determined by the Independent Engineer as being reasonable in the circumstances then prevalent. In the event that NTADCL does not reduce the Transmission Losses for any three occasions, in a block of every three Operating Years there shall have occurred a NTADCL Event of Default.

Section 2.10 Bulk Water Supply and Offtake Agreement

GOTN hereby acknowledges and agrees that the performance by TM of its obligations under the BWSA is a material condition to the implementation of this Project by NTADCL.

GOTN hereby undertakes that it shall cause TM to adhere to and discharge its obligations under the BWSA. GOTN further undertakes to direct TM to
arrange to discharge any TM Dues and cause TM to exercise all its rights against its consumers and recover their dues as expeditiously as practicable to compensate NTADCL. In the event that there are TM Dues, TM undertakes to exercise all its rights against its consumers and shall take all necessary and appropriate actions as requested by NTADCL to discharge the TM Dues at the earliest. In the event of termination of the BWSA, GOTN shall compensate NTADCL to the extent of the value of the System as detailed in Section 32.

Section 2.11 Reduction in Abstraction and re-allocation of Water

In the event of a TM Event of Default under Section 24.2, NTADCL shall have the right to either reduce the volume of abstraction of Raw Water and consequently reduce or cease its supply of Potable Water to the Purchasers or Reallocate that volume of Potable Water to other Purchasers.

Section 2.12 Way Side Village

GOTN by itself or through its nominee shall ensure that the Way Side Villages do not draw Potable Water in excess of the quantity allocated for them under the respective Service Agreements. GOTN by itself or through its nominee shall prohibit the Way Side Villages from selling the Potable Water for Non Domestic Purpose. It shall also ensure that the Way Side Villages ensure compliance of its order in this regard. GOTN further undertakes to indemnify NTADCL against any losses and/or liability arising as a consequence thereof.

Section 2.13 Quality of Raw Water

GOTN shall ensure, control and regulate through the Competent Authority that abstraction of water from the River Cauvery, and discharge of effluents by other Persons, upstream of the Abstraction Area, shall not cause any degradation of the quantity or quality of Raw Water such that it impedes the Abstraction, Services and or the Performance Standards of NTADCL

ARTICLE 3
CONCESSION BY TM

Section 3.1

TM hereby grants to NTADCL and NTADCL hereby accepts an exclusive right to provide TM with Water Treatment and Supply Service and Sewage Offtake and Treatment Service, excluding the water supply service provided by TM through the Existing System. In order to enable NTADCL to provide the Services, TM hereby further grants NTADCL the exclusive right:

(a) in relation to Water Treatment and Supply Service:

(i) to supply Potable Water to TM for supply by TM within the municipal area;

(ii) to develop, design, finance, construct, operate and maintain the Water Treatment Facility and / or to make additional investments;
(iii) to determine, levy, demand, collect, retain, and appropriate the Water Charge from TM for the Water Treatment and Supply Service;

(iv) to fulfil its obligations under this Agreement, NTADCL will have the right to undertake activities either by itself or through subcontracting arrangements;

(v) assist TM, at NTADCL's discretion, in collection of Water Charges from consumers within the TM, for and on behalf of and in the name of TM and to retain the same.

(vi) to develop, design, finance, construct and transfer to TM the Water Distribution System upon issuance of Construction Completion Certificate

(vii) to exercise such other rights that TM may reasonably determine as being necessary and which it consents to in writing, for the purposes incidental and necessary for the provision of the Service having regard to the needs of TM.

(b) In relation to Sewage Offtake and Treatment Service:

(i) to carry out the activity of treatment and disposal of Sewage discharged, at the Sewage Offtake Points, by TM;

(ii) to design, develop, construct, finance, operate and maintain the Sewage Treatment Facility

(iii) to determine, levy, demand, collect, retain, and appropriate the Sewage Charge from TM for the Sewage Offtake and Treatment Service;

(iv) to develop, finance design, construct, operate and maintain such number of Sludge Disposal Sites as may be identified and determined in accordance with this Agreement during the Concession Period;

(v) to utilise, supply and otherwise dispose off the Waste Water and the Sludge for appropriate consideration (at the sole discretion of NTADCL) or otherwise within and/or outside TM;

(vi) to fulfil its obligations under this Agreement, NTADCL will have the right to undertake activities either by itself or through subcontracting arrangements;

(vii) assist TM, at NTADCL's discretion, in collection of Sewage Charges from consumers within the TM, for and on behalf of and in the name of TM and to retain the same.
(viii) to establish, design, construct, operate and maintain a Waste Water recycling facility for treatment and supply of the treated Waste Water for Non Domestic Purposes

(ix) to develop, design, finance, construct and transfer to TM the Sewerage System upon issuance of Construction Completion Certificate

(x) To such other rights as TM may determine as being necessary or desirable and which it consents to in writing, for the purposes incidental and necessary for the provision of the Services having regard to the needs of TM;

Section 3.2 Appointment of Contractors

Without prejudice to the generality of the provisions of Sections 3.1(a) (iv) and Section 3.1 (b) (v), NTADCL shall have the right to appoint Contractors for the purposes of sub-contracting the design, development, construction, testing and commissioning of the Facilities and the System, and operation and maintenance of the Facilities in order to enable NTADCL to fulfill the objectives of this Agreement without in any way relieving NTADCL of its obligations as set out in this Agreement.

Section 3.3 Payment to TM

TM shall not require any additional payment by NTADCL in respect of the Concession, or provision of the Service or any other matters set out in this Agreement other than those set out in Section 7.4(f) this Agreement. Rent or royalty or any additional payment as determined by GOTN shall be payable by NTADCL to TM for the Sites, Site for the System, Sludge Disposal Sites, the Facilities or any area acquired within TM by NTADCL in relation to provisions of Services. In the event that any such payment shall be required by TM, NTADCL shall have the right to immediately request the Prices Review Committee to consider an increase in the rates of Charges as may be necessary to recover the Total Cost of Project and the Returns due thereon within the period remaining out of 30 years from the first Operations Date.

Section 3.4 Actions in Support of the Concession

(a) TM shall ensure that NTADCL is free to carry out Works within the TM and outside the TM, and to enjoy the full benefit of this Agreement. TM hereby agrees not to grant any Person access to the Sites and the Site for the System for the purpose of carrying out any construction, building or laying of pipes or wires or planting of trees or for any other purpose whatsoever which might adversely affect the Facilities or the System. NTADCL will notify TM of any such Impediment to it carrying out the Works or enjoying the benefit of the Concession and TM shall act to remove such Impediment immediately following receipt of such notice. All costs, expenses or charges incurred in removing such Impediments, shall be borne and paid for by TM. In the event that TM fails to remove the Impediments within a period of 30 days after being duly notified, NTADCL may without prejudice to its rights remove the Impediments and seek reimbursement from TM. In the event that the said costs and expenses are borne by NTADCL, TM shall within a period of 45
days from the date of claim by NTADCL reimburse the amount claimed. TM shall indemnify and hold NTADCL harmless from any costs or claims relating to any delay caused as a result of such impediments.

(b) TM hereby agrees that it shall not allow or permit any Person other than NTADCL to develop, finance, design, construct, own, manage, operate and maintain new facility(ies) in relation a Service similar to the Services within the Service Area without first offering the same to NTADCL on the same terms and conditions as would be offered to its own agency or any other third party based on a fair and equitable basis.

(c) TM, in order to enable NTADCL to establish Viability and procurement of Financing for the Project, undertakes that from the Operations Date/s it shall:

(i) continue to charge consumers within the TM

(ii) charge the supply of Potable Water for Non Domestic Purposes within the TM at a rate not lower than the Price for Potable Water determined and collected by NTADCL from Industrial Units outside limits of the TM

(iii) TM shall install volumetric meters for all connections for all Non Domestic Purposes

(iv) NTADCL shall reserve the right to inspect the records of TM, in the event that consumption for Non Domestic Purpose in any given month falls below the corresponding consumption in the previous month

(d) TM hereby acknowledges that the alignment of the pipelines, the System and the location of the Facilities and the design thereof are of fundamental importance to the Project and that it or any Competent Authority within its jurisdiction or control or acting on its behalf shall not require the alteration of such alignment and/or location as proposed by NTADCL, during the Construction Period.

(e) TM hereby agrees and acknowledges that the regular, periodic and accurate billing of the consumers within the TM, in accordance with the provisions of Section 3.4 (c) and the BWSA, is of fundamental importance to the Project and undertakes to comply with the Transition Plan, and establish and maintain a system, for the purpose of issuing invoices and ensuring timely and accurate collection thereof from the consumers within the TM.

(f) TM shall not terminate or repudiate this Concession prior to the expiry of the Concession Period otherwise than in accordance with the provisions of Article 26 of this Agreement.

(g) In the event of failure of supply of electricity, NTADCL shall, to the extent practicable maintain the Services. However, NTADCL shall be relieved of its obligation to supply Potable Water and offtake and/or treat Sewage during periods of failure in supply of electricity to the Facilities or during the periods of scheduled maintenance activities as set out in Section 8.1 (g).
(h) TM shall implement a program, at its own cost, to install connections from households to the Sewerage System and for transfer of existing connections onto the Water Distribution System. TM and NTADCL shall co-ordinate with each other such that the schedule of TM's program integrates with the Project plan of NTADCL, for the System. TM shall have completed, within twenty-eight months of the Construction Commencement Date, installation of such number of connections from households to the Sewerage System so as to deliver a minimum flow of 10 MLD of Sewage at the Sewage Offtake Points. TM shall undertake regular inspections of connections to the Water Distribution System, Existing System and Sewage System in order to ensure the accuracy of meters and prevention of any pilferage or theft of Potable Water.

(i) TM hereby undertakes that no Industrial Unit within the TM shall be connected to the Sewage System or gains any access thereto.

(j) TM hereby undertakes that it will remain present by itself or through its duly authorised agent and authorise NTADCL or its Operator to remain present on all the occasions when the testing is done at the Sewage Offtake points for the quality of Sewage and record its confirmation on the test results and copy of the results would be preserved by NTADCL and TM for a period of five of years. For the purposes of carrying out tests required, NTADCL shall be responsible to incur all necessary costs and expenses and this shall be recovered as Other Costs of Commissioning if incurred prior to the issue of Final Construction Completion Certificate or as Owners Cost if incurred after the issue of Final Construction Completion Certificate.

Section 3.5 Extension of Municipal Area

In the event that the TM or jurisdiction of TM or any other Municipality or authority is increased, under the Tamil Nadu District Municipalities Act, 1920, so as to include within such area: (i) any of the Sites, Facilities, Sludge Disposal Sites or Sites for System or such area that has been acquired by NTADCL in relation to provision of the Services or (ii) any area comprising the Service Area falling outside the TM, TM undertakes to be bound by GOTN notification referred to in Section 2.5 during the Concession Period and extensions thereof. GOTN and TM shall ensure that the charges or Encumbrances of Lenders over Sites, Sites for System, Facilities, Sludge Disposal Sites, or such area that has been acquired by NTADCL in relation to the Project shall continue undisturbed and NTADCL shall continue to exercise complete unimpeded control thereon. In the event of Breach of this covenant GOTN shall, without prejudice to the right of NTADCL to terminate this Agreement, indemnify NTADCL for the losses in Revenues and the amounts accelerated and declared as due and payable by NTADCL under the Financing Agreements, resulting as a consequence thereof (which losses and amounts shall be calculated by NTADCL and verified by the Independent Auditor).
Section 3.6 Transmission Losses

TM hereby specifies that the provisions of Section 2.9 shall form part of the actions undertaken by TM in support of the Concession granted by it.

Section 3.7 Regulation of Abstraction of Ground Water

TM hereby undertakes to ensure the effective implementation and enforcement of any regulation on abstraction of ground water for Non Domestic purposes within TM, as may be promulgated under Section 2.8.

ARTICLE 4
COMMENCEMENT OF SERVICES

Section 4.1 Phased Commencement

Subject to the provisions of this Agreement NTADCL is permitted to commence the Services on a deferred basis and in multiple phases for due performance of its obligations under this Agreement.

Section 4.2 Commencement of Water Treatment and Supply Service

Subject to the provisions of this Agreement, the provision of the Water Treatment and Supply Service including the development, financing, designing, construction operation and maintenance of Facilities for providing the Service on a commercial basis, and providing supply pipeline networks for distribution of Potable Water to TM and other Purchasers outside the TM, shall be substantially completed by NTADCL within 3 years from the Construction Commencement Date provided that such time period shall be extended in accordance with section 24.4 and 21.6 for any Breach by GOTN or TM of its obligations thereunder and any event of Force Majeure. The adjustment to the Total Cost of Project, as a result of the foregoing shall be net of insurance proceeds and other recoveries available to NTADCL.

Section 4.3 Commencement of Sewage Offtake and Treatment Services

Subject to the provisions of this Agreement the provision of the Sewage Offtake and Treatment Service including the development, financing, designing, construction operation and maintenance of Facilities for providing the Services on a commercial basis in the Service Area, shall be substantially completed by NTADCL within 3 years from the Construction Commencement Date provided that such time period shall be extended in accordance with section 24.4 and 21.6 for any Breach by GOTN or TM of its obligations thereunder and any event of Force Majeure. The adjustment to the Total Cost of Project, as a result of the foregoing shall be net of insurance proceeds and other recoveries if any available to NTADCL.
ARTICLE 5
CONCESSION PERIOD

Section 5.1 Concession Period

The Concession Period shall, commence from the date of Financial Close and subject to the other terms of this Agreement shall expire on the earlier of:

(i) subject to Section 5.2, the date falling 33 years from Financial Close as extended pursuant to Sections 24.4 and 21.6; or

(ii) the later of 28 years or the date on which the Independent Auditor certifies in writing that NTADCL has recovered the Total Cost of Project and the Returns thereon

Upon the termination of the Concession Period, NTADCL shall transfer the Facilities to GOTN and TM, as the case may be, in accordance with the terms of Article 22.1.

Section 5.2 Extension of Concession Period

In the event that NTADCL has not recovered the Total Cost of Project and the Returns thereon on the date 33 years from Financial Close, the Concession Period shall at the request of NTADCL, without qualification, be extended by GOTN for successive periods of two years at a time until the Total Cost of Project and the Returns thereon have been recovered by NTADCL; provided that:

(i) any request for an extension from NTADCL must be supported by a certificate from the Independent Auditor that the Total Cost of Project and the Returns thereon have not been recovered; and

(ii) GoTN is not obliged to extend the Concession Period beyond 38 years from Financial Close

(iii) nothing in this Section shall in any way limit the right of NTADCL to terminate this Agreement.

Section 5.3 Modifications in the Terms of Concession

If, in the view of the Independent Auditor or as determined by NTADCL and certified by the Independent Auditor, the Total Cost of Project and the Returns thereon could not reasonably be expected to be recovered only by extending the Concession Period, as stated herein above, GOTN shall in good faith on receipt of request from NTADCL within a period of 90 days from the date of receipt of the request:

(i) agree to an alteration of the formulae for determining the respective Charges and/or

(ii) revise this Agreement on such terms and conditions as may be agreed to between the Parties, to facilitate recovery of the Total Cost of Project and the Returns thereon.
Either party may refer any decision of the Independent Auditor given under this Section 5.2 to arbitration in accordance with Article 29 of this Agreement.

ARTICLE 6
CONDITIONS PRECEDENT

The obligations of NTADCL, under this Agreement, are subject to the satisfaction in full of the following Conditions Precedent:

Section 6.1 GOTN's CP

(a) GOTN shall have Leased to NTADCL the Sites and Sludge Disposal Sites with Vacant Possession for the Concession Period under a duly executed Site Lease Agreement, in accordance with the provisions of Article 7 herein below;

(b) GOTN shall have granted to NTADCL or caused to be granted to NTADCL all the necessary rights including pipeline routes, and other Easement Rights in order to permit design, construction, testing, commissioning of the Facilities and System and operation and maintenance of the Facilities;

GOTN shall have granted or caused to be granted all Clearances, as per Schedule G, for the Project including licenses, consents, exemptions, permissions and approvals from the Competent Authority necessary or desirable for drawing water and carrying out the Works in the form and substance satisfactory to NTADCL provided that NTADCL has made the applicable applications for the grant of such Clearances;

(c) GOTN shall have obtained one or more written opinion(s) from the Advocate General of Tamil Nadu as to the validity and enforceability of this Agreement and the BWSA;

(d) GOTN shall issue notifications under the Tamil Nadu Water Supply and Drainage Board Act, 1970 or any other Law, if necessary, specifying NTADCL as the entity with exclusive rights to abstract raw water, develop, finance, design, construct, own operate and maintain the Facilities Water Treatment Facility, pipelines and waterworks in order to provide Services within the Service Area.

(e) GOTN shall exempt the holdings of NTADCL by leases of Sites, Sludge Disposal Sites and Site for Systems under the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, or any other applicable Law, prior to the delivery of the Sites, Sludge Disposal Sites and Site for System with Vacant Possession by TM and GOTN to NTADCL

(f) GOTN shall pass the notification and take all steps under the provisions of the Tamil Nadu District Municipalities Act, 1920 specifying that the property in the System as is built, owned by
NTADCL and offered for operations and maintenance to TM for services to its consumers shall vest with TM subject to prior charge created by NTADCL in favour of its Lenders and it shall ensure that NTADCL is able to create the security over the System in favour of its Lenders and such security continues to be a duly created security in their favour during the Concession Period

Section 6.2 TM's CP

(a) TM shall have Leased to NTADCL the Sites and Sludge Disposal Sites with Vacant Possession for the Concession Period under a duly executed Site Lease Agreement, in accordance with the provisions of Article 7 hereinbelow;

(b) Without prejudice to the provisions of Article 2, TM shall deliver Vacant Possession of the land comprising the Sites, Sludge Disposal Sites and the Site for the Systems and all Easementary Rights related thereto to NTADCL.

(c) In relation to such utilities as cannot be removed from the Sites or the Sludge Disposal Sites or the Site for Systems, TM or such other Competent Authority, should have undertaken to provide adequate safeguards for such utility against the Works and ensure that such utilities do not hinder or interfere in the enjoyment by NTADCL of Vacant Possession thereof.

Section 6.3 Partial Compliance with Conditions Precedent

(a) NTADCL may, in its sole discretion, for the purposes of commencing Works vary, postpone or waive in writing any one or more of the Conditions Precedent set out in Section 6.1 and/or Section 6.2 here-in-above, in whole or in part, without affecting in any way the validity of the remaining Conditions Precedent.

(b) In the event NTADCL determines to commence Work as set forth in subsection (a) above, it shall deliver a Certificate of Partial Compliance to GOTN and TM. NTADCL shall have the right to issue a Certificate of Partial Compliance specifying the time within which the balance conditions will have to be complied with by GOTN and TM, prior to the issuance of the Certificate of Compliance by NTADCL.

(c) No variance, postponement or waiver granted or agreed to by NTADCL in connection with any of the conditions stipulated in Section 6.1 and/or Section 6.2 here-in-above, shall impair or affect any right, power, privilege or remedy of NTADCL with respect to any other Conditions Precedent stipulated in Section 6.1 and/or Section 6.2 or be construed as being a waiver thereof;

(d) Without prejudice to the generality of (a), (b) and (c) above, the right of NTADCL to require compliance with any Condition Precedent under this Agreement, which may have been varied, postponed or waived by NTADCL, is expressly preserved;
Section 6.4 Compliance with Conditions Precedent

(a) GOTN and TM shall be obligated to comply in full with the Conditions Precedent set forth in Section 6.1 and Section 6.2 above within a period of 365 days from the date of this Agreement.

(b) Upon satisfaction in full of the Conditions Precedent set forth in Section 6.1 and/or Section 6.2 above, NTADCL shall issue a Certificate of Compliance to GOTN and TM. NTADCL shall issue the Certificate of Compliance within four weeks of its determination that all conditions precedent set forth in Section 6.1 and/or Section 6.2 have been complied with. In the event that NTADCL has not issued the Certificate of Compliance within such four week period and GOTN is of the opinion that such conditions have been complied with, GOTN may request the Independent Engineer to issue the Certificate of Compliance; provided however that the Parties shall have recourse to the provisions of Article 29 in the event of any disagreement as to whether the Conditions Precedent have been complied with.

(c) NTADCL may, at its discretion, prior to the Concession Commencement Date, undertake any actions in order to ensure the timely commencement of the Works. Such action on the part of NTADCL shall not constitute a waiver or variation or postponement of any of the Conditions Precedent in Section 6.1.

(d) GOTN shall hold NTADCL harmless against any claims, actions or proceedings arising in relation to any Condition Precedent including those initiated by any riparian right holder(s) to redress any adverse impact resulting from the drawal of 185 (one hundred and eighty five) MLD of water by NTADCL, or such increased quantity in accordance with Section 9.2 of this Agreement, from the River Cauvery under this Agreement.

Section 6.5 Non-fulfilment of Conditions Precedent

(a) In the event that any of the conditions set forth in Section 6.1 have not been fulfilled within 365 days of the signing of this Agreement, NTADCL, may, at any time thereafter, so long as the conditions precedent remain unfulfilled give written notice to GOTN and TM that this Agreement is terminated with immediate effect. In the event that Vacant Possession has already been delivered to NTADCL then, upon the termination of this Agreement, the Sites, Site for the System and Sludge Disposal Sites shall revert to GOTN or TM, as the case may be, subject to the Encumbrances created in favour of the Lenders until the payments due to the Lenders have been discharged, where after the Project shall vest with GOTN or TM, as the case may be, free and clear from any Encumbrances, irrespective of any outstanding mutual claims between the Parties.
In the event that this Agreement is terminated under this Section 6.5 and NTADCL is not in any Breach of this Agreement on the date of issuance of written notice by NTADCL in accordance with Section 6.5(a) hereinabove, GOTN shall pay to NTADCL, on demand, (i) any amounts incurred or committed to be incurred by NTADCL up to the date of termination of this agreement as certified by the Independent Auditor (ii) the amount of all sums due and owing to the Lenders (including any penalties incurred for the early termination thereof and any interest and other amounts accrued thereon) pursuant to the Financing Agreements; (iii) all costs incurred in transferring the Facilities to GOTN as determined by the Independent Auditor and (iv) an amount equal to the Total Cost of Project and the Returns thereon determined on the date of termination, after deducting the amount paid in accordance with item (i) and (ii) herein above stated in this paragraph which was a part of the Total Cost of Project. All amounts payable under this paragraph shall be determined by the Independent Auditor.

ARTICLE 7
SITES

Section 7.1 Lease of Sites

(a) GOTN by itself or through any of its agencies or TM, as the case may be, shall Lease to NTADCL, under a valid and binding Site Lease Agreement (in a form acceptable to the Parties), the Sites identified in Schedule F and indicated in Map No. A (3) (1) to A (3) (61) annexed in Schedule A hereto, with Vacant Possession within six month from the date of execution of this Agreement.

(b) TM acknowledges that GOTN shall be acquiring and leasing to NTADCL lands identified as the Sites in accordance with this Section 7.1 and TM hereby undertakes to assist and co-operate in every manner possible with GOTN in acquisition and leasing of the Sites to NTADCL.

(c) Without limiting the generality of this Article 7, the Site Lease Agreements shall be substantially in form and substance as set out in Schedule T so as to enable procurement of funds from Lenders for the implementation of the Project.

Section 7.2 Lease of Sludge Disposal Sites

(a) GOTN or TM, as the case may be, hereby agrees to provide to NTADCL the Sludge Disposal Sites of the specifications indicated by NTADCL from the area of land broadly indicated in Schedule F hereto or any other land which shall be located within a radius of ten (10) K.Ms from the Water Treatment Plant and Sewage Treatment Plants Sites, and provided within six months from the execution of this Agreement. This Agreement as applicable to the Sites shall apply
mutatis mutandis to the Lease of the Sludge Disposal Sites by GOTN or TM as the case may be.

(b) GOTN by itself or through any of its agencies or TM, as the case may be, shall Lease to NTADCL the Sludge Disposal Sites under a Lease agreement substantially in form and substance as set out in Schedule T and deliver Vacant Possession in accordance with the terms of this Agreement.

Section 7.3 Vacant Possession and Complete Control of Site for Systems

(a) TM shall also provide NTADCL with Vacant Possession and complete control of the Site for System in accordance with the terms of this Agreement. The Vacant Possession and complete control of the Site for System shall continue to subsist with NTADCL till the grant of the Construction Completion Certificate by the Independent Engineer in respect of the entire System and not any part thereof, in accordance with Article 32 herein. Provided however that TM shall lease to NTADCL such portion of the Site for the System, upon the grant of the Construction Completion Certificate, over which the Low Cost Sanitation portion of the System has been constructed.

(b) TM shall, upon the grant of the Construction Completion Certificate Lease back to NTADCL the System in accordance with the provisions of Article 32 hereof and grant such Easementary Rights as may be necessary in relation thereto, for the term of the Concession Period.

Section 7.4 General Provisions Relating to Sites, Sludge Disposal Sites and the Site for the System

(a) All costs, expenses or charges incurred in making available the Sites and the Sludge Disposal Sites, prior to the delivery of Vacant Possession to NTADCL shall be borne and paid for by GOTN. In the event that the said costs and expenses are borne by NTADCL, GOTN shall within a period of 45 days from the date of claim by NTADCL reimburse the amount claimed. GOTN shall hold NTADCL harmless from any costs or claims relating to any such acquisition and removal of such structures. Provided however that even though the responsibility for the resettlement of the persons displaced due to the acquisition of the Sites, the Site for System and the Sludge Disposal Sites shall be that of GOTN, the costs in relation to such resettlement to the extent as agreed in the ESAR, shall be borne by NTADCL and be included as part of Total Cost of Project.

(b) GOTN shall grant such permission or exemptions as may be required under the Laws relating to and regulating land as applicable in the State of Tamil Nadu so as to ensure that NTADCL can enjoy Vacant Possession and hold the area of land comprising the Sites, Sludge Disposal Site and the Site for the Systems, other than where failure to enjoy Vacant Possession results from a Breach by NTADCL of the terms of this Agreement or any Clearance other than as a consequence of a Change in Law. In the event that the Change in Law require NTADCL to make additional investments for the
Project, such investments when made, shall be added to the Total Cost of Project

(e) GOTN shall ensure that NTADCL is free to carry out the design, construction, operation and maintenance of the Facilities and the System, in accordance with the provisions of this Agreement. GOTN hereby agrees not to grant any Person access to the Site, the Site for the System and the Sludge Disposal Sites for the purposes of carrying out any construction, building or laying of any structures or utilities such as wires, pipes or for any other purpose which may, in the opinion of NTADCL, adversely affect the Facilities. In relation to such utilities as cannot be removed from the Sites or the Sludge Disposal Sites or the Site for Systems, GOTN or TM or such other Competent Authority, undertake to provide adequate safeguards for such utility against the Works and ensure that such utilities do not hinder or interfere in the enjoyment by NTADCL of Vacant Possession thereof. GOTN and TM hereby agree to indemnify NTADCL against all or any losses, actions or liabilities that may arise due to the presence of such utilities in the Sites or the Sludge Disposal Sites or the Site for the System.

(d) NTADCL will notify GOTN and TM of any impediment, being obstructions or encroachments on Site or Site for System which are not attributable to the negligence or Breach of NTADCL or restriction which are not attributable to NTADCL, whether physical or legal, to the construction, operation and maintenance of the Facilities, System and the Sludge Disposal Site. Upon receipt of such notice GOTN and TM shall act so as to remove such Impediment or restriction. In the event GOTN and/or TM is unable to remove such Impediment within a period of 30 days from the date of notice thereof, NTADCL may incur the necessary expenses and GOTN/TM shall be liable to reimburse NTADCL with the said expenses within a period of 30 days from the date of claim by NTADCL.

(e) NTADCL shall be handed over such documents as it may reasonably require for encumbering the Sites and Sludge Disposal Site for Financing the Project and such documents may inter alia include Leases, Easementary Rights, grants or such other title deeds over the Sites.

(f) In consideration for the anticipated Lease of the Sites and the Sludge Disposal Sites, NTADCL shall pay to GOTN the amount as determined by GoTN at the time of grant. In consideration for the anticipated Lease of the Sites and the Sludge Disposal Sites, NTADCL shall pay to TM a sum of Rs. 4,44,000 (Rupees Four Lakh forty four thousand only) per annum. All such payments as stated herein above shall be considered as a cost incurred in the implementation of the Project and included in the Other Costs of Commissioning or Owner’s Cost as the case may be. GOTN and TM each undertake that they shall not increase the Lease rentals for the Lease of Sites and the Sludge Disposal Sites during the term of Concession Period and/or extensions thereof. Save and except such payments, no further rentals/premium will be payable by NTADCL.
to GOTN or TM for Lease of the Sites, Sludge Disposal Sites or Sites for System.

(g) GOTN and TM represent to NTADCL that land acquisition proceedings in respect of the Sites and Sludge Disposal Sites shall be complete and final and that GOTN and TM will have full and unencumbered title and Vacant Possession of the Sites and the Sludge Disposal Site.

(h) GOTN and TM further represents that there are no litigations, claims, demands or proceedings pending before any authority in respect of acquisition of the land for the Sites and Sludge Disposal Sites which would have a Material Adverse Effect on the implementation of the Project in accordance with this Agreement.

(i) GOTN and TM, as the case may be, shall:

(i) remove all structures, buildings and other Impediments to construction on the relevant parts of the Sites and the Sludge Disposal Site;

(ii) evacuate relocate, rehabilitate and resettle residents, close roads or take such other actions including road closure/traffic regulation/diversion to ensure uninterrupted work on the Site and the Sludge Disposal Site.

ARTICLE 8
OBLIGATIONS OF PARTIES

Section 8.1 Obligations of NTADCL

NTADCL, in addition and without prejudice to its obligations specified in the other provisions of this Agreement, shall, without qualification, observe and comply with the following obligations:

(a) upon issuance of the Certificate of Compliance or the Certificate of Partial Compliance, take over possession of the Site and Sludge Disposal Site and Site for System from GOTN and TM, respectively, provided, however, it is being delivered in accordance with the provisions of Article 2, Article 3 and Article 7 respectively;

(b) without prejudice to GOTN's obligations under Articles 6 and 8, make, or cause to be made, the necessary applications to the relevant Competent Authority for all Clearances and shall supply the appropriate particulars and details to such Competent Authority as may be necessary, confirming that NTADCL fulfills the eligibility criteria to enable such authority to reasonably consider the request for the grant of the relevant Clearance and, following the grant of any such Clearance, maintain such Clearance in full force and effect so long as it is necessary in order for NTADCL to perform its obligations hereunder;
achieve Financial Close within a period of 90 days from the Concession Commencement Date;

appoint the Construction Contractor and the O&M Operator by entering into the Construction Contract and the Operation and Maintenance Agreement with a view to fulfilling its obligations under this Agreement of designing, constructing, operating and maintaining and managing the Facilities, in accordance with the conditions of Clearances, Prudent Utility Practices, the Technical Requirements and the Performance Standards and shall provide a Project plan within a period of three months from the Construction Commencement Date to GOTN and TM which would detail the activities to be undertaken by NTADCL during the Construction Period;

organise the supervision, monitoring and control of the construction of the Facilities and System, and operation and maintenance of the Facilities, as may be necessary to ensure the proper performance of the Facilities in accordance with the conditions of Clearances, Prudent Utility Practices, the Technical Requirements and the Performance Standards;

report to GOTN/TM during the Construction Period and the Operations Period as detailed in Article 14. Such reports will be in a form acceptable to GOTN (acting reasonably) and contain such information as GOTN/TM may reasonably require to be properly informed of material matters relating to the construction, operation and maintenance of the Facilities;

operate and maintain the Facilities or cause the Facilities and System to be operated and maintained in accordance with the conditions of all Clearances, Prudent Utility Practices, the Technical Requirements and the Performance Standards provided however NTADCL shall be entitled to suspend the Abstraction of Raw Water in the event that the quality of Raw Water is worse than that set out in Schedule L or there is no adequate quantity of Raw Water at the Abstraction Area to operate the Raw Water intake well or there being no electric supply to any of the Facilities or part thereof required for the operation of the Facilities. Further, NTADCL shall be entitled to suspend Services for a period of 7 days every Operating Year for undertaking scheduled maintenance activities and shall be entitled to suspend the off-take of Sewage from TM in the event that: (i) the quality and nature of the Sewage from TM at the Sewage Off-take Points has a greater toxic content than that specified in Schedule L or (ii) the volume of Sewage available for off-take from TM is below 10 Mld or in excess of 30 Mld. Further provided before exercising its rights under this Section 8.1 (g), NTADCL shall have made reasonable endeavors for maintenance of Services prior to such suspension;

maintain the Facilities in accordance with the Technical Requirements and the Performance Standards and Prudent Utility Practices with the objective of providing adequate service standards to the Purchasers and ensuring that at the end of the Concession Period the Facilities transferred to GOTN is in fair condition, subject to normal wear and tear having regard to their use in accordance with Prudent Utility Practices and the terms and conditions of this
Agreement;

(i) allow representatives of GOTN, TM or Persons duly authorized by the relevant Competent Authority concerned with safety, security or environmental protection, reasonable access to the Sites, Sludge Disposal Sites and the Sites for Systems and/or the Facilities, at all reasonable times and on reasonable notice, following grant of Vacant Possession thereof, but so as not to interfere unreasonably with the construction, operation or maintenance of the Facilities and/or the construction of the System. Provided however that the Persons obtaining access as aforesaid shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the construction, operation and maintenance (as the case may be) of the Project, consistent with the purpose of the Person gaining such access. GOTN shall be responsible for any increase in costs or delays caused by the actions of any of such Persons and shall to the extent certified by the Independent Engineer and the Independent Auditor reimburse forthwith NTADCL on demand all such costs and expenses;

(j) supply the requisite details of the Total Cost of Project and other material particulars to the Independent Auditor and GOTN when requested;

(k) subject to the provisions of Article 21, NTADCL shall not cease activities on the Facilities such that it constitutes Abandonment;

(l) shall design and construct the System as per the details contained in Schedule B;

(m) NTADCL shall train the staff of TM for Operating and Maintaining the System and in adopting necessary and appropriate engineering practices for giving Water and Sewage Connections at the appropriate time. The number of staff to be trained, duration and all other aspects of training shall be decided by NTADCL and notified to TM at NADCL’s sole discretion;

(n) NTADCL shall upon issuance of the Construction Completion Certificate for the System comply with the hand over requirements set out in Schedule I and complete the hand over of the System to TM. It is clarified that the issuance of the Construction Completion Certificate by the Independent Engineer shall be deemed as hand over of the system to TM. NTADCL shall remove all Construction Defects notified by TM before the expiry of twelve months from the date of issuance of the Construction Completion Certificate, as soon as practicable and in case this requires the operation of the System to be regulated/suspended, it shall notify TM about the same and TM shall facilitate NTADCL to discharge its obligations as set out in this clause.

(o) NTADCL shall repair and refurbish the Existing System prior to the issuance of the Construction Completion Certificate related to the System. However, the maximum liability of NTADCL in this regard including cost of condition assessment shall be limited to Rs.10,00,00,000 (Rupees Ten Crore only).
Section 8.2  Obligations of GOTN

GOTN, in addition to and without prejudice to its obligations specified in the other provisions of this Agreement, shall, without qualification, observe and comply with the following obligations:

(a)  GOTN shall, upon written request from NTADCL, provide NTADCL with access to all infrastructure facilities and utilities, at fair rates and on terms no less favorable to NTADCL than those generally available to customers receiving substantially equivalent services and which are necessary for NTADCL to develop, establish, finance, design, construct, operate, maintain and use the Facilities and duly implement the Project;

(b)  GOTN shall ensure that the obligations of TM are binding upon any successor, entity or authority of TM;

(c)  GOTN shall assist NTADCL for rehabilitation, relocation and resettlement of any Persons displaced by the acquisition of the Sites and Sludge Disposal Sites and shall bear the costs of acquisition thereof as required under Law; provided however NTADCL shall bear the additional costs (over and above the aforesaid statutory compensation) as required under the Environment and Social Assessment Report;

(d)  GOTN shall facilitate the Financing of the Project by permitting the creation of security interests over the Facilities and System and the establishment of suitable financial arrangements. GOTN shall render all reasonable assistance to NTADCL to achieve Financial Close;

(e)  GOTN shall, upon request from NTADCL, grant or cause to be granted all Clearances which are necessary for the implementation of the Project an indicative though not exhaustive list of which are given in Schedule H, at the appropriate stages of the Project and which are in its authority to grant or cause to be granted subject to NTADCL complying with the eligibility criteria for the grant of such Clearances;

(f)  GOTN shall assist NTADCL at all times during the tenure of this Agreement to obtain Clearances from the GOI required for the implementation of the Project from time to time;

(g)  In the event of a Change in Law, and such change has a Material Adverse Effect, NTADCL may by notice in writing to GOTN request such modifications to the terms of this Agreement and such other relevant contracts as NTADCL reasonably believes are necessary to place NTADCL in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Parties will thereafter consult in good faith to agree such modifications and in the event agreement cannot be reached, either Party may refer the matter for determination by the Panel;
(h) GOTN shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the construction, operation and maintenance of the Facilities and the implementation of the Project by NTADCL and the ownership, control and use by NTADCL of the Facilities, the Sites, Sludge Disposal Sites and Site for the System. GOTN confirms and accepts the Technical Requirements and Performance Standards relating to the Facilities as set out in the Schedules B and C respectively;

(i) GOTN shall cooperate with NTADCL as necessary to enable NTADCL to achieve timely Financial Close. Such cooperation shall include, without limitation, the obligation of GOTN to discuss in good faith with NTADCL modifications to any Project Agreement as requested by the Lenders in order to facilitate the process of achieving Financial Close. GOTN shall not unreasonably refuse to make any reasonable modification which is necessary to achieve Financial Close which does not materially and adversely affect its rights and interests hereunder, provided that GOTN shall not be required to assume any additional material financial obligations;

(j) GOTN shall render such assistance as NTADCL may reasonably require, from time to time, for the availing of formal permissions and for completion of formalities relating to the Project. Such assistance shall include, without limitation, delivery of commercially reasonable consents for assignment of this Concession and/or cash flows or revenue streams from Purchasers for the benefit of Lenders and permitting assignment of the Concession in the event of failure or default in the Financing Agreements;

(k) GOTN shall grant exemption under Tamil Nadu Land Reforms (Fixation of Ceiling on Lands) Act, 1961 in relation to holding of Leasehold land granted or agreed to be transferred to NTADCL;

(l) GOTN shall render such assistance as Lenders may require to exercise their rights under the provisions of Article 23, and shall grant appropriate and required Clearances to the Substitute Entity and shall not object to the Substitute Entity so appointed by Lenders;

(m) GOTN recognizes that the availability of uninterrupted electric power is fundamental to the proper operation of the Project and shall continue to ensure NTADCL’s access to adequate and uninterrupted electric power, on a continuous supply basis, from Tamil Nadu State Electricity Board or any other source provided that NTADCL is not in default of the terms and conditions of the initial application made by it at the time of procuring the electric supply. GOTN shall ensure that no power cuts are imposed on NTADCL as per agreements executed by GoTN or its agencies with other similar service providers;

(n) GOTN shall grant all necessary Clearances to enable NTADCL to acquire the System, on Lease from TM;

(o) GOTN and TM shall not exempt, in any manner or to any extent, any Person from the obligations to make payments for the provisions of
the Services. Provided however that in the event GOTN or TM do
exempt any Person(s) from the obligation to make payments in
relation to the consumption of Potable Water or usage of the Sewage
Offtake and Treatment Service, GOTN and/or TM shall be liable to
compensate NTADCL for the loss in the realisation of the Revenues
to the extent of such exemption immediately upon demand;

(p) GOTN shall direct TM to discharge the TM dues to NTADCL in the
event of a failure on part of TM to discharge the same;

(q) In the event of any action or suit to prevent, prohibit or otherwise
challenge the Project being instituted or contemplated which in the
reasonable opinion of NTADCL may have a Material Adverse Effect,
GOTN shall, if required by NTADCL by notice in writing in this
regard, take such action as is reasonably available to it in order to
mitigate such Material Adverse Effect;

(r) GOTN shall enter into or cause the Way Side Villages to enter into
Service Agreement/s with NTADCL for purchase of Potable Water
by the Way Side Villages on or before the first Operations Date at
the Price of Potable Water payable by Way Side Villages as
contained in this Agreement. GOTN shall direct Way Side Villages to
discharge their dues to NTADCL;

(s) GOTN shall share information available with it, to the extent
requested by TM as is necessary and appropriate for the
implementation of the Project in accordance with the Project plan;

(t) GOTN shall ensure implementation by TM in full and effective
manner the Transition Plan on a progressive basis prior to the
issuance of the Construction Completion Certificate for the System;

Section 8.3 Obligations of TM

TM, in addition to and without prejudice to its obligations specified in the
other provisions of this Agreement, shall, without qualification, observe and
comply with the following obligations:

(a) TM shall, upon written request from NTADCL, use its best efforts to
provide NTADCL with access to all infrastructure facilities and
utilities, including water, electricity and telecommunication facilities
at fair rates and on terms no less favorable to NTADCL than those
generally available to customers receiving substantially equivalent
services and which are necessary for NTADCL to develop, establish,
finance, design, construct, operate, maintain and use the Facilities
and duly implement the Project;

(b) In the event of a Change in Law, and such change has a Material
Adverse Effect, NTADCL may by notice in writing to TM request
such modifications to the terms of this Agreement and such other
relevant contracts as NTADCL reasonably believes are necessary to
place NTADCL in substantially the same legal, commercial and
economic position as it was prior to such Change in Law. The Parties
will thereafter consult in good faith to agree such modifications and
in the event agreement cannot be reached, either Party may refer the matter for determination by the Panel;

(c) TM shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the construction, operation and maintenance of the Facilities and the implementation of the Project by NTADCL and the ownership, control and use by NTADCL of Facilities, Sites, Sludge Disposal Sites and the Site for the System, Existing System, the Project Site. TM confirms and accepts the Technical Requirements and Performance Standards relating to the Facilities as set out in the Schedules B and C respectively;

(d) TM shall cooperate with NTADCL as necessary to enable NTADCL to achieve timely Financial Close. Such cooperation shall include, without limitation, the obligation of TM to discuss in good faith with NTADCL modifications to any other contracts as requested by the Lenders in order to facilitate the process of achieving Financial Close. TM shall not unreasonably refuse to make any reasonable modification which is necessary to achieve Financial Close which does not materially and adversely affect its rights and interests hereunder, provided that TM shall not be required to assume any additional material financial obligations;

(d) TM shall assist GOTN in the rehabilitation, relocation resettlement of any Persons displaced by the acquisition of the Sites, Sludge Disposal Site and Site for the System, and to bear the cost of acquisition as required by law, for the acquisition of the Site for the System, provided however that NTADCL shall bear the additional cost (over and above the aforesaid statutory cost) for the rehabilitation for the persons so displaced as required under the Environment and Social Assessment Report;

(e) TM shall render such assistance as NTADCL may reasonably require from time to time for the completion of formalities relating to the Project. Such assistance shall include, without limitation, exercise and delivery of commercially reasonable consents for assignment of this Agreement to a Substitute Entity in accordance with Article 23;

(f) TM shall pass a valid resolution approved, by GOTN authorizing NTADCL to construct the Systems within the TM, for and on behalf of TM and has passed such other valid resolutions ratifying the agreements that will be entered into between NTADCL and TM in relation thereto;

(g) TM shall introduce or amend the water bye laws of TM under the Tamil Nadu District Municipalities Act, 1920 prior to the first Operations Date, in order to enable TM to do the following:

(i) charge the supply of Potable Water for Non Domestic Purposes within the TM at a rate not lower than the Price for Potable Water determined and collected by NTADCL from Industrial Units outside limits of the TM
(ii) install volumetric meters for all connections for all Non Domestic Purposes

(h) TM shall take steps for exemption, waiver, remission of taxes and levies of octroi, water taxes and property taxes for Works or Facilities during the period of Concession which may be required to be paid in connection with the Project or provision of Service;

(i) TM shall waive, through appropriate corporate resolution or decision of its authorised representative, its rights to object to GOTN’s power to limit the control of TM to exclude from the jurisdiction of TM, the Sites, Sludge Disposal Sites Facilities, or such other area acquired by NTADCL for the purposes of Project, in the event of any extension of the TM, during the Concession Period;

(j) TM shall render such assistance as Lenders may require to exercise their rights in accordance with the provisions of Article 23, and shall grant appropriate and required Clearances to the Substitute Entity and shall not object to the Substitute Entity so appointed by Lenders;

(k) TM shall establish a system for the purposes of issuing invoices and ensuring timely collection thereof from the consumers of the Service within the TM, in accordance with the Transition Plan;

(l) TM shall be responsible for providing water connections to individual consumers within TM and for providing Sewage connection to individual consumers to the Sewage System at its own cost in accordance with the Project plan and the Transition Plan;

(m) TM shall ensure proper maintenance of consumer connections for water supply and Sewage offtake and transmission of Sewage from individual households within TM, to the Sewage Offtake Points and shall make an appropriate Yearly Budgetary allocation as may be necessary and appropriate during the Concession Period;

(n) TM shall submit to NTADCL a Monthly report on the status of billing and collections thereof from the consumers for Non Domestic Purposes within TM;

(o) TM shall undertake regular inspections to the Water Distribution System, Existing System and the Sewerage System in order to ensure the accuracy of the metres and prevention of any pilferage or theft of Potable Water and to ensure that no Industrial Unit within its jurisdiction has access to the Sewerage System and to monitor the quality of Sewage at all times;

(p) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project being instituted or contemplated which in the reasonable opinion of NTADCL may have a Material Adverse Effect, TM shall, if required by NTADCL by notice in writing in this regard, take such action as is reasonably available to it in order to mitigate such Material Adverse Effect;
(q) TM shall ensure that no Industrial Unit is provided a Sewage connection during the Concession Period and households with non-domestic use mixed are also prohibited from seeking access to the Sewage System. TM shall maintain a record with regard to the inspections made by its officials prior to grant of Sewage connection and such record shall include the type of activities carried out by the households. NTADCL shall at its discretion scrutinise such record;

(r) TM shall depute the staff at the time and for the duration notified by NTADCL for the purposes of training them in providing Water and Sewage connections and operating and maintaining the System in accordance with Article 8.1 (m);

(s) TM confirms the data and other necessary and appropriate information supplied to NTADCL for preparing the design and construction of the System and the refurbishment of the Existing System. Further TM shall accept the System and the Existing System from NTADCL on the date of issuance of Construction Completion Certificate upon NTADCL complying with the requirements set out in Schedule 1, C and K and NTADCL shall be relieved of all its obligations relating to the design and construction of the System and refurbishment of the Existing System except in respect of removal of defects attributable to the construction of the System. NTADCL shall be liable, at its own cost, to remove the Construction Defects for a period of twelve months from the date of issuance of Construction Completion Certificate;

(t) TM shall provide sufficient and necessary access to the Existing System to NTADCL for condition assessment within a period of 3 months from the date of execution of this Agreement and thereafter extend assistance to NTADCL for completing the repairs and refurbishment to the Existing System

(u) TM shall comply with the terms and conditions of BWSA.

Section 8.4 Obligation of Parties

(a) Without prejudice to the rights and obligations of the Parties under this Agreement, if a regulatory framework for the supervision of concession related projects is introduced in the State of Tamil Nadu, the parties shall consult in good faith with a view to determining what future role the Independent Auditor, the Independent Engineer and the Prices Review Committee may have in relation to this Agreement and to agree such amendments to this Agreement as may be reasonably necessary to take account of such regulatory framework but so that the rights of NTADCL hereunder are not adversely affected or additional material liabilities imposed;

(b) Each of the Party hereby agree that in the event that the Final Construction Completion Certificate is not issued within a period of 48 Months from the Construction Commencement Date for reasons not attributable to any of the Parties herein, then GOTN and TM are within their rights to make necessary arrangements to meet the demand for water for Domestic purposes within TM
(c) Each of the Party shall comply with and perform its/their respective obligations under this Agreement

ARTICLE 9
PRODUCTIVITY INVESTMENTS

Section 9.1 Productivity Investments

NTADCL at its sole discretion shall be entitled to implement Productivity Investments as set out below:

(a) additional capital investments on the Facility to establish, design, construct, operate and maintain a Waste Water recycling facility for treatment and supply of the Waste Water from the Sewage Treatment Facility;

(b) investments for increased abstraction of up to additional 65 MLD of Raw Water in accordance with the terms set out in Section 9.2 of this Agreement and supply the water so abstracted.

NTADCL shall supply the additional quantity of Potable Water and or the treated Waste Water pursuant to the Productivity Investments to the Industrial Units within the Service Area for Non Domestic Purposes.

Section 9.2 Additional Allocation

NTADCL shall, at any time during the Concession Period have the right to make one or more requests to GOTN in writing, to increase NTADCL's water drawal rights above the existing rights of 185 (one hundred and eighty five) MLD upto 250 MLD, if in the opinion of NTADCL, the demand for Potable Water by Industrial Units outside TM is likely to exceed the allocated 100 MLD for Non Domestic Purposes. NTADCL shall submit its request to GOTN detailing the following:

(a) The additional quantity of Raw Water for which Abstraction rights are required;

(b) Confirmation from the Independent Engineer and independent Auditor for the present quantity of Potable water being supplied to Industrial Units for Non Domestic Purposes and the Year in which NTADCL is likely to be supplying the additional quantity requested;

(c) The cost estimates for the Productivity Investments to be made by NTADCL and the time within which NTADCL would be in a position to raise the funds required;

(d) The time within which NTADCL would complete the design, construction and commence operation of the modified Water Treatment Facility;
(e) The Clearances required from the GOTN/TM and other Competent Authority for commencing operation of the modified Water Treatment Facility;

GOTN shall on receipt of such request/s supported by the above details, subject to availability, provide NTADCL with additional Raw Water abstraction rights within the Abstraction Area within 2 (two) months from the date of receipt of the request, provided NTADCL at the time of request is not in Breach of any of its obligations under this Agreement. Immediately upon grant of the request/s of NTADCL, GOTN and TM shall extend all necessary and appropriate assistance and the Parties shall perform all their respective obligations as detailed in this Agreement to the extent applicable. NTADCL will identify and finalise any additional Sites, required for Productivity Investments at the appropriate time. GOTN shall, on a request from NTADCL along with the details of such additional sites, acquire and Lease them to NTADCL, under a valid and binding Site Lease Agreement, with Vacant Possession, in accordance, with terms of this Agreement, and upon such Lease, the additional sites shall be comprised in the Sites. The duration of the Lease shall be for the entire Concession Period. Upon expiry of Concession Period the rights granted to NTADCL under this Section shall also expire and the Facilities shall be transferred to GOTN as per details set out in Article 22 of this Agreement. GOTN and TM hereby undertake to make such consequent amendments to this Agreement as may be necessary as a consequence of acceding to the request/s specified herein.

Section 9.3 Domiciling of Productivity Investments

NTADCL is allowed to make the Productivity Investments by itself or in a subsidiary or subsidiaries of NTADCL.

Section 9.4 Benefits of Productivity Investments

NTADCL shall be entitled to manage the Productivity Investments and realise returns and other benefits on the investment entirely on commercial considerations as per its sole discretion. However, NTADCL shall not charge a price exceeding the price of Potable water being charged to Industrial Units for Non Domestic Purposes from time to time by NTADCL for Non Domestic Purposes out of 185 MLD, in accordance with the terms of this Agreement.

Section 9.5 Treatment of Productivity Investments

The amount incurred by NTADCL in Productivity Investments shall not be added to the Total Cost of Project and the Independent Auditor shall confirm the same from time to time.

Section 9.6 Appropriation of Productivity Gains

Upon the adoption of the annual audited accounts after every financial year of NTADCL or of the Subsidiary, as long as the Productivity Gains for that year are positive, NTADCL is obliged to add ___% of the Productivity Gains to the amount of Revenues available for appropriation as set out under Section 15.3.
Section 9.7 Consequences of Termination

In the event of termination of this Agreement due to a GOTN Event of default, NTADCL shall be entitled to recover the then outstanding Productivity Investments in its books from GOTN, as certified by the Independent Auditor.

In the event of termination of this Agreement due to an NTADCL event of default, NTADCL shall not be entitled to recover the then outstanding Productivity Investments in its books.

In the event of unilateral termination by NTADCL pursuant to Section 25.5, NTADCL shall not be entitled to recover the then outstanding Productivity Investments in its books.

Section 9.8 Value Added Services

NTADCL shall upon payment of the applicable cost as determined by the Competent Authority, be vested with the right to use the Sites and the Site for the System, for the purposes of laying optical fibre cable and/or power cable and other cables network and/or piped gas network along the Facilities, the water pipeline, pipeline routes, the Sewage pipeline and the System and shall, in relation to the Site for the System be vested with the Easementary Rights, to establish, operate and maintain the optical fibre cables and/or power cable and other cables network and/or piped gas network along the System, throughout the Concession Period. NTADCL shall obtain the requisite approvals/permissions required for the establishment, operation and maintenance of such optical fibre and/or power cable and other cables network and/or piped gas network.

Further, the investments and the revenues realised as a result of these activities shall not be included as part of the Total Cost of Project and in the Revenues as specified in Article 15

ARTICLE 10
REPRESENTATION AND WARRANTIES

Section 10.1 GOTN represents and warrants that:

(a) GOTN has full power and authority to execute, deliver and perform this Agreement to grant the Concession and to carry out the transactions contemplated herein;

(b) GOTN has taken all necessary governmental action to authorize the execution, delivery and performance of this Agreement and the other contracts to which GOTN is a party;

(c) this Agreement and the other contracts to which GOTN is a party, constitutes a legal, valid and binding obligation of GOTN, enforceable against it in accordance with the terms hereof and thereof;
(d) GOTN is subject to civil and commercial Law with respect to this Agreement and it hereby expressly and irrevocably waives the defense of sovereign immunity in any jurisdiction; and

(e) GOTN has full power and authority to execute, deliver and perform the Concession and carry out its obligations set out herein and in the BWSA.

Section 10.2 TM represents and warrants that:

(a) TM has full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated herein, and that its authorised signatory has been duly empowered and further that the permission of GOTN has been accorded for the Works outside the limits of the TM under the provisions of Tamil Nadu District Municipalities Act 1920 and any other applicable Law;

(b) TM has taken all necessary governmental action to authorize the execution, delivery and performance of this Agreement and the BWSA,

(c) this Agreement and the BWSA constitutes a legal, valid and binding obligation of TM, enforceable against it in accordance with the terms hereof and thereof;

(d) TM is subject to civil and commercial Law with respect to this Agreement and the BWSA and further that it hereby expressly and irrevocably waives the defence of any municipal immunity if any in any jurisdiction; and

(e) TM has the full power and authority to execute financial Lease or hire purchase agreements or other Financial Agreements for the System constructed for and on behalf of TM by NTADCL, if TM does not organise full payment by way of sale price of the System upon completion of Works in relation thereto.

Section 10.3 NTADCL hereby represents and warrants that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation;

(ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and the BWSA and to carry out the transactions contemplated hereby and thereby;

(iii) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the BWSA and;

(iv) this Agreement and the BWSA constitutes legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof and thereof.
Section 10.4

The Parties hereby agree that these representations shall stand as true and valid for the term of the Agreement and each Party shall have an obligation to disclose to the others as and when any of these representations ceases to be true and valid representations.

ARTICLE 11
CLEARANCES

Section 11.1 GOTN Assistance

(a) Save insofar as the same have been applied for or granted prior to the date of this Agreement, NTADCL shall, as soon as reasonably practicable, after the date hereof make applications for the Clearances in the required form and pay any formal and/or administrative and/or filing fees in respect thereof. NTADCL shall, from time to time, make timely applications for any other or further Clearances required in connection with the development, finance, design, construction, completion, ownership, operation or maintenance of the Facilities. In the event of any Clearances from the Central Government or Ministry of Home Affairs being required for purposes of State Security, GOTN shall assist NTADCL in obtaining the same.

(b) Subject to the performance by NTADCL of its obligations under Section 11.1 above GOTN shall discharge its obligations specified under Section 8.2 (f) and (g).

Section 11.2 Expenses

Any costs reasonably incurred by NTADCL for receiving or renewing any Clearance up to the Operation Date/s shall constitute a part of the Other Cost of Commissioning and thereafter form part of Owner's cost and shall be recoverable by NTADCL as such.

Section 11.3 Revocation, Renewal and Additional Clearances

(a) If, at any time during the Concession Period:

(i) any Clearance is not granted to NTADCL within a reasonable time frame provided NTADCL shall have applied for the same and be in compliance of the eligibility criteria thereof, or

(ii) any Clearance is revoked or withdrawn or varied or interpreted in a manner materially adverse to the interests of NTADCL, except in circumstances when such revocation or withdrawal is caused due to NTADCL being in breach of the conditions of Clearances and acting in a manner materially inconsistent with the requirements of this Agreement or

(iii) in the case of any consent granted for a limited period or for limited purposes, any of the Clearances expire without being renewed, if so requested by NTADCL, for a further period
before the purpose for which the same was granted has been achieved, or

(iv) if there shall be introduced a further legal requirement for any clearance other than the Clearances required at the time of grant of Concession and such Clearance is not promptly granted to NTADCL and/or its Contractors (as appropriate) without cost to NTADCL or its Contractors (other than formal administrative and filing fees).

(v) then NTADCL, GOTN and TM shall in good faith consult with a view to resolving any Material Adverse Effect on the interests of NTADCL arising therefrom.

(b) Parties shall endeavour to formulate a plan to resolve the matters specified in Section 11.3 hereinafore. In the absence of satisfactory resolution, NTADCL shall be entitled to make a demand for increasing the Charges commensurate with the increase in costs on account of Material Adverse Effect caused therefrom and any additional investments made as certified by the Independent Auditor shall be added to the Total Cost of Project.

(c) In the event that such matter is not resolved to the satisfaction of NTADCL within a 90 day period or such further period as NTADCL may reasonably allow, then NTADCL may, by notice in writing to GOTN terminate this Agreement but without prejudice to any of the rights accrued to any Party against another hereunder and the provisions of Article 25.1 shall apply in relation to any such termination.

(d) If the matter shall be resolved within such 90 day period any costs or damages reasonably incurred or loss of revenue suffered (less any expenses not incurred by NTADCL) during such period shall be recoverable by NTADCL either by an increase in the Charge or by such other method agreed between the Parties.

ARTICLE 12
INDEPENDENT ENGINEER

Section 12.1 Appointment of Independent Engineer

(a) NTADCL, in consultation with the Lenders, shall propose, within a period of 30 days from the date of Financial Close a panel of three reputable firms of engineers, having adequate experience in construction and operation and maintenance of projects, of which, one shall be approved by GOTN within a period of 15 days from the date of receipt of the panel of names. The approved firm shall act as the Independent Engineer for the purposes of determining and ensuring compliance with the Technical Requirements, the Performance Standards and Costs of Construction and for other purposes as set out in this Agreement. Within 15 days following such approval, NTADCL shall appoint the Independent Engineer. The
Terms of Reference shall be substantially those terms set out in Schedule P. The Independent Engineer may be removed by NTADCL, upon 30 days notice to GOTN but subject to the prior approval of GOTN and a substitute Independent Engineer having been agreed and appointed in accordance with this Section.

(b) The Independent Engineer shall, during the Concession Period, inspect the Sites, Sludge Disposal Sites, Site for the System and Existing System at such intervals as reasonably determined by the Independent Engineer in order to determine the progress of construction, repairs and refurbishment and operation and maintenance of the Facilities and the extent of compliance with the Technical Requirements and the Performance Standards stipulated for the Facilities, the System and the Existing System as per this Agreement. The terms of appointment of the Independent Engineer shall require it to promptly notify NTADCL in writing, copied to GOTN, of any material deviations from the Technical Requirements and Performance Standards.

(c) The terms of appointment of the Independent Engineer shall, besides the responsibilities outlined above, require that:

(i) The Independent Engineer shall monitor on behalf of GOTN and TM the design, construction, operation and maintenance of the Facilities and the construction of the System, repairs and refurbishment of the Existing System and compliance by NTADCL of its obligations under this Agreement including monitoring of the construction program and certifying the achievement of the milestone events set out in the construction program, grant all reasonable request of NTADCL for extension of Construction Period and provide services within the time limits such that NTADCL is in compliance of its obligations to respond to the Contractors;

(ii) With respect to the design, construction, testing and commissioning of the Facilities and the System, Completion of the repairs and refurbishment of the Existing System, the Independent Engineer shall issue and sign the Construction Completion Certificate for each part of the Works upon achievement of the tests on completion as set out in Schedule C and the Final Construction Completion Certificate upon completion of the Project;

(iii) From the Operations Date/s of a Facility(ies), the Independent Engineer shall monitor the operation- and maintenance of such Facility(ies) to ensure compliance by NTADCL with the Performance Standards. Within a period of twelve months from the date of issue of Final Construction Completion Certificate the performance indicators in respect of consumption of power, Consumables and spares shall be determined by NTADCL for a block of three Operating Years. The performance indicators shall be reviewed by NTADCL one month before the expiry of every three Operating Years and revised as is necessary.
performance indicators as and when determined as aforesaid shall be communicated to the Independent Engineer before the expiry of seven days after the same has been determined. The Independent Engineer shall thereafter ensure compliance with the performance indicators by NTADCL until the expiry of the Concession Period;

(iv) The Independent Engineer shall monitor the transfer of the System to TM and confirm compliance of NTADCL to the details set out in Schedule 1 including confirmation of completion of repairs and refurbishment of the Existing System in accordance with the Transition Plan. The Independent Engineer shall also monitor the transfer of the Facilities including but not limited to the testing and inspections following the transfer and ensure that the Facilities is transferred to the GOTN in line with the Performance Standards detailed in this Agreement; and

(v) The Independent Engineer shall certify completion of Interconnection Facilities.

(d) Upon the issuance of the Final Construction Completion Certificate, the Independent Engineer along with the Independent Auditor shall undertake to verify the Cost of Construction of the Project as determined and submitted by NTADCL, based on the Variations, calculations and the measurements, work done, costs incurred, invoices and amounts paid by NTADCL, within 30 days from the issuance of the said certificate

(e) The Cost of Construction as certified by the Independent Engineer and Independent Auditor shall be presented to GOTN, TM, NTADCL, and Lenders and shall be considered for the purposes of computing the Landed Cost as on the date of issuance of Final Construction Completion Certificate.

(f) The facts and measurements that are required for the determination of the Variations determined and certified by the Independent Engineer shall be final and binding on the Parties hereto. The Independent Engineer shall follow the standard practice of measurements. The Parties shall have recourse to arbitration under Article 29 or, any other aspect relating to the determination of the Cost of Construction.

(g) The professional fee, costs and expenses of the Independent Engineer and Independent Auditor shall be borne by NTADCL and shall be added to the Total Cost of Project until the date of issuance of Final Construction Completion Certificate and thereafter would become part of the Owners Costs. NTADCL hereby undertakes that the Independent Engineer and the Independent Auditor shall have sufficient funds to meet the costs and expenses incurred by the Independent Engineer and the Independent Auditor as agreed in the terms of their respective appointments in the course of discharging their functions specified in this Agreement. NTADCL shall establish a separate account and shall maintain a balance in such account
which is sufficient to meet the remuneration and expenses of the Independent Engineer and the Independent Auditor for a minimum period of 6(six) month at all times during the subsistence of their appointments. The failure of NTADCL in this regard, which failure is not cured within 60 days of a notice by GOTN to cure such failure, shall constitute a NTADCL Event of Default.

Section 12.2 Appointment of Consultants

(a) In addition to its appointment of the Independent Engineer NTADCL shall have the right to appoint any number of Persons not being the affiliate/associate of the Independent Engineer to assist NTADCL in the execution of its duties under this Agreement. Prior to such appointment, NTADCL shall notify GOTN and the Independent Engineer of the duties and scope of authority of such Persons. Both GOTN and the Independent Engineer shall within 15 days of such notification have the right to object on reasonable grounds to the appointment of such consultant and such consultants shall not (without prejudice to the right to submit the matter to dispute resolution) be appointed if objections are received within 15 days by NTADCL

(b) The costs of any consultant appointed in accordance with paragraph (a) above shall be taken into account by the Independent Auditor for the purposes of calculating the Total Cost of Project until the date of issuance of Final Construction Completion Certificate and thereafter shall become part of the Owners Costs.

ARTICLE 13
CONSTRUCTION, OPERATION AND MAINTENANCE OF THE FACILITIES

Section 13.1 Appointment of Construction Contractor

NTADCL shall select and appoint qualified Contractor/s, within a period of 6 (six) months from the date of this Agreement, to be the Construction Contractor/s and to undertake the design, procurement, construction, completion, testing and commissioning of the Facilities and the System. The appointment of the Construction Contractor shall not, in any manner, relieve NTADCL of its obligations under this Agreement.

Section 13.2 Construction Commencement

NTADCL shall commence the construction work on the Facility and/or the System or part thereof within 90 days from the Financial Close.

Section 13.3 Progress Review during Construction

(a) During the Construction Period, NTADCL shall, on or before the 15th day of every Month, prepare and submit to the Independent Engineer a Monthly progress report for the previous Month in a form agreed to between the Parties. Such report shall describe the progress of the design, procurement, completion and commissioning of the Project
and all other matters material to the construction, operation and
maintenance of the Facilities and the construction of the System
together with such other information that the Independent Engineer
may reasonably request in order to perform its obligations.
NTADCL shall also submit to the Independent Engineer the relevant
designs and drawings and other technical information as may be
reasonably necessary to determine and confirm compliance with the
Technical Requirements and the Performance Standards. Upon
request, NTADCL shall also provide copies of such reports to GOTN
/TM together with any other information relating to the Project and
Facilities as GOTN/TM may reasonably request (but not more
frequently than Monthly unless GOTN/TM reasonably believes there
may have been a Breach by NTADCL of the terms of this
Agreement).

(b) During the Construction Period the Independent Engineer shall, at all
reasonable times and upon reasonable notice, have access to the
Sites, Site for the System, Existing System and the Sludge Disposal
Sites for the purpose of discharging its duties under this Agreement.

(c) When NTADCL reasonably believes that a Facility(ies) and/or the
System have reached Substantial Completion and would
satisfactorily pass the relevant tests and Performance Standards
prescribed in Schedule C, NTADCL shall notify the Independent
Engineer in writing (with a copy to GOTN/TM where
applicable). Such notice will set out the place, date and time when the
relevant tests will be performed (which shall not be on a date which
is earlier than 7 days following the date of such notice). GOTN and
TM shall have the right to attend such tests. The Independent
Engineer shall attend such tests with a view to determining whether
Substantial Completion has occurred.

(d) Within 7 days from the date of inspection in accordance with
subsection (c) above, the Independent Engineer shall either (i) issue
a Construction Completion Certificate if, in the reasonable opinion of
the Independent Engineer, the specific Facility and/or the System
has reached Substantial Completion or (ii) notify NTADCL of any
other item or work which is required to be completed before in the
reasonable opinion of the Independent Engineer a Construction
Completion Certificate could be issued. The Final Construction
Completion Certificate shall specify the date on which, in the
Independent Engineer's reasoned opinion, all parts of the Works and
the Project reached Completion. In the event that the Independent
Engineer notifies NTADCL of additional work required prior to the
issuance of the Construction Completion Certificate, NTADCL shall,
subject to its right to refer the matter to dispute resolution, complete
such work as soon as reasonably practicable to the reasonable
satisfaction of the Independent Engineer. Upon satisfactory
completion of such work the Independent Engineer shall promptly
issue the Final Construction Completion Certificate.

(e) Following the issue of the Final Construction Completion Certificate
NTADCL shall promptly complete all minor works not otherwise
completed at the time of completion which were not required to be completed in order for the Final Construction Completion Certificate to be issued. GOTN and TM shall accept the Final Construction Completion Certificate issued by the Independent Engineer and discharge NTADCL of its obligation in this regard.

Section 13.4 Completion Assurance

(a) NTADCL shall proceed diligently with the construction of the Facilities and the System and repairs and refurbishment of the Existing System in accordance with the Project Plan prepared by NTADCL pursuant to Section 8.1(d) and the Transition Plan.

(b) NTADCL hereby undertakes to achieve Substantial Completion of the Water Treatment and Supply Facility within a period not later than 3 years from the Construction Commencement Date and that of Sewage Treatment Facility and the System and complete repairs and refurbishment of the Existing System within a period not later than three years from the Construction Commencement Date in accordance with the terms hereof; provided that NTADCL shall not be in breach of this Section, on account of the following:

(i) delay on the part of Indian Railways in completing the construction of the part of the Facilities to be constructed on the land belonging to the Indian Railways or a delay in the grant of any Clearances required form the Central Government or any Competent Authority outside the jurisdiction or control of GOTN, provided NTADCL is not in breach of its obligations;

(ii) delay in provision of electric supply from two sources as set out in Section 2.7, provided NTADCL is not in breach of its obligations;

(iii) the occurrence in accordance with Article 21 of an event of Force Majeure;

(iv) a GOTN or TM Event of Default or any other act or omission of GOTN or TM in contravention of its obligations under this Agreement or a failure by GOTN, after the issuance of a Certificate of Commencement, to satisfy the conditions precedent within 365 days of the date of this Agreement; and

(v) specific extensions granted by the Independent Engineer

In all the above mentioned instances, NTADCL shall be relieved of its obligations, the Construction Period shall automatically be extended by the period of delay or, in the case of the events specified in clause (iii) and (iv), in accordance with Sections 21.6 and 24.4 respectively and associated cost increases resulting from a Breach by GOTN or TM of its obligations hereunder or arising out of an event of Force Majeure or other events beyond the Control of NTADCL shall be added to the Total Cost of the Project.
Section 13.5 Operation and Maintenance

(a) NTADCL shall appoint an O&M Operator with the requisite technical and financial capacity for the management, operation and maintenance of the Facilities. The appointment of the O&M Operator shall not, in any manner, relieve NTADCL of any of its obligation under this Agreement;

(b) The O&M Operator's functions shall include, but not be limited to, operation and maintenance of the Facilities including metering and billing, and such other responsibilities as may be entrusted by NTADCL;

ARTICLE 14
FINANCIAL AND PROJECT INFORMATION

Section 14.1 Periodic Information

NTADCL agrees to deliver to GOTN, during both the Construction Period and the Operation Period, the following documents and information at the intervals described below:

(a) annual audited accounts of NTADCL delivered within 180 days of the end of each fiscal year;

(b) un-audited financial statements of NTADCL delivered within 60 days of the end of each quarter;

(c) the Construction Budget and Operations Budget for the Project to be delivered within 30 days of approval by the Independent Engineer and the Independent Auditor as required under Section 14.6, such annual budgets to include an analysis of actual expenditure in previous years against previous relevant budgets and a commentary on Variations which are identified in those relevant budgets;

(d) notification of any Material Adverse Effect in the financial condition of NTADCL and/or the Project promptly following such occurrence; and

(e) the Project plan for the implementation of the Project which shall comprise of the order in which NTADCL shall carry out various activities involved in the Construction of the Facilities and/or the System or part thereof, repairs and refurbishment of the Existing System within a period of 90 days from the Construction Commencement Date.

Section 14.2 Construction Period Reports

NTADCL shall provide, within 30 days of the Construction Commencement Date, a copy of the construction schedule in a network form to GOTN and to the Independent Engineer and Independent Auditor. A detailed explanation of
the construction methodology, outlining the plans for traffic management during excavation and for public safety, shall also be included.

NTADCL shall provide to GOTN/TM to the extent applicable and the Independent Engineer a Monthly progress report during the Construction Period, which shall contain the following information:

(a) **Summary of progress**: Summary of the progress of the Project for that Month which shall detail:

(i) any areas of significant concern and the action being taken to resolve any significant difficulties;
(ii) the actual progress made during that Month against the construction schedule including a description in reasonable detail of the work carried out;
(iii) the details of quantification of the cost and time overDue if any as part of the report and reasons for the same along with the funding for it and any matters which have come to light which are likely materially and adversely to affect the construction of the Project;
(iv) any potential or actual deviations from the construction schedule, Technical Requirements, Prudent Utility Practices, Performance Standards or otherwise confirmation that construction is proceeding in accordance with the construction schedule, Technical Requirements, Performance Standards and Prudent Utility Practices; and
(v) a commentary on the progress of construction as against the business plan.

(b) **Budget analysis**: showing actual expenditure in that Month against the relevant budget for that period and detailing the remaining costs of the Project and the amount of committed financing available to cover such costs;

(c) **Completion**: details of any changes to the proposed date of completion of construction and the reasons for such changes; and

(d) **Government Approvals**: written confirmation that all Clearances then required are in full force and effect including a list of such Clearances.

**Section 14.3 Operation Period Report**

NTADCL shall provide to GOTN/TM (to the extent applicable) and the Independent Engineer a quarterly/monthly operation and maintenance progress report during the Operation Period, which shall contain the following information:

(a) **Summary of progress**: summary of operating and financial results for that quarter and explanations of any major variation between actual and projected results;
(b) **Expenses:** details of any Major Repairs Expenses, of Operation and Maintenance Expenses and the costs or expenses of other repairs incurred in that quarter or expected to be incurred in the following quarter;

(c) **Monthly Revenue Reports:** details of Revenues collected every Month and the Revenues due and payable to NTADCL every Month; and

(d) **Maintenance Plan:** a maintenance plan for the Project for the next quarter and a report on maintenance carried out during the previous quarter (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).

**Section 14.4 Additional Information**

NTADCL agrees to provide to GOTN/TM, the Independent Engineer and the Independent Auditor such further information as any of them may reasonably request in order for them to monitor the progress and performance of the Project.

**Section 14.5 Other Project and Financial Information**

NTADCL will provide the following information to GOTN/TM to the extent applicable, promptly after becoming aware of it:

(a) **Force Majeure:** details of any event of Force Majeure which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;

(b) **Litigation:** details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Facilities; and

(c) **Legislation:** details of contravention of any Law or regulation or with the terms of any Clearance and any fines or penalties which have or may thereby be incurred.

**Section 14.6 Budgets**

(a) Not later than 30 days after Construction Commencement Date, NTADCL shall prepare and submit to the Independent Engineer and the Independent Auditor the Construction Budget of the Cost of Construction and Other Cost of Commissioning indicating the costs incurred till then and of projected Cost of Construction and Other Cost of Commissioning for the remainder of the Construction Period. The Independent Engineer shall, acting reasonably in all the circumstances, confirm within 30 days whether it believes that the budget reflects the expenditure which has been incurred to date and expenditure which will be incurred in the future which is reasonably necessary or appropriate for the construction of the Facilities as well as the System, repairs and refurbishment of the Existing System and the Independent Auditor shall, acting reasonably in all the circumstances and as long as the expenditures are within the norms
of Performance as set out in Schedule J confirm the amount of the expenditure incurred to date. In the event that the Independent Engineer or the Independent Auditor provides a reasoned refusal, NTADCL may refer the matter to the Lenders who shall after holding consultations with NTADCL for a period not exceeding 5 days provide their decision and their decision in this regard shall be final and binding. The budget confirmed by the Independent Engineer and the Independent Auditor or by the Lenders shall be the approved Construction Budget (subject to amendment in accordance with paragraph (b) below).

(b) At any time that NTADCL wishes to update the approved Construction Budget and in any event within 30 days of the commencement of each financial year of NTADCL, NTADCL shall prepare and submit to the Independent Engineer and the Independent Auditor a statement confirming (i) the expenditure incurred or committed to be incurred by NTADCL as on the date of the statement and (ii) future expenditure anticipated to be made during the remainder of the Construction Period. In the event that the aggregate of the expenses mentioned in (i) & (ii) above exceed the approved Construction Budget then the Independent Engineer shall, acting reasonably in all the circumstances, and as long as the expenditures are within the norms of Performance as set out in Schedule J confirm within 30 days whether it believes that the expenditure which has been incurred to date and expenditure which will be incurred in the future is reasonably necessary or appropriate for the construction of the Facilities, the System and repairs and refurbishment of the Existing System and the Independent Auditor shall, acting reasonably in all the circumstances, confirm the amount of the expenditure incurred to date and anticipated to be made during the remainder of the Construction Period. In the event that the Independent Engineer or the Independent Auditor provides a reasoned refusal, NTADCL may refer the matter to the Lenders who shall after holding consultations with NTADCL for a period not exceeding 5 days provide their decision and their decision in this regard shall be final and binding. The approved Construction Budget shall be amended according to the confirmations given in this paragraph.

(c) Not later than 30 days before the anticipated first Operations Date, NTADCL shall prepare and submit to the Independent Engineer and the Independent Auditor the Operations Budget for Operation and Maintenance Expenses (including Operator Fees, Cost of Consumables), Owners Cost, projected Major Repairs Expenses (during the Concession Period) for the first operating year. Thereafter every year not later than 30 days before the commencement of the Operating Year NTADCL shall prepare and submit to the Independent Engineer and the Independent Auditor the Operations Budget for the next operating year, containing the Operation and Maintenance Expenses, Owner’s Cost, Major Repairs Expenses and projected Major Repairs Expenses during the remaining Concession Period. The Operations Budget would be in accordance with the operating plan. The Independent Engineer shall, acting reasonably in all the circumstances, and as long as the expenditures are within the
norms of Performance as set out in Schedule J confirm within 30 days whether it believes that the budgets reflects the expenditure which has been incurred to date and expenditure which will be incurred in the next Operating Year which is reasonably necessary or appropriate for the commissioning and operation and maintenance of the Facilities in accordance with this Agreement and the Independent Auditor shall, acting reasonably in all the circumstances, confirm the amount of the expenditure incurred to date. If the requisite confirmations are not provided NTADCL may refer the matter to arbitration under Article 29. The budget confirmed by the Independent Engineer and the Independent Auditor or through arbitration shall be the Operations Budget (subject to amendment in accordance with paragraph (d) below);

(d) At any time that NTADCL wishes to update the Operations Budget and in any event within 30 days of the commencement of each Operating Year of NTADCL, NTADCL shall prepare and submit to the Independent Engineer and the Independent Auditor a statement confirming:

(i) the expenditure incurred or committed to be incurred by NTADCL as on the date of the statement; and

(ii) future expenditure anticipated to be made during the next operating year.

In the event that the aggregate of the expenses mentioned in (i) & (ii) above exceed the Operations Budget then the Independent Engineer shall, acting reasonably in all the circumstances, and as long as the expenditures are within the norms of Performance as set out in Schedule J confirm within 30 days whether it believes that the expenditure which has been incurred to date and expenditure which will be incurred in the future is reasonably necessary or appropriate for the operation and maintenance of the Facilities and the Independent Auditor shall, acting reasonably in all the circumstances, confirm the amount of the expenditure incurred to date and anticipated to be made during the reminder of the operating year. If the confirmations are not provided NTADCL may refer the matter to arbitration under Article 29. The Operations Budget shall be amended according to the confirmations given in this paragraph (or as determined by arbitration).

(e) If there is an increase in the Cost of Construction or Other Costs of Commissioning or Operation and Maintenance Expense or Owners Cost or any other cost due to an act or omission of NTADCL which constitutes a Breach of NTADCL as determined by the Independent Engineer, who shall record reasons therefor, then such increase in cost shall not be approved by the Independent Engineer and such cost shall not be included in the Total Cost of Project. While determining the validity of the claim of NTADCL for increase in costs mentioned above, the Independent Engineer shall be obliged to consider the norms of Performance as set out in Schedule J and the allowable Variations as set out in Schedule E.
ARTICLE 15
TOTAL COST OF PROJECT, RETURNS AND RECOVERY ACCOUNTING

Section 15.1 Total Cost of Project

(a) On and effective from the date of this Agreement, the Total Cost of Project at the beginning of any quarter, shall be the outstanding balance on the last day of the immediately preceding quarter being aggregate of:

(i) The Total Cost of Construction and Other Costs of Commissioning at such date; and

(ii) The aggregate of Major Repairs Expenses incurred up to and including such date (for the avoidance of doubt, the entire quantum of such expenses would be included); and

(iii) Cost, if any) incurred for drawing Raw Water from an alternate site, during a Water Shortage Period, as specified in Section 19.2 (c); and

(iv) The aggregate of Shortfalls, for each quarter which ends prior to such quarter end date, as per Section 15.4 (b); less the aggregate of

(i) The amount of connection fees and

(ii) the value of the System received by NTADCL in accordance with Section 32.1 (d) of this Agreement and

(iii) the amounts appropriated under Section 15.4 (a)(ii) below

(b) It is clarified that Productivity Investments and Value Added Services as stated in Article 9, shall not form part of the Total Cost of Project.

(c) The Total Cost of Project, at any relevant date, shall be calculated by NTADCL and audited and verified by the Independent Auditor, who, upon the recovery thereof along with a __% Return thereon, shall issue a certificate specifying the recovery of the Total Cost of Project and the Returns thereon. In the event of Termination, otherwise than by the expiry of the Concession Period, NTADCL shall calculate within 30 days of such Termination, the Total Cost of Project including returns due thereon, as of the date of Termination and submit it to the Independent Auditor for audit and confirmation.

Section 15.2 Landed Cost

The Landed Cost shall be determined by NTADCL within 30 days from the date NTADCL obtains the Final Construction Completion Certificate in relation to all the Facilities, the System and the Existing System and shall thereafter be verified and certified by the Independent Engineer and the Independent Auditor, within a period of 90 days thereof.
Section 15.3 Calculations of Amounts Available for Appropriation

On and effective from the date of execution of this Agreement, the amounts available for appropriation by NTADCL for the purpose of recovering the Total Cost of Project and the Returns thereon shall be calculated by NTADCL (in consultation with the Independent Auditor) as at the end of each quarter. The quarters shall commence on the 1st of January, April, July and September and respectively end on the last day of March, June, September and December in each year. For avoidance of any doubt, the outstanding Total Cost of Project as on the last date of each quarter would be taken as the balance eligible for computing Return thereon for the current quarter ending on that date. Similarly, all the revenues and expenses would be aggregated for the quarter and on the quarter ending date the net available balance would be computed in the following manner:

Start with:  Gross Revenue collections excluding Surcharge but including drawl from Water Shortage Fund and ___% of Productivity Gains calculated as per Section 9.5

less Taxes (excluding taxes accounted as part of Owner’s Cost in Operation and Maintenance Expenses)

less the sum of Operation and Maintenance Expenses and Owner’s Cost as approved under the Operations Budget for the relevant period

gives the amounts available for appropriations by NTADCL

Section 15.4 Appropriation

(a) The amount available for appropriations as calculated under Section 15.3 shall be applied on the last date on which the relevant quarter ends being 31st March, 30th June, 30th September and 31st December (an illustration of the appropriation is given in Schedule D):

(i) first, the amount available for appropriation as set out in Section 15.3 in the payment of the Return for that quarter as on that quarter end date (as calculated in accordance with paragraph (b) below); and

(ii) secondly, the balance (if any) in reduction of the Total Cost of Project outstanding on the last date of the relevant quarter

(b) The Return due to NTADCL will be calculated by NTADCL (in consultation with the Independent Auditor) from the date of investment (the last day of the quarter during which the investment was made shall be the date of investment notwithstanding the actual date of investment being different) till recovery thereof and on a 365 day year and quarterly rests basis by reference to the outstanding Total Cost of Project on the last day of the quarter. The amount of
revenues available for appropriations on the last day of the quarter shall be offset against the Return for that quarter calculated on the outstanding Total Cost of Project on the last day of the quarter in the event of any shortfall in the amount required to be applied under Section 15.4 (a) (i), the amount of such shortfall shall form part of the Total Cost of Project as on the last day of the immediately succeeding quarter.

Section 15.5

While calculating the outstanding Total Cost of Project and the amounts available for Appropriation and various costs and expenses under Section 15.1 through 15.4, the Independent Engineer and the Independent Auditor shall disallow claims for expenses which are in excess of the norms set out in Schedule J.

ARTICLE 16
INDEPENDENT AUDITOR

Section 16.1

NTADCL shall, in consultation with the Lenders, within a period of 30 days from the date of Financial Close, propose a panel of three reputable audit firms, to act as the Independent Auditor, of which one shall be approved by GOTN, within a period of 15 days from the date of receipt of the panel of names. Within 15 days following such approval, NTADCL shall appoint the Independent Auditor. The Terms of Reference shall be substantially those terms set out in Schedule Q. NTADCL shall consult with the Independent Auditor in the calculation of all amounts under Article 15 and shall provide, at the end of each financial year, a certificate from the Independent Auditor confirming the accuracy of all calculations made during the relevant financial year. NTADCL may remove the Independent Auditor, upon 30 days notice to GOTN but subject to the prior approval of GOTN and a substitute Independent Auditor having been agreed and appointed in accordance with this clause.

Section 16.2

Within 30 days of the date NTADCL submits the Landed Cost as calculated by it under provisions of Section 15.2, the Independent Auditor shall certify the accuracy of the Landed Cost so submitted in consultation with the Independent Engineer.

Section 16.3

The Independent Auditor shall audit and verify the Total Cost of Project determined by NTADCL under Section 15.1 within a period of 30 days from the date of submission thereof, and shall notify GOTN and NTADCL in writing as soon as the Total Cost of Project has been recovered by NTADCL (which notice will include a certification from the Independent Auditor confirming such recovery).

Section 16.4

In the event NTADCL is unable to recover the Total Cost of Project as
determined under Section 15.1 on or before the expiry of 30 years from the first Operations Date, the Independent Auditor shall submit a report to that effect to GOTN and NTADCL, which specifies the amount of the Shortfall in recovery and outstanding Total Cost of Project and the Returns thereon.

Section 16.5

The professional fees, costs and expenses of the Independent Auditor shall be borne by NTADCL and shall be taken into account for determining the Total Cost of Project until the date of issuance of Final Construction Completion Certificate and thereafter would become part of the Owner’s Cost. NTADCL hereby undertakes that the Independent Auditor shall have sufficient funds to meet the costs and expenses incurred by the Independent Auditor, as agreed in the terms of its appointment, in the course of discharging its functions specified in this Agreement.

Section 16.6

The Independent Auditor shall furnish data to the Prices Review Committee at the request of NTADCL or as requested by the Prices Review Committee from time to time in accordance with Section 17.5

ARTICLE 17
CHARGES & PRICES

Section 17.1 Charges

(a) GOTN and TM hereby grant to NTADCL the right and entitlement to determine, the Price of Potable Water and the Price of Sewage Treatment, connection fee, reconnection fee and security deposit in accordance with the terms of this Agreement and, demand from and charge to the Purchasers the charges for the Services provided by it pursuant to this Agreement and to collect, retain, appropriate securities, charge and hypothecate the same. The Charges shall be more specifically, in the nature of:

(i) the Water Charge and
(ii) the Sewage Charge

NTADCL may at its discretion for reasons of commercial expediency charge Prices which are less than the amounts to which it is entitled to charge in accordance with this Agreement. NTADCL may, at its sole discretion, also provide a rebate in the Charges, if the Purchasers make prompt payments thereof prior to the due dates.

(b) The Water Charge shall be governed under by the provisions of the BWSA and the Service Agreements and shall comprise of: (i) amount which is the higher of (I) the Water Capacity Charge or (II) the product of Price of Potable Water and the Volume of Potable Water registered at the Water Offtake Points for each Purchaser, and (ii) any Taxes imposed in relation to the Project that are passed through to the Purchasers.
The Price of Potable Water / Price of Sewage Treatment shall be determined in accordance with the provisions of Sections 17.3 and 17.4 herein below. Besides the Water Charge, NTADCL is entitled to collect a one time connection fee, reconnection fee and security deposit. NTADCL shall be at liberty to determine by negotiations, the amount of connection / reconnection fee and security deposit including deposit terms with the Purchasers and the same shall be recorded in the BWSA and the Service Agreements. In respect of TM no connection fees will be levied by NTADCL.

Notwithstanding the provisions of this Section 17.1(b), NTADCL shall have the right to require the Purchasers to either take a minimum volume of Potable Water at all times or to pay for the said minimum volume in order to ensure payment of a minimum charge ("Water Capacity Charge") subject always to the terms of the BWSA or of the Service Agreements, as the case may be.

(c) The Sewage Charge for the provision of Sewage Treatment Service to TM, shall be governed by the provisions of the BWSA and shall comprise of: (i) the amount which is higher of (I) the Sewage Capacity Charge or (II) the product of Price of Sewage Treatment and the Volume of Sewage delivered by TM at the Sewage Offtake Point, as registered by the meters maintained by NTADCL at the Sewage Offtake Points (ii) any Taxes imposed in relation to the Project that are passed through to the Purchasers. The Price of Sewage Treatment shall be determined in accordance with the provisions of Sections 17.3 and 17.4 herein below.

Besides the Sewage Charge, NTADCL is entitled to collect a one time connection fee, reconnection fee and security deposit. NTADCL shall be at liberty to determine by negotiation the amount of connection/reconnection fee and security deposit including deposit terms with TM, and the same shall be recorded in the BWSA. Notwithstanding the provision of this Section 17.1 (c), NTADCL shall have the right to require TM to provide a minimum volume of Sewage at all times in order to ensure a payment of minimum charge ("Sewage Capacity Charge") subject always to the terms of the BWSA. During suspension of Services pursuant to reasons not attributable to NTADCL, NTADCL shall be entitled to collect the Charges for the volume of Sewage offtaken prior to the suspension of Services or the Sewage Capacity Charge, whichever is higher, subject always to the terms of the BWSA.

(d) Notwithstanding the contents of this Article the Sewage Charge, connection fee, and the security deposit for Sewage Offtake and Treatment Service shall be levied and collected by NTADCL only after the prior approval of GOTN and TM.

(e) The Charges will be in the nature of price paid for Services rendered and are not in the nature of any tax or fee. The rates of Price of Potable Water and Price for Sewage Treatment shall be determined by NTADCL and reviewed periodically under the provisions of Sections 17.3, 17.4 and 17.5 or in such other circumstances as specifically provided for in this Agreement and having regard to
various criteria, parameters and factors in order to allow NTADCL to recover Total Cost of Project along with the Returns thereon before the expiry of 30 years from the first Operations Date.

(f) NTADCL shall be entitled to levy a Surcharge on the Price of Potable Water supplied for Non Domestic Purposes to Industrial Units at a rate to be determined by the Prices Review Committee, to set off any foreign exchange liability devolved on NTADCL due to material changes in the foreign exchange rates. The Price Review Committee would determine the amount of Surcharge per kilo litre of water based on the report of the Independent Auditor

Section 17.2 Collection of Charges

(a) The collection of Charges (other than in the area within TM) may be delegated by NTADCL to the O & M Operator and/or other Persons, who shall collect such Charges as agents for and on behalf of and in the name of NTADCL.

(b) GOTN expressly recognises that if any Purchaser fails to pay Charges as required, NTADCL may exercise all rights and remedies available under the Law for recovery of Charges and/or under the other contracts including suspension or termination or cancellation of supply of Services to the Purchaser, provided that NTADCL shall not suspend or terminate the supply of Service to any Purchaser without giving at least seven days prior written notice to such Purchaser.

Section 17.3 Initial Price

(a) Initial Price of Potable Water

The Initial Price of Potable Water to be levied by NTADCL on the Operations Date of the relevant Service are stipulated as under:

(i) In relation to the Way Side Villages, the Initial Price of Potable Water shall be at the rate of Rs. 3.50 per kilo litre of Potable Water or at such other rate levied by Tamil Nadu Water Supply and Drainage Board for the supply of bulk water to rural habitations; provided however, in the event, a Way Side Village appropriates the Potable Water supplied to it to any purchaser or Person within or outside the village in order to profit from differences in rate of Water Charges to the various Purchasers or for any other reason, NTADCL upon conducting a spot inspection and submitting a report thereof to GOTN, shall be entitled to levy on such Way Side Village, Water Charges at the same rate, as is collected from Purchasers in Section (iii) herein below.

(ii) In relation to TM the Initial Price of Potable Water shall consist of two components. First, the Price of Potable Water at Rs. 5.00 per kilo litre for Domestic Purposes and second the Price of Potable Water for Non Domestic Purposes. The
Water Charges to be paid by TM to NTADCL shall be determined based on the above unit rates in respect of Domestic Purposes and in respect of Non Domestic Purposes as set out in Section 17.3 (iii) below and the agreed year wise demand as specified in Schedule S of this Agreement and the BWSA. TM hereby undertakes to charge Industrial Units within TM at a rate not lower than the rates charged by NTADCL to Industrial Units outside TM and, as revised from time to time pursuant to the rates charged to this agreement and the BWSA and the Service Agreements for the supply of Potable Water for Non Domestic Purposes within the area under its jurisdiction.

(iii) In relation to Non Domestic Purposes, the Initial Price of Potable Water to the Industrial Units shall be that rate per kilo litre of Potable Water supplied which enables NTADCL recover the Total Cost of Project and the Returns due thereon within a period of thirty years from the first Operations Date as per the principles set out in Schedules J, V and E of this Agreement.

(b) Initial Price of Sewage Treatment

The Initial Price of Sewage Treatment to be levied by NTADCL to TM on the Operations Date of the relevant service shall be as determined by consultation amidst the Parties

(c) NTADCL, GO TN and TM hereby agree and acknowledge that the fixing of the Charges under this provision, has been carried out on the basis that they are commercially expedient as shall be determined by NTADCL. However, at the insistence of GO TN, the price of Potable Water for Domestic Purpose is subsidized. With a view to reduce the gap between pricing of Potable Water supplied for Domestic and Non Domestic purposes in due course of time different formulae are proposed to be applied for revising the Prices for Domestic Purposes and for Non Domestic Purposes by treating them as separate classes. For this purpose, NTADCL may in consultation with GoTN and TM, fix appropriate value for the Subsidy Correction Factor after 2 years from the date of issuance of Final Construction Completion Certificate, for every year thereafter.

Section 17.4 Price Adjustment for Recovery of Total Cost of Project and Returns

(a) The Price of Water required for recovery of Total Cost of Project and Returns thereon, over the Concession Period are, based on the assumptions listed in Schedule V.
(b) The Parties confirm that NTADCL has provided, calculations in support of the Prices required for recovery of the Total Cost of Project and Returns thereon, over the Concession Period, based on the assumptions and principles set out in Schedule V. Within 30 days from the date of appointment of the Independent Auditor NTADCL shall provide, calculations in support of the above Prices required for recovery of the outstanding Total Cost of Project and Returns thereon, during the Concession Period.

(c) Upon issuance of the Final Construction Completion Certificate the Independent Engineer and Independent Auditor shall certify the Landed Cost on the date of issuance of the Final Construction Completion Certificate of the Project. Within 30 days of such certification, NTADCL shall calculate and submit to the Independent Auditor the revised prices required for the recovery of outstanding Total Cost of Project and Returns thereon over the Concession Period. The Independent Auditor shall verify the calculations based on the assumptions set out in Schedule V as well as the norms of Performance set out in Schedule J and Variations as set out in Schedule E and certify such revised prices within 30 days of submission by NTADCL. For the avoidance of doubt, any such revisions shall be applicable only to the Prices for Non Domestic Purposes.

(d) The Variations shall be allowed in respect of only those assumptions which are outside the reasonable control of NTADCL and which are not attributable to any negligence of NTADCL.

Section 17.5 Review of Prices

NTADCL shall review and revise the Price of Potable Water in each year based on the principles and formulae set out in this section:

(a) First year revision

On 1st July of the year immediately succeeding the first Operations Date, the Price of Potable Water and Price of Sewage Treatment in respect of all the Purchasers would be revised as under:

(i) in relation to supply for Domestic Purposes within the area under the jurisdiction of TM, the Price of Potable Water will be revised in accordance with the following formula:

\[
P_1 = P_0 \times (a \times E_1/E_0 + b \times WPI(i)/WPI(o) + c \times CPI(i)/CPI(o) + d \times CPI(i)/CPI(o))
\]

Where:

- \(P_1\) = New Price of Potable Water
- \(P_0\) = Existing Price of Potable Water
- \(a\) = Weightage for electricity consumption
- \(E_1\) = Electricity Rate per kilo watt hour as on 31st March of the year the revision is being made
- \(E_0\) = Electricity Rate per kilo watt hour as on the
Operations Date
b = Weightage for Consumables
c = Weightage for all other Operation and Maintenance Expenses
d = Weightage for Owner’s Cost

$CPI(0) = CPI$ as of the Operations Date
$CPI(i) = CPI$ as of $31^{st}$ March of the year in which the revision is being made

$WPI(0) = WPI$ as of the Operations Date
$WPI(i) = WPI$ as of $31^{st}$ March of the year in which the revision is being made

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses

The Weightages shall be as determined by the Operations Budget approved for the Year ending $31^{st}$ March of the year in which the revision is being made

(ii) in relation to supply for Non Domestic Purposes, the Price of Potable Water / Waste Water will be revised in accordance with the following formula:

$P1 = P0 \times (a \times \frac{E1}{E0} + b \times \frac{WPI(i)}{WPI(0)} + c \times \frac{CPI(i)}{CPI(0)} + d \times \frac{CPI(i)}{CPI(0)})$

Where:
$P1 = New \ Price \ of \ Potable \ Water$
$P0 = Existing Price of Potable Water$
$a = Weightage for electricity consumption$
$E1 = Electricity Rate per kilo watt hour as on $31^{st}$ March of the year the revision is being made$
$E0 = Electricity Rate per kilo watt hour as on the first Operations Date$

b = Weightage for Consumables
c = Weightage for all other Operation and Maintenance Expenses
d = Weightage for Owner’s Cost

$CPI(0) = CPI$ as of the Operations Date
$CPI(i) = CPI$ as of $31^{st}$ March of the year in which the revision is being made

$WPI(0) = WPI$ as of the Operations Date
$WPI(i) = WPI$ as of $31^{st}$ March of the year in which the revision is being made

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses
The Weightages shall be as determined by the Operations Budget approved for the Year ending 31st March of the year in which the revision is being made

(iii) in relation to the Sewage, the Price for Sewage Treatment shall be revised in accordance with the following formula:

\[ S1 = S0 \times (a \times \frac{E1}{E0} + b \times \frac{WPI(i)}{WPI(o)} + c \times \frac{CPI(i)}{CPI(o)} + d \times \frac{CPI(i)}{CPI(o)}) \]

Where:
- \( S1 \) = New Price for Sewage Treatment
- \( S0 \) = Existing Price for Sewage Treatment
- \( a \) = Weightage for electricity consumption
- \( E1 \) = Electricity Rate per kilo watt hour as on 31st March of the year the revision is being made
- \( E0 \) = Electricity Rate per kilo watt hour as on the Operations Date
- \( b \) = Weightage for Consumables
- \( c \) = Weightage for all other Operation and Maintenance Expenses
- \( d \) = Weightage for Owner's Cost

\[ WPI(o) = \text{WPI as of the Operations Date} \]
\[ WPI(i) = \text{is the WPI as of 31st March of the year the revision is being made} \]
\[ CPI(o) = \text{CPI as of the Operations Date} \]
\[ CPI(i) = \text{is the CPI as of 31st March of the year the revision is being made} \]

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses and Owners' Cost.

The Weightages shall be as determined by the Operations Budget approved for the Year ending 31st March of the year in which the revision is being made

(iv) The first year revisions will not apply to Way Side Villages.

(b) Subsequent Annual Revisions

Effective from the 1st July each year succeeding the first year revision NTADCL shall review the Prices and revise the rates of prices based on the principles and formulae set out below:

(i) in relation to Way Side Villages, the rate of Water Charge shall be revised by NTADCL in consultation with GOTN and such revision shall take place every two years.
(ii) in relation to supply for Domestic Purposes within the area under the jurisdiction of TM, the Price of Potable Water will be revised in accordance with the following formula:

\[ P1 = P0 \times S \times (a \times E1/E0 + b \times \frac{WPI(i)}{WPI(0)} + c \times \frac{CPI(i)}{CPI(0)} + d \times \frac{OC(i)}{OC(0)}) \]

Where:

- **P1** = New Price of Potable Water
- **P0** = Existing Price of Potable Water
- **S** = Subsidy Correction Factor (from the time it is decided to be applied by the Prices Review Committee)
- **a** = Weightage for electricity consumed per kilo litre
- **E1** = Electricity Rate per kilo watt hour as on 31st March of the year the revision is being made
- **E0** = Electricity Rate per kilo watt hour as on the 31st March of the previous year
- **b** = Weightage for Consumables per kilo litre
- **c** = Weightage for all other Operation and Maintenance Expenses
- **d** = Weightage for Owner’s Cost
- **OC(i)** = Owners Cost for the Previous Year (Year n)
- **OC(o)** = Owners Cost for the Year n-1
- **CPI(o)** = CPI as of the 31st March of the Previous year
- **CPI(i)** = is the CPI as of 31st March of the year the revision is being made
- **WPI(o)** = WPI as of the 31st March of the Previous year
- **WPI(i)** = is the WPI as of 31st March of the year the revision is being made

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses

The Weightages shall be determined as per the methodology enumerated in Schedule J

(iii) in relation to supply for Non Domestic Purposes, the Price of Potable Water will be revised in accordance with the following formula:

\[ P1 = P0 \times (a \times E1/E0 + b \times \frac{WPI(i)}{WPI(0)} + c \times \frac{CPI(i)}{CPI(0)} + d \times \frac{OC(i)}{OC(0)}) \]

Where:

- **P1** = New Price of Potable Water
- **P0** = Existing Price of Potable Water
- **a** = Weightage for electricity consumed per kilo litres
E1 = Electricity Rate per kilo watt hour as on 31st March of the year the revision is being made

E0 = Electricity Rate per kilo watt hour as on the 31st March of the previous year

b = Weightage for Consumables per kilo litre

c = Weightage for all other Operation and Maintenance Expenses

d = Weightage for Owner’s Cost

OC (i) = Owners Cost for the Previous Year (Year n)

OC (o) = Owners Cost for the Year n-1

CPI (o) = CPI as of the 31st March of the previous year

CPI(i) = is the CPI as of 31st March of the year the revision is being made

WPI (o) = WPI as of the 31st March of the previous year

WPI(i) = is the WPI as of 31st March of the year the revision is being made

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses

The Weightages shall be determined as per the methodology enumerated in Schedule J

(iv) in relation to the Sewage, the Price for Sewage Treatment shall be revised in accordance with the following formula:

S1 = S0 x (a x E1/E0 + b x WPI(i)/WPI (o) + c x CPI(i)/CPI(o) + d x OC (i)/ OC (o))

Where:

S1 = New Price for Sewage Treatment

S0 = Existing Price for Sewage Treatment

a = Weightage for electricity consumed per kilo litre

E1 = Electricity Rate per kilo watt hour as on 31st March of the year the revision is being made

E0 = Electricity Rate per kilo watt hour as on the 31st March of the previous year

b = Weightage for Consumables per kilo litre

c = Weightage for all other Operation and Maintenance Expenses

d = Weightage for Owner’s Cost

OC (i) = Owners Cost for the Previous Year (Year n)

OC (o) = Owners Cost for the Year n-1
WPI(o) = WPI as of the 31st March of the previous year
WPI(i) = is the WPI as of 31st March of the year the revision is being made
CPI(o) = CPI as of the 31st March of the previous year
CPI(i) = is the CPI as of 31st March of the year the revision is being made

WPI is in respect of Consumables and CPI is in respect of other Operation and Maintenance Expenses and Owners' Cost.

The Weightages shall be determined as per the methodology enumerated in Schedule J.

In respect of Price for supply of Potable Water for Domestic Purposes within TM, the Parties agree that the increase, based on the foregoing annual formula, could be effected either on an annual or a block basis every three years. The revisions if made effective once in three years the amount of entitled increase for the three year period shall be computed on the basis of the formula on an annual cumulative basis and aggregated.

NTADCL would determine and submit, on the 1st of June of each year, to the Prices Review Committee, constituted in accordance with Section 17.6 of this Agreement, the revised Prices for the following Year calculated based on the above formulae and duly certified by the Independent Auditor. The Prices Review Committee shall within ten days from the date of receipt of the calculations confirm to NTADCL the calculations and the entitled Price based on the provisions of 17.6 of this Agreement.

NTADCL shall revise the then price of Potable Water and price of Sewage Treatment on the basis of the confirmation provided by the Prices Review Committee and these Prices shall become effective on 1st of July of that Year. The provisions contained in Section 17.6(c) shall apply to all increase in Prices and or changes in the formulae set out in Section 17.5.

In computing the annual revision in Prices NTADCL would give effect to any orders of the Prices Review Committee relating to increase in Prices, as determined under Section 17.6 (c) below save and except in respect of annual revisions as set out in the section 17.6.

Section 17.6 Review of Formulae and basis for determining Prices

(a) For the purpose of confirming the annual revisions and for revising the formulae specified in Section 17.4 and for the purposes of reviewing the basis for determining Prices, NTADCL shall establish within 30 days of the Operations Date a Prices Review Committee comprising of one representative nominated by GOTN (in
consultation with TM), one representative of NTADCL and a retired judge (who shall be the Chairperson of the Prices Review Committee) of any of the High Courts of Judicature in India. The Chairperson of the Prices Review Committee shall be selected by GOTN and NTADCL through mutual consultation within a period of 15 days. NTADCL shall have the right to submit a demand for a review in the Prices to the Prices Review Committee as set out below

(b) **Annual Revisions**

In respect of annual revisions NTADCL would determine and submit, on the 1\textsuperscript{st} of June of each year, to the Prices Review Committee, constituted in accordance with this Section 17.6, the revised Prices for the following Year calculated based on the formulae set out in Section 17.5(b) of this Agreement and duly certified by the Independent Auditor. The Prices Review Committee shall within ten days from the date of receipt of the calculations confirm to NTADCL the calculations and the entitled Price to be recovered.

(c) **Unexpected increase in Prices and Review of Formula for annual revisions**

Any demand for review in Prices on account of unexpected reasons shall be made within one Month of occurrence of the events set out in Section 17.7 The Prices Review Committee shall determine the revised rate and the effective date of such revision within a period of one Month from date of receipt of demand for revision in Prices from NTADCL in respect of increases demanded in accordance with the provisions set out in Section 17.7. It is obligatory for the Prices Review Committee to consider the recovery of the outstanding Total Cost of Project and the Returns due thereon, over the period of thirty years from the first Operations Date, based on the assumptions and principles set out in Schedule V, and in accordance with the performance norms as set out in Schedule J as the guiding principle and decide the request for revisions in Prices from time to time.

The Prices Review Committee shall for considering the request of NTADCL for review in Charges, review the basis for determining Charges and in particular, the formulae stipulated in Section 17.5 above once in every three years in the usual course or on the occurrence of any event set out in Section 17.6.

(d) **Decisions of the Prices Review Committee:**

All the decisions of the Prices Review Committee shall be final and binding unless any of the Parties raises a dispute in relation thereto within a period of fifteen days from the date thereof. Any dispute relating to a decision of the Prices Review Committee shall be settled by arbitration under the provisions of Section 29.1(e); provided however that the Parties shall implement such a decision of the Prices Review Committee till the time of a decision relating to unexpected increase in prices or changes in the annual revision formulae is reversed by the Arbitration Panel, in which case the decision of the
Arbitration Panel shall be complied with. In respect of the decision of the Prices Review Committee relating to the annual revisions NTADCL shall comply with the same in case the decision points out errors if any in the calculations submitted to the Prices Review Committee. In case the Prices Review Committee either denies the entitlement of NTADCL for the increase in Prices or grants a lower increase than the entitled Price calculated as per the formula set out in 17.5, NTADCL shall implement the increase in Prices on the basis of the calculations duly certified by the Independent Auditor and submitted to the Prices Review Committee, to be effective 1st July of that year. GOTN/TM if aggrieved by any decision relating to annual revisions may raise a dispute on the action of NTADCL in increasing the Prices effective 1st July on or before 31st July of that year. In respect of other request for increases of NTADCL within a period of 15 days within which the decision of the Prices Review Committee became effective any of the Parties aggrieved by the decision of the Prices Review Committee may raise a dispute. All such disputes shall be in accordance with Section 29.1(e) of this Agreement. The Parties shall however be bound by the decision of the arbitration proceedings as set out in Section 29.1(e) of this Agreement if such a proceeding is initiated within the time as above stated.

Section 17.7 Unexpected Increase in Prices

In the event that:

(i) the River Cauvery should move from its present location;
(ii) increase in the Total Cost of Project consequent to the Water Shortage Period as specified under 19.2 (c);
(iii) the quality of water in River Cauvery falls below the levels specified in Schedule L hereto;
(iv) there is a variation in the standards required of Potable Water or of Sewage Disposal as determined by GOTN or any statutory body or Competent Authority;
(v) the nature of impurities and toxic levels of the Sewage being treated rises above the levels specified in Schedule L hereto;
(vi) there occurs a Force Majeure event, Change in Law or a Change in Tax;
(vii) there is a failure in the supply of electricity or an increase in the price of electricity having a Material Adverse Effect on the Project
(viii) there is hyperinflation in excess of 15 % at any point in a financial year in Indian Economy
(ix) GOTN requires any payment by NTADCL in respect of the Concession and/or any Competent Authority requires any additional payment including without limitation rental or sales tax in relation thereto or increase, in any manner, the amount of rental for the Lease of the Sites under Article 7 and royalty payable by NTADCL to GOTN under Section 2.4

(x) changes in the Foreign Exchange rates being devaluation of the rupee against US dollar at a rate in excess of 6% per annum affecting the ability of NTADCL to make foreign currency payments

(xi) if the outstanding Total Cost of Project and Returns thereon is not recoverable within 30 years from the first Operations Date as certified by the Independent Auditor, having a Material Adverse Effect, NTADCL shall have the right to demand an increase in the Prices. Such demand for review in Prices shall be made within one Month of occurrence of the aforesaid events in order to enable NTADCL to recover the Total Cost of Project along with the Returns, thereon. The Prices Review Committee shall determine the revised rate within a period of one Month from date of receipt of demand for increase in Prices from NTADCL.

Section 17.8 Changes in Tax

(a) In the event any Tax is introduced, levied or charged on NTADCL in relation to the Concession or the Services provided by NTADCL, which did not exist or affect NTADCL at the date of execution of this Concession Agreement, and which has a Material Adverse Effect, NTADCL shall have the right to petition, at any time, the Prices Review Committee to review the Prices and the formula for determining the same within two months. Upon receipt of the petition from NTADCL, the Prices Review Committee shall review the Prices to the extent necessary to ensure that, to the extent reasonably possible NTADCL after such Change in Tax, is substantially in the same financial position under this Concession Agreement as it would have been had the Change in Tax not occurred

(b) In the event NTADCL exercises its right to review the Prices in accordance with Section 17.7 (a) hereinafore, NTADCL shall give GOTN and TM notice of the occurrence of such Change in Tax and specify the new Prices so determined by the Prices Review Committee, whereupon the Purchasers shall become liable to pay at the higher rate from the fifteenth day from issue of such notice. The said notice shall also be published in the TM Area and the other parts of the Service Area.

Section 17.9 Changes in Law

(a) In the event of any Change in Law in relation to the Concession or the Services, to be performed under it, and which has a Material Adverse Effect, NTADCL shall have the right to petition the Prices
Review Committee to review the Prices and formula for determining the same. Upon receipt of petition from NTADCL, the Prices Review Committee shall review and revise the Prices to the extent necessary to ensure, to the extent reasonably possible, that NTADCL after such Change in Law, is substantially in the same financial position under this Concession Agreement as it would have been had the Change in Law not occurred.

(b) In the event NTADCL exercises its right to review the Prices in accordance with Section 17.8(a), hereinafter, NTADCL shall give GOTN and TM notice of the occurrence of such Change in Law and specify the new Prices so determined by Prices Review Committee, whereupon the Purchasers shall become liable to pay the higher rate from the fifteenth day from issue of such notice. The said notice shall also be published in the TM and other parts of the Service Area.

ARTICLE 18
INSURANCE

Section 18.1

(a) NTADCL shall, on and from the Construction Commencement Date, maintain or cause to be maintained, at its own expense, insurance policies as are customarily and ordinarily available in India on commercially reasonable terms and reasonably required to be maintained, consistent with similar facilities of the size and type of the Facilities and as may be required by the Lenders.

(b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage, shall be accounted as expenses for the Project and shall, prior to the Operations Date, be included in Other Costs of Commissioning and, thereafter, as Owner's Cost

ARTICLE 19
WATER SHORTAGE PERIOD

Section 19.1 Water Shortage Period

(a) A Water Shortage Period shall commence upon:

(i) The determination by NTADCL and the certification thereof by the Independent Engineer, that NTADCL is unable to draw, for reasons not attributable to the negligence of NTADCL, a volume of 185 (one hundred and eighty five) MLD off Raw Water at the Abstraction Area; or

(ii) GOTN notifying the commencement of a lean period due to which NTADCL is unable to draw a volume of 185 (one hundred and eighty five) MLD of Raw Water at the Abstraction Area.
(b) NTADCL shall notify the commencement of a Water Shortage Period to the Purchasers, which shall be deemed to have commenced from the first hour, during which NTADCL was unable for reasons not attributable to the negligence of NTADCL to draw, the allocated volume of Raw Water at the Abstraction Area from the River Cauvery and to distribute the required volume to the Purchasers and such notice shall be confirmed by the Independent Engineer as early as practicable.

(c) The Water Shortage Period shall cease when the Independent Engineer notifies that NTADCL is able to draw a volume of 185 (one hundred and eighty five) MLD of Raw Water from the Abstraction Area and NTADCL is able to distribute the required volume to the purchasers for a continuous period of 48 hours or that lean period has ceased to exist, as the case may be.

Section 19.2 Water Treatment and Supply Suspension Period

During the subsistence of a Water Shortage Period, or when there is failure in electricity supply to the Facility or any part thereof or when the water quality at the Abstraction Area is not in accordance with those setout in Schedule L NTADCL is entitled to suspend Services which are not practicable to be maintained, provided NTADCL is not in any Breach and has made reasonable endeavours to maintain the Services. For avoidance of any doubt NTADCL shall be required to maintain Services in other parts of the Facility in the event of electricity failure being only in a part of the Facility to the extent reasonably practicable.

When the water quality at the Abstraction Area is not in accordance with Schedule L, NTADCL shall monitor the quality on a daily basis and as soon as the water quality is in accordance with Schedule L shall immediately as is reasonably practicable re-commence the Services.

Section 19.3 Effect of Water Treatment and Supply Suspension Period

During the subsistence of Water Treatment and Supply Suspension Period:

(a) NTADCL shall have the right to suspend Services and be relieved of its obligation under this Agreement, the BWSA and the Service Agreements upon confirmation of the Water Treatment and Supply Suspension Period by the Independent Engineer. NTADCL shall have the right to suspend supply or supply a lesser volume of Potable Water than that contracted for with the Purchasers to the extent feasible and the Purchasers shall accept the volume of water so supplied.

(b) NTADCL shall endeavor to reduce the supply of Potable Water proportionally to all the Purchasers.

(c) NTADCL shall have the right, to be exercised at its sole discretion and without prejudice to other remedies it has under the terms of this
Agreement in relation thereto, to identify and draw Raw Water from a different source or site other than the Abstraction Area in the event that the Water Treatment and Supply Suspension Period continues for a period longer than seven (7) days. GOTN shall grant necessary Clearances to enable NTADCL to draw Raw Water from such an alternate source or site as identified by NTADCL, provided that such drawl of water will not affect the rights of existing concessionaires at such alternate source or site. NTADCL shall have a right to receive an extension of this Agreement in relation to the alternate source or site for drawl of Raw Water. Without prejudice to the generality of this provision, it is hereby agreed by the Parties that in such circumstances NTADCL shall exercise its right to an alternate source of water only if such an alternate source is proximate and the abstraction therefrom shall not lead to an increase in the Total Cost of the Project by more than 0.5%.

Section 19.4 Sewage Offtake Suspension Period

(a) A Sewage Offtake Suspension Period commences upon the suspension by NTADCL of the offtake of Sewage from TM:

(i) upon deterioration in the quality of Sewage from the standards specified under Schedule L, such suspension being in accordance with the provisions of Section 19; or

(ii) upon a fall in the volume of the Sewage from TM to a volume below the Sewage Minimum Offtake specified in the BWSA; or

(iii) upon an increase in volume exceeding the maximum offtake volume specified in the BWSA.

(b) During the Sewage Offtake Suspension Period NTADCL shall have the right to suspend Services and be relieved of its obligation under this Agreement, and the BWSA upon confirmation of the Sewage Offtake Suspension Period by the Independent Engineer. NTADCL shall have made reasonable endeavors for maintenance of Services prior to such suspension.

(c) GOTN and TM hereby agree to indemnify and keep NTADCL indemnified against any and all liability or claims, costs, charges, expenses etc arising from the suspension of the offtake of Sewage by NTADCL. The Sewage Offtake Suspension Period shall cease when the circumstances leading to the Sewage Offtake Suspension Period cease to exist, as certified by the Independent Engineer.

Section 19.5 Water Shortage Period Fund

(a) GOTN recognizes the need to finance and implement full maintenance schedules with respect to the Facilities during the Water Treatment and Supply Suspension Period, when, lack of continuous flow of water could seriously degrade the Facilities.
(b) To support the financing and maintenance of the Facilities during the aforesaid periods, including the Water Shortage Period, GOTN shall create, prior to the Construction Commencement Date, a public deposit account, in the name of NTADCL and as per the rules of GOTN and shall deposit therein an amount determined in accordance with Section 19.5(d), below. This deposit shall constitute the Water Shortage Period Fund.

(c) The Water Shortage Period Fund shall not be subject to any charge, lien, hypothecation or Encumbrance.

(d) GOTN shall make an initial; deposit in the Water Shortage Fund of a sum equivalent to the aggregate of six months outgoings of NTADCL towards,

i) Debt Service, excluding the amount of Debt Service, which is required on account of the Productivity Investments;

ii) payment of the Operation and Maintenance Expenses excluding the variable expenses and excluding operation & maintenance expenses pursuant to the Productivity Investments and

iii) the Owners Cost excluding expenses relating to Productivity Investments and

iv) GOTN shall maintain the same with sufficient balances at all times equivalent to the aggregate of six months outgoings of NTADCL, as above stated, as certified by the Independent Auditor.

(e) Upon Commencement and for the duration of a Water Shortage Period, NTADCL shall have the right to draw from the Water Shortage Period Fund such amounts as set out in Section 19.5(d) herein above that are certified by the Independent Auditor as being necessary for NTADCL: (i) to meet its Operation and Maintenance Expenses, excluding operation & maintenance expenses pursuant to the Productivity Investments and Owners Cost and fulfill all standards and specifications set out in Schedule C and (ii) to meet the Debt Service obligations to the Lenders under the Financing Agreements, excluding the amount of Debt Service, which is required on account of the Productivity Investments. The Independent Auditor shall certify to GOTN, when called upon to do so by NTADCL, of shortfalls in cash flows (of NTADCL) with respect to Operation and Maintenance Expenses and Owner’s Cost and Debt Service.

(f) The Water Shortage Fund shall be reviewed every year and balance as required in accordance with Section 19.5(d) shall be maintained on a replenishment basis for an amount determined in accordance with Section 19.5 (b) above, from the Construction Commencement Date to the date on which this Agreement terminates.
(g) GOTN shall not be liable for meeting any cost of NTADCL in respect of the additional water drawl right of 65 MLD, which may be granted to NTADCL in accordance with Article 9.1 of this Agreement.

(h) The Water Shortage Period Fund shall revert to GOTN upon termination of this Agreement or at the end of the Concession Period.

ARTICLE 20
ENVIRONMENT AND SOCIAL ASSESSMENT

Section 20.1
The Parties will each comply with their respective obligations specified in the Environment and Social Assessment Report set out in Schedule N.

Section 20.2
(a) GOTN undertakes that it shall bear the costs of acquisition of the Sites, Sludge Disposal Sites and Site for the System required under Law. NTADCL shall rehabilitate, any Persons or businesses that may have to be displaced in the course of the acquisition NTADCL shall bear the costs in relation to the rehabilitation of such Persons as detailed under the Environment and Social Assessment Report and all the additional costs payable in addition to the statutory compensation by GOTN.

(b) GOTN further hereby agrees to indemnify and keep indemnified NTADCL against any actions or liabilities which may arise as a consequence of such acquisition. The Parties hereby agree that any cost incurred by NTADCL in relation to the environmental and social aspects of the Project which are not specified and assumed by NTADCL under the Environment and Social Assessment Report shall be added to the Other Costs of Commissioning or Owners Cost, as the case may be and shall be included in the Total Cost of Project.

(c) GOTN hereby undertakes to regulate use and / or extraction of ground water for Non Domestic Purposes (excluding agriculture) in Service Area and within the radius of 30 kms from the outermost boundary of the Service Area in Erode and Coimbatore districts as set out in Section 2.8

Section 20.3 Deterioration in Quality of Raw Water

(a) The Water Treatment Facility will be designed by NTADCL, for treating Raw Water of the quality, presently existing in the River Cauvery, and specified in Schedule L to the levels of Potable Water specified in Schedule C hereto. GOTN undertakes to take such measures as may be necessary to ensure that the quality of Raw Water at the Abstraction Area conforms to the quality standards specified in Schedule L.

(b) NTADCL shall monitor the quality of Raw Water being drawn by the Water Treatment Facility from the River Cauvery. If the quality of
Raw Water deteriorates, NTADCL may give notice to GOTN of the results of any Raw Water test and GOTN shall consider initiation of appropriate and necessary action against any Person who NTADCL believes may be making unlawful discharges into the River Cauvery and GOTN shall immediately investigate the activity of that Person and take appropriate action to enforce environmental legislation and prevent further unlawful discharges. In addition, in the interests of public safety, in addition to the right to inform GOTN and TM of deterioration in the quality of water in the River Cauvery, NTADCL may also inform the Purchasers of such deterioration.

(c) NTADCL will have the right to reduce the volume of or suspend the drawal of Raw Water from the River Cauvery in the event the quality of Raw Water in the River Cauvery falls materially below the standards specified in Schedule L herein, NTADCL shall obtain certification of the Independent Engineer in this respect. In the event of a material fall in the quality of Raw Water in the River Cauvery NTADCL shall not be liable in any manner whatsoever for non-compliance with the quality of Potable Water specified in Schedule C or fall in the volume of Potable Water supplied to Purchasers. Notwithstanding its rights under this Section 20.3, NTADCL shall use its best endeavours and take all measures that are reasonably in its control to ensure the supply of Potable Water to Purchasers.

(d) GOTN hereby agrees and undertakes to put into effect, environmental measures as may from time to time be requested by NTADCL for the purpose of protecting the River Cauvery and the Facilities from pollution or other degradation in the quality or reduction in the quantity of the Raw Water. Such measures will be considered, by GOTN, when requested by NTADCL if without them there is a danger that the Raw Water quality of the River Cauvery will degrade materially below the acceptable standard described in Schedule L hereto.

(e) GOTN hereby agrees to indemnify NTADCL and to keep NTADCL indemnified against any and all claims arising from NTADCL's abstraction of Raw Water from the River Cauvery in accordance with the terms and conditions of this Agreement which shall include without limitation any claims from other users of Raw Water from the River Cauvery.

Section 20.4 Deterioration in Quality and Quantity of Sewage

(a) The Sewage Treatment Facility will be designed by NTADCL to offtake minimum and maximum volume of Sewage as the context may require as indicated in Schedule C and be equipped to treat Sewage of the composition, impurities and toxicity level as specified in Schedule L hereto. NTADCL shall not be liable to treat Sewage of a composition, impurity and toxicity level more hazardous than that specified in Schedule L or that of a volume less than the minimum volume or higher than the maximum volume of Sewage offtake as specified in Schedule C.
(b) NTADCL has the right to suspend or reduce the volume of offtake of Sewage from TM if the Sewage delivered by TM is of a higher level of impurity and toxicity than the level specified in Schedule L or the volume of Sewage goes below the Sewage Minimum offtake or exceeds the maximum volume. NTADCL shall have made reasonable endeavors for maintenance of Services prior to such suspension. In such circumstances TM shall not be relieved of its obligations to pay the Minimum Sewage Charge to NTADCL, if applicable.

(c) The Parties agree that NTADCL shall not be liable in any manner whatsoever for any environmental contamination including Hazardous Waste, damage or accident caused by the introduction of Sewage having a higher level of toxicity and impurities, than those specified in Schedule L, into the Sewage Treatment Facility by TM. NTADCL hereby agrees not to enter into any offtake agreement for Sewage or Waste Water that contravenes the specifications in Schedule L.

(d) The Parties hereby agree that without prejudice to the generality of Sections 20.4 (a), (b) and (c) above, a notice from NTADCL, pursuant to tests on the quality of Sewage being offtaken at the Sewage Offtake Points, notifying the presence of Sewage having a higher level of toxicity and impurities, than those specified in Schedule L, shall be conclusive proof as to the discharge of NTADCL from any obligation in relation to the treatment, disposal and handling of such Sewage and shall be conclusive proof as to the immunity of NTADCL against any liability in relation to or arising out of the treatment, disposal or handling of such Sewage.

Section 20.5 Non-Discriminatory Treatment

GOTN will not introduce or apply any environmental or other Law, regulation or other requirement on NTADCL unless such Law, regulation or other requirement applies without discrimination or favour to all operations of water supply in specified river basins in the State of Tamil Nadu the Cauvery basin and will enforce and procure the enforcement of all such Laws, regulations or requirements (whether present or future) without discrimination or favour against all Persons affected thereby.

Section 20.6 Proceedings

(a) GOTN and NTADCL shall promptly inform each other of any claims or proceedings or anticipated claims or proceedings against them in respect of which NTADCL is entitled to be indemnified under this Article as soon as they become aware of the same. Subject to indemnification in respect of the reasonable costs thereof, GOTN and NTADCL shall give reasonable assistance to one another in the defense of such claims or proceedings.

(b) Neither Party shall permit any claim or proceedings referred to in this Section 20.6 to be settled without the prior written consent of the
other Party, unless the party of whom indemnification is sought indicates, that it has no indemnification obligations or does not agree in writing to indemnify the other party with respect to such claims or proceeding when requested.

ARTICLE 21
FORCE MAJEURE

Section 21.1 Force Majeure

NTADCL or GOTN or TM, as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of Force Majeure (a "Force Majeure").

Section 21.2 Force Majeure Events

A Force Majeure event means any event or circumstance and or a combination of events and circumstances referred to in this Article 21, (a) which are beyond the reasonable control of the affected Party, (b) which such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care in relation to the implementation of the Project, (c) which do not result from the negligence of such Party and or the failure of such Party to perform its obligations hereunder and (d) which prevents a Party, in whole or in part, from performing its obligations hereunder, including the following:

I Non-Political Events:

(i) any act of God such as, drought, lightning, earthquake, landslides, etc or other events of natural disaster of rare severity

(ii) meteorites or objects falling from aircraft or other aerial devices, traveling at high speeds

(iii) fire or explosion, chemical or radioactive contamination or ionizing radiation;

(iv) epidemic or plague

(v) strikes, lock-outs or other industrial action or labor disputes, civil commotion or riots affecting the implementation of the Project or the supply of goods or services

(iv) A Water Treatment and Supply Suspension Period or the Sewage Offtake Suspension Period

II Indirect Political Events:

(i) act of war (whether declared or undeclared), threat of war, invasion, armed conflict or act of foreign enemy, unexpected
call up of armed forces, blockade, embargo, revolution, riot, religious strife, bombs or civil commotion, sabotage, terrorism or threat of such acts or other similar events of a political or social nature;

III Direct Political Events:

(i) in respect of NTADCL’s obligations only expropriation, acquisition confiscation, or nationalization of the Facilities by GOI or GOTN or TM, as the case may be, or requisition of the Facilities other than in accordance with Section 21.9

(ii) in respect of NTADCL’s obligations only the imposition of any blockade, embargo, import restrictions, rationing or allocation by GOTN or TM or any Competent Authority;

(iii) political bandhs, transporters agitation, merchant agitation, riots, civil disturbances of any kind including civil commotion and disturbances by local bodies or people around the Sites, Site for the System, Existing System and the Sludge Disposal Site or at any other location, which impedes the implementation of the Project;

(iv) in respect of NTADCL’s obligations only, any Change in Law or Change in Tax as defined under Section 17.8,17.9 which has a Material Adverse Effect on its obligations

(v) in respect of NTADCL’s obligations only any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction, operation or maintenance of the Project or the performance of a Party’s obligations including the determination, levy, demand, collection, retention and appropriation of Charges provided such order of a court or tribunal is not attributable to negligence or omission of NTADCL;

(vi) any other act by any Competent Authority which has a Material Adverse Effect or materially adversely affects the Project

Section 21.3 Exceptions to Force Majeure for NTADCL

NTADCL shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Agreement other than to the extent that such circumstances result from an event of Force Majeure:

(a) delay in the performance by the Construction Contractor, the O&M Operator or any subcontractor to either of them; or
Section 21.4 Exceptions to Force Majeure for GOTN and TM

GOTN and TM shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of their respective obligations under this Agreement:

(a) the expropriation, acquisition, confiscation or nationalization of the Facilities by GOI or GOTN or TM, as the case may be, or requisition of the Facilities;

(b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by GOTN or TM or any Competent Authority;

(c) any delay or difficulty in handing over Vacant Possession of the Sites, Site for System, Existing System and Sludge Disposal Sites as a result of any intervention or Directive of GoI; and

(d) Strikes, lockouts or other industrial actions or labour disputes by the employees of GOTN and/or TM.

Section 21.5 Procedure for Force Majeure

(a) If a Party claims relief on account of a Force Majeure event, then the Party claiming to be affected by the Force Majeure event shall, as soon as reasonably practicable and in any event within seven days of becoming aware of the Force Majeure event and its effect, give notice of and describe in reasonable detail the effect of such event of Force Majeure to the other Party in writing, including the dates of commencement and estimated cessation of such event of Force Majeure and its effects on the Party’s obligations under this Agreement. Upon cessation of the situation which led to a Party claiming Force Majeure under this section the relevant Party shall within 7 days thereof notify the other Party in writing of such cessation and the Parties shall as soon as practicable thereafter continue performance of all obligations under this Agreement but without prejudice to the excuse of performance of all obligations during the continuance of the Force Majeure.

(b) The Party receiving the claim for relief under Force Majeure shall, if it wishes to dispute the claim, give a written notice of dispute to the Party making the claim within 30 days of receiving the notice of claim. If the notice of claim is not contested within 30 days as stated above, all the Parties to this Agreement shall be deemed to have accepted the validity of the claim and their obligations under this Agreement shall remain suspended. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 29.
Section 21.6 Revised Timetable

Provided that the Party claiming to be affected by the Force Majeure event has complied with the notice procedure under Section 21.5, any time period specified in this Agreement for the performance of an obligation, including the Concession Period and the Construction Period, shall be appropriately extended for a period equal to the longer of (i) the period of time during which the Force Majeure was in effect or (ii) the amount of time needed to put the Party affected by the Force Majeure in the same position in which it would have been had the Force Majeure not occurred as determined by such Party and Certified by the Independent Engineer.

Section 21.7 Consultation and Duty to Mitigate

The Party claiming relief under Force Majeure shall, at its own cost, take all steps reasonably required to remedy and mitigate the effects of the Force Majeure event and restore its ability to perform its obligations under this Agreement as soon as reasonably practical. The Parties shall consult with each other to determine the reasonable measures to be implemented to minimize the losses of each Party resulting from the Force Majeure event. The Party affected by Force Majeure shall keep the other Parties informed of its efforts to remedy the effect of the Force Majeure event and shall make reasonable efforts to mitigate such event on a continuous basis and shall provide written notice of the resumption of performance hereunder. Except as specifically stated to the contrary, no Party shall be relieved of its obligations under this Agreement by reason of impossibility of performance or any other circumstance whatsoever beyond its control.

Section 21.8 Consequences of Force Majeure

(a) In the event of the occurrence of Force Majeure, such obligations, the performance of which are directly affected by the Force Majeure event, of any of the Parties shall be suspended till the cessation of such event(s);

(b) The term of the Concession Period shall be automatically extended in accordance with Section 21.6.

(c) The Parties shall have the right to terminate this Agreement in accordance with the provisions of Section 25.3.

Section 21.9 Requisition of Facility

(a) In the event of a national or state emergency, GOTN, shall have the right, upon seven days written notice to NTADCL, temporarily to assume control of the Facilities by deputizing duly qualified personnel in place of NTADCL; provided, however, that within three days after the termination of the circumstances giving rise to GOTN's assumption of control of the Facilities, GOTN shall not, under any circumstances, continue to be in control of the Facilities and; provided further, that any such requisition for the duration of the requisition including time taken by the Competent Authority to restore the Facility to NTADCL shall be treated as a Force Majeure event and NTADCL shall have the right to terminate this Agreement
after the expiry of 180 days from the date on which the Facilities were requisitioned and transfer the Facilities pursuant to Section 22.1.3;

(b) The determination as to whether the circumstances giving rise to GOTN’s assumption of the operation and maintenance of the Facilities cease to exist shall be a question of fact and shall not in any manner be connected with or dependent upon a declaration of national emergency under the constitution of India or any official notification by any Competent Authority or revocation of such declaration or notification.

(c) In the event of any assumption by GOTN as set forth in subsection (a) above, the Concession Period, shall, without qualification, be extended for a period of time equal to that during which the Facilities were under the control of GOTN.

(d) During the period in which GOTN assumes control of the Facilities, GOTN shall be responsible for discharging the obligations of NTADCL under the other contracts and the Financing Agreements including, without limitation, promptly discharging sums due and owing to the Lenders (including any interest or other amounts accrued thereon) pursuant to the Financing Agreements and operating and maintaining the Project in accordance with the terms of the Operations and Maintenance Agreement and including all statutory payments required to be made by NTADCL in relation to the Facilities. The duties and obligations of NTADCL shall be suspended during such period and GOTN shall operate and maintain the Facilities in accordance with the provisions of this Agreement, the Financing Agreements, the other contracts and Prudent Utility Practices and NTADCL shall not be liable in relation to any claim or cause of action which arise during or the following period of requisition in respect of the operation and maintenance of the Facilities or the provision of the Service during such time as the Facilities are requisitioned under the provisions of this Section 21.9. The requisition of the Facilities shall not affect the charge in favour of the Lenders over the Facilities or the Sites (including Sludge Disposal Sites) and rights of the Lenders under the Service Agreement.

(e) GOTN shall indemnify and keep NTADCL indemnified and hold it harmless (i) against any claims arising out of or in relation to the period of time during which the Facilities are under the control of GOTN and (ii) against any breach by NTADCL under any of the other contracts or the Financing Agreements arising due to GOTN’s control of the Facilities during such period and GOTN shall compensate NTADCL for the loss of revenue suffered by NTADCL during the relevant period. NTADCL shall not be liable or responsible for any costs, charges or expenses relating thereto.

(f) In no event shall GOTN’s assumption of control of the Facilities be deemed to be a transfer of title or a transfer of NTADCL’s rights and obligations in relation to the Facilities arising pursuant to this Agreement or the other contracts.
(g) The occurrence of circumstances specified in this Section 21.9 shall not be a basis for nationalisation or continued requisition. Any requisition under this Section 21.9 shall be of a temporary nature in the context of the Concession Period. Unless already compensated under this Agreement the compensation payable by GOTN for use of the Facilities shall be the amount equivalent to the loss of revenue to NTADCL as determined by the Independent Auditor in addition to any liabilities, indemnities or obligations of NTADCL, including to Lenders, towards the performance of its obligations under this Agreement during the period of requisition.

(h) On return of control of the Facilities by GOTN to NTADCL, NTADCL shall have the right to require the Independent Engineer to inspect the Facilities prior to resuming construction, operation and maintenance on the Facilities. In the event the Independent Engineer reports that there has been any damage to the Facilities, or any deterioration thereof, it shall submit a report stipulating the extent of such damage and its effect on the Total Cost of Project and specifically any other costs resulting from the requisition of the Facilities. Upon the request of NTADCL, GOTN shall, either (i) promptly pay to NTADCL all amounts equal to that required to repair such damage plus any other costs as determined by the Independent Engineer and certified by the Independent Auditor, (ii) extend the Concession Period for a period of time equal to that during which the Facilities were occupied by GOTN in accordance with this section or for such longer periods to ensure full recovery of the Total Cost Of Project and Returns thereon or (iii) agree to the revision of the formulae specified in Section 17.4 in the event that the Total Cost of Project and the Returns are not recoverable within a period of thirty years from the Operations Date.

ARTICLE 22
TRANSFER AND PURCHASE OF FACILITIES

Section 22.1.1 Transfer upon Expiry of Concession Period

(a) Six Months prior to the anticipated expiry of the Concession Period, GOTN and NTADCL shall meet and agree on detailed procedures for the transfer of the Facilities. At the time of such meeting, NTADCL shall submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer, and GOTN shall inform NTADCL of the identity of its representatives in charge of the transfer.

(b) During the six Month period prior to the anticipated transfer of the Facilities NTADCL shall at the cost of GOTN provide such training services to the representatives and employees of GOTN as may be reasonably necessary for GOTN to operate and maintain the Facilities efficiently and safely following such transfer.

(c) During the six Month period prior to the anticipated transfer of the Facilities, GOTN and NTADCL shall by consultation, before the expiry of the said six month period, determine the following:
(i) the total liabilities of GOTN to NTADCL, as on the date of transfer of Facilities;

(ii) the total liabilities, if any, of NTADCL to GOTN, as on the date of transfer of Facilities;

(iii) the claims or the likely claims on NTADCL on account of the discharge of obligations of NTADCL under this Agreement and the BWSA and the manner in which the Parties propose to deal with the same, including the apportionment of the associated costs and recovery thereof;

(iv) subsisting Encumbrances created by NTADCL on all the assets relating to the Project, which are to be transferred to GOTN;

(v) manner of discharge of the liabilities of each Party to the other.

However, when the notice of termination of this Agreement has been issued by NTADCL to GOTN pursuant to a Force Majeure event, the aforementioned determination shall be completed by the Parties within a period of fifteen days from the date of receipt of notice.

(d) NTADCL, after the transfer of the Facilities, shall not have any liabilities in relation thereto and shall neither carry any liabilities relating thereto, other than those specifically agreed by NTADCL with GOTN in accordance with Section 22.1.1. (c) (v).

(e) GoTN has no liability on account of the outstanding Total Cost of Project and Returns due thereon in the event of the transfer of the assets upon the expiry of the Concession Period. However, in respect of other liabilities, the manner of discharge of such liabilities by each Party to the other, will be as determined under Section 22.1.1 (e) herein above.

Section 22.1.2 Transfer upon Termination by NTADCL

(a) As a precondition to the transfer of Facilities to GOTN in the event of termination of this Agreement by NTADCL excluding unilateral termination as set out in Section 25.5, GOTN shall pay to NTADCL, within 90 days from the date of termination of this Agreement, an amount equal to the (i) Total Cost of Project, (ii) the Returns thereon outstanding until the termination date of the Concession Agreement (iii) capital cost of Productivity Investments outstandings as reflected by the books of NTADCL as on the date of termination and (iv) all such additional costs as may be incurred in transferring the Facilities as specified in Section 22.2(e), as certified by the Independent Auditor. The liabilities which have been determined in accordance with Section 22.1.1-(c) (v) shall be discharged in accordance with the
agreement established thereunder. All payments by GoTN shall be in Indian Rupees and made into the designated trust & retention account of NTADCL in India with a scheduled commercial bank, which shall be notified by NTADCL to GoTN before the expiry of 30 days after Financial Close.

(b) In the event that a transfer is required pursuant to termination by NTADCL, the parties shall meet to agree such procedures as soon as possible and in any event within 3 days of either party giving notice to the other party requesting such meeting. The procedure as to the transfer of the Facilities shall be evolved by consensus between the Parties but to the extent that they cannot agree such procedure within 15 days either party may submit the matter for arbitration under Article 29. At the time of such meeting, NTADCL shall submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer, and GoTN shall inform NTADCL of the identity of its representatives in charge of the transfer. For avoidance of any doubt, the liability of GoTN under this Section shall be discharged within a period of 90 days from the date of termination.

Section 22.1.3 Transfer upon Termination by GoTN

(a) As a precondition to the transfer of Facilities to GoTN in the event of termination of this Agreement by GoTN, GoTN shall pay to NTADCL, within 90 days from the date of termination of this Agreement, an amount equal to (i) all sums due and owing to the Lenders under the respective Financing Agreements, including without limitation any interest accrued thereon and any other amounts due and payable to the Lenders; and (ii) all such costs as may be incurred in transferring the Facilities as specified in Section 22.2(e), as certified by the Independent Auditor. The liabilities which have been determined in accordance with Section 22.1.1 (c) (v) shall be discharged in accordance with the agreement established thereunder. All payments by GoTN shall be in Indian Rupees and made into the designated trust & retention account of NTADCL, in India with a scheduled commercial bank, which shall be notified by NTADCL to GoTN before the expiry of 30 days after Financial Close.

(b) In the event that a transfer pursuant to a termination by GoTN for a NTADCL Event of Default, the parties shall meet to agree such procedures as soon as possible and in any event within 3 days of either Party giving notice to the other Party requesting such meeting. The procedure as to the transfer of the Facility shall be evolved by consensus between the Parties but to the extent that they cannot agree such procedure within 15 days either party may submit the matter to arbitration under Article 29. At the time of such meeting, NTADCL shall submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer, and GoTN shall inform NTADCL of the identity of its representatives in charge of the transfer. For avoidance of any doubt, the liability of GoTN under this Section shall be discharged within a period of 90 days from the date of termination.
Section 22.1.4 Transfer upon termination due to Force Majeure Event

(a) As a precondition to the transfer of Facilities to GOTN in the event of termination of this Agreement following Force Majeure, arising out of Force Majeure events detailed in Section 21.2 I (vi), 21.2 II and 21.2 III, GOTN shall pay, within 90 days from the date of termination of this Agreement, to NTADCL an amount equal to the Total Cost of Project and the Returns thereon, outstanding on the date of termination and capital cost of Productivity Investments outstanding as reflected by the books of NTADCL as on the date of termination, such amounts to be determined by the Independent Auditor and all such costs as may be incurred in transferring this Facilities, as specified in Section 22.2(e), as certified by the Independent Auditor. The liabilities which have been determined in accordance with Section 22.1.1 (e) (v) shall be discharged in accordance with the agreement established thereunder. All payments by GoTN shall be in Indian Rupees and made into the designated trust & retention account of NTADCL with a scheduled commercial bank, which shall be notified by NTADCL to GOTN before the expiry of 30 days after Financial Close.

(b) As a precondition to the transfer of Facilities to GOTN in the event of termination of this Agreement following Force Majeure, arising out Force Majeure events detailed in section 21.2 I (i) through (v), GOTN shall be obligated, to pay all amounts payable to the Lenders under the Financing Agreements within 90 days GoTN shall be entitled to have first charge, to the extent of such payments made to Lenders, on all the insurance proceeds remaining to be received by NTADCL. All payments by GoTN shall be in Indian Rupees and made into the designated trust & retention account of NTADCL with a scheduled commercial bank, which shall be notified by NTADCL to GOTN before the expiry of 30 days after Financial Close.

(c) In the event that a transfer pursuant to a termination due to Force Majeure, the parties shall meet to agree such procedures as soon as possible and in any event within 3 days of either party giving notice to the other party requesting such meeting. The procedure as to the transfer of the Facility shall be evolved by consensus between the Parties but to the extent that they cannot agree such procedure within 15 days either party may submit the matter to arbitration under Article 29. At the time of such meeting, NTADCL shall submit a detailed list of the structures, equipment, and items to be transferred and the names of its representatives in charge of the transfer, and GOTN shall inform NTADCL of the identity of its representatives in charge of the transfer. GOTN shall pay all such costs as may be incurred in transferring the Facilities as specified in Section 22.2 (e), as certified by the Independent Auditor and those payments which have been specifically agreed with GOTN by NTADCL in accordance with Section 22.1.1 (e) herein above.
Section 22.2  Common Terms Relating to Transfer of Facilities

(a) The Facilities including the designs, plans and other engineering drawings, including the as-built drawings and operation and maintenance manuals, therefore, shall be transferred or surrendered to GOTN or the Substitute Entity, as the case may be, with Vacant Possession, where applicable, upon the transfer of the Facilities under this Article. The rights of NTADCL and other permitted use of Sites for other activities of NTADCL as set out in Section 2.1 (b) (vii), shall be deemed to have been extinguished vis-a-vis the ownership of Facilities and the Sites, which shall be deemed to have reverted to GOTN or be transferred to the Substitute Entity free of all charges, liens and Encumbrances except for Permitted Liens and Liens arising as a result of a Breach by GOTN or TM of its obligations hereunder whatsoever upon the payment in Indian Rupees to NTADCL of the amounts specified under Sections 22.1.3, 22.1.4 and 22.1.5, as the case may be, as preconditions to such a transfer, except in respect of those payments which have been specifically agreed with GOTN by NTADCL in accordance with Section 22.1.1 (c) herein above.

(b) GOTN and TM shall sign such documents as are required by NTADCL to evidence such revesting or transfer of Facilities.

(c) Prior to the transfer of the Facilities to GOTN under this Article and without prejudice to any rights of NTADCL under any other provisions of this Agreement:

(i) The transfer of Facilities shall be treated as a transfer on a going concern basis with continuity of employment benefits to the workmen and employees. GOTN or a nominee of GOTN, shall take over the obligations of NTADCL in relation to all the employees of NTADCL employed in relation to the operation and maintenance of the Facilities subject to the provisions of Section 22.2 (g) herein below or provide fair and just compensation for termination of employment to such employees as part of purchase price as required under Law or their contract of employment. GOTN shall indemnify NTADCL against any and all claims such employees might make for loss of office, redundancy, loss of employment or otherwise in accordance with the prevailing laws of India. The contracts of employment that NTADCL enter into with such employees concerned with operation and maintenance of Facilities shall stipulate this condition as a term of service of the employee at the time of appointment.

(ii) NTADCL shall, upon payment of all amounts due under this Agreement, pay all the other outstanding trade creditors of NTADCL.

(d) The transaction cost (including stamp duty and registration charges, if any) as determined by the Independent Engineer and the Independent Auditor, involved in such revesting or transfer of
Facilities in accordance with the provisions of this Article shall be borne by GOTN. NTADCL shall not bear any part of such transaction cost and GOTN shall indemnify and hold NTADCL harmless against any such cost/expenditure and also claims from Tax Authorities on account of transfer.

(e) NTADCL shall to the extent possible assign to GOTN or its nominated agency at the time of transfer all unexpired guarantees and warranties by Contractors and suppliers and all insurance policies. Subject to any security granted in favour of the Lenders, NTADCL shall ensure that any rights which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counter party to NTADCL.

(f) NTADCL shall, to the extent possible at the time of transfer assign to GOTN all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by NTADCL and subsisting at the time of transfer except contracts with employees. In the event that NTADCL's employee contracts are assigned then NTADCL shall confirm that statutory and contractual obligations relating to the benefits of the aforesaid employees have been duly complied with by NTADCL and appropriate provisions have been made. NTADCL shall transfer the balances held by NTADCL in that regard to GOTN. NTADCL shall ensure that GOTN's interests and entitlement to assignment are subject to any security granted in favour of the Lenders. NTADCL shall ensure that any rights, which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counter party to NTADCL.

(g) The transfer of immovable property comprising the Facilities shall be deemed to be a termination of all Leasehold arrangements or licenses in relation to the Sites and the Sludge Disposal Sites and title to all such immovable property shall automatically revert to GOTN or TM as the case may be. The movable property comprising the Facilities shall be deemed to be transferred by constructive delivery and possession.

(h) From the date of the transfer of the Facilities, the obligations and the rights of NTADCL under this Agreement shall terminate, and GOTN or its nominated agency shall take over the operation of the Facilities and any other rights or obligations arising out of the terms of this Agreement which either expressly or implicitly survive termination of this Agreement; provided, however, that NTADCL may continue with any other business operations arising other than in connection with this Agreement.

(i) The transfer of Facilities referred to above shall be subject to rights of NTADCL as stated under Section 9.8 of this Agreement.
Section 22.3 Condition of Facilities at Transfer

(a) At the time of the transfer of the Facilities pursuant to this Article, the Facilities shall be in such condition with reasonable wear and tear as would be reasonable in the circumstances taking into account their design, the materials used in their construction, their age and the maintenance carried out thereto which shall have been in accordance with the Technical Requirements and the Facilities being in compliance of the Performance Standards.

ARTICLE 23
FINANCING AND LENDERS’ RIGHTS

Section 23.1 Assignment and Creation of Security

(a) Parties confirm that NTADCL for the purposes of enabling Financing of the Project can assign or charge or encumber all its rights, title, benefit and interest under this Agreement in favour of the Lenders for securing the repayment of the monies which may become payable by NTADCL to the Lenders.

(b) For the avoidance of doubt, such assignment shall not in any way reduce the obligations of NTADCL under the Concession Agreement.

Section 23.2 Exercise of Rights by Lenders

(i) If, at any time during the Concession Period the Lenders request for a Substitute Entity to be appointed GOTN and TM will consent to such novation (which for the avoidance of doubt shall not include any amendment to the Concession Agreement other than with respect to the name of the party defined as “NTADCL” therein);

(ii) the Substitute Entity shall enjoy the rights of NTADCL under the Concession Agreement and will be liable to discharge and perform all liabilities and obligations of NTADCL under the Concession Agreement; and

(iii) GoTN and TM shall not be entitled to terminate the Concession Agreement unless the Substitute Entity commits a Breach of its obligations under this Agreement after its appointment as a Substitute Entity.

(iv) GOTN and TM agree that enforcement of any Security Agreement by Lenders shall not entitle either GOTN or TM to terminate this Agreement.
ARTICLE 24
EVENTS OF DEFAULT

Section 24.1 GOTN Events of Default

The following events or circumstances shall be considered, for the purposes of this Agreement, as events of defaults of GOTN ("GOTN Events of Default");

(a) Breach by GOTN of any of its obligations under this Agreement which is not cured for a period of 3 month from notice thereof by NTADCL; provided however that if such Breach cannot in the reasonable opinion of NTADCL be cured within the aforesaid period of 3 month then NTADCL shall be entitled to treat it as an immediate Event of Default

(b) events specified in Section 7.4(e) and 13.4 b(iv) as GOTN Events of Default under this Agreement;

(c) a Change in Law or change in the policies of GOTN which has a Material Adverse Effect on NTADCL’s ability to implement the Project;

(d) breach of any express representation or warranty or assurances by GOTN which has a Material Adverse Effect which Breach is not remedied within 120 days of receipt of written notice to GOTN from NTADCL specifying such breach and requiring GOTN to remedy the same; provided that if such breach cannot in the reasonable opinion of NTADCL be cured within a period of 120 days after such notice with the exercise of reasonable diligence, then NTADCL shall be entitled to treat it as an immediate Event of Default;

(e) repudiation of this Agreement by GOTN;

(f) occurrence of a TM Event of Default under Section 24.2 hereof

Section 24.2 TM Events of Default

The following events or circumstances shall be considered, for the purposes of this agreement, as events of default of TM ("TM Events of Default");

(a) Breach by TM of any of its obligations under this Agreement which is not cured for a period of 3 month from notice thereof by NTADCL;

(b) events as specified in Section 13.4(b) (iv)as TM Events of Default under this Agreement;

(c) default by TM of any of its obligations under the BWSA;

(d) change in the policies of TM which has a Material Adverse Effect on NTADCL’s ability to implement the Project;