

### DISCLAIMER

The information contained in this Request for Proposal ( hereinafter referred to as " RFP") document or subsequently provided to Bidder(s) or Applicants whether verbally or in documentary form by or on behalf of New Delhi Municipal Council ( " NDMC" ) or ( referred to as " NDMC Representatives"), is provided to the Bidder(s) on the terms and conditions set out in this RFP document and all other terms and conditions subject to which such information is provided.

This RFP document is not an agreement and is not an offer or invitation by NDMC or NDMC Representatives to any parties other than the Applicants who are qualified to submit the Proposal ( " Bidders" ). The purpose of this RFP document is to provide the Bidder(s) with information to assist the formulation of their Proposal. This RFP document does not purport to contain all the information each Bidder may require. This RFP document may not be appropriate for all persons and it is not possible for NDMC or NDMC Representatives, to consider the investment objectives, financial situation and particular needs of each Bidder who reads or uses this RFP document. Each Bidder should conduct its own investigations and analysis and should check the accuracy, reliability and completeness of the information in this RFP document and where necessary obtain independent advice from appropriate sources. Neither NDMC nor their employees or consultants make any representation or warranty as to the accuracy, reliability or completeness of the information in this RFP document. NDMC shall incur no liability under any law, statute, rules or regulations as to the accuracy, reliability or completeness of the RFP document.

The RFP document and the information contained herein are for the use only of the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisors). In the event that the recipient does not continue with his involvement in the Project ( as defined herein) in accordance with this RFP document, this RFP document shall be kept confidential.

NDMC reserves the right to reject any or all of the Proposals ( as defined herein) without assigning any reason whatsoever. NDMC further reserves the right, at its complete discretion and without assigning any reasons, to discontinue the Proposal to execute the Projects through the Bidder.

NDMC may in their absolute discretion, but without being under any obligation to do so, update, amend or supplement the information in this RFP document.

## TENDER NOTICE



**PUBLIC PRIVATE PARTNERSHIP (PPP) PROJECT TO DEVELOP ADDITIONAL WATER RESOURCES BY INSTALLING STP's 100 KLD to 500 KLD (10 Nos.) IN THREE GROUP, INFRASTRUCTURE (CONSTRUCTION OF SEWAGE TREATMENT PLANT) IN NDMC AREA**

New Delhi Municipal Council (NDMC) seeks Request for Proposal (RfP) from reputed / eligible agencies for developing STP infrastructure at various locations in NDMC area on Build, Operate and Transfer (BOT) and supply the treated water with the installed capacity to the department for a 12 years

To decrease the dependency on regular Un-Filtered water supply (by CPWD) for Horticulture purposes, NDMC is planning to lay additional infrastructure of minimum water requirement daily of 3.1 MLD by using its available resources i.e. continuously generated sewage. The need of this proposal will be essential for betterment of environment by adding additional greenbelt including preserving the existing one with his full capacity. NDMC hereby wishes to invite reputed firms (Applicants) for selection as Developers to develop 100 to 500 KLD Capacity Sewage Treatment Plant including Operation and Maintenance for twelve years.

**Group-I** Sanjay Park Lake 300 KLD, Park in between Satya Sadan and Railway Line Around Khushak Nallah 500 KLD, near Junction of Ring Road and Shanti path at Moti Bagh 100 KLD and Subhash Park at Netaji Nagar 100 KLD.

**Group-II** Nehru Park 500 KLD, Developed Rose Garden at Shanti Path towards Nyaya Marg 300 KLD, Rose Garden at Shanti Path towards Niti Marg 100 KLD, Gole Market in between junction of Peshwa Road and R.K. Ashram 200 KLD.

**Group-III** Lodhi Garden 500 KLD, Bharti Nagar 500 KLD,

**WHO CAN APPLY:** The Applicants may be a single entity consortium, coming together to implement the Project(s). The applicants shall be experienced in tasks of (i) project development/ construction of 100 to 500 KLD STP, (ii) 100 to 500 KLD, have profitable financial operations.

**SCOPE OF WORK:** The scope of work would include the entire process of development of additional water by recycling the sewage water upto acceptable parameter for reuse in horticulture demand in the area by installing/construction of STP's including designing, financing, operations, maintenance

and collection of supplying water charges from concessionaire during concession period.

**HOW TO APPLY:** The Request for Proposal (RfP) document can be obtained against payment by way of a crossed Demand Draft (non re-fundable) drawn in favour of Secretary, New Delhi Municipal Council' payable on any Scheduled Bank at New Delhi, on all working days (Monday to Friday) between 1000 hrs to 1700 hrs IST from the office of:

The Executive Engineer  
Sewerage Project Division  
Bengali Market, Todarmal Lane,  
New Delhi-110001  
Ph- 011-23753129 (office)

**Cost of the RFQ Document**

Obtained from the Office of	INR 1000
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**Relevant Dates**

Uploading RFP	14.06.2016
Last date for submission of RfP	28.06.2016 at 3.00 PM
Pre-Bid Meeting	---
Date of opening of Technical Bid	28.06.2016 at 3.30PM

The RFQ document is also available on NDMC website: [www.ndmc.gov.in](http://www.ndmc.gov.in). If the document is downloaded from the above website, the demand draft for the amount payable towards cost of document should be enclosed along with the Application. In case of any difficulty in downloading the document from the above website, information may be obtained by sending an e-mail to [sewerageproject@gmail.com](mailto:sewerageproject@gmail.com).


Part I	Instructions to Bidders
Part II	Draft Concession Agreement, together with its schedules
Volume II	
Part I	Available quantity of sewage and area for construction / installation STP during concession period. or reuse in Horticulture



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## Instructions to Bidders

### BIDDING PROCEDURE

#### 1. General

##### 1.1 Scope of Proposal

1.1.1 The New Delhi Municipal Council (hereinafter referred to as "NDMC") provides civic services to an estimated population of 3.5 Lac covering an area of 42.74 square Kilometers. In addition to the resident population of the NDMC area, an additional 15 Lac people commute to commercial complexes and government offices in NDMC area.

1.1.2 However the consistent and increase demand of water for horticulture in NDMC area during summer and winter is to be required for maintaining / improving green area's. The valuable resources of scare water is recycled upto the standard of horticulture demand in NDMC area by continuous availability of raw material for the Sewage Treatment Plant i.e. sewage. NDMC is desirous to improve the availability of raw water for horticulture and dependency on UFW currently provided by CPWD by developing infrastructure STP's. With this objective, development of STP's infrastructure is proposed under a Public Private Partnership at ten identified locations, viz. at Lodhi Garden, Sanjay Park Lake, Park in between Satya Sadan and Railway Line around Khushak Nallah, Nehru Park, Bharti Nagar, Both Rose Garden, Gole Market in between junction of Peshwa Road and R.K. Ashram, At Moti Bagh Junction of Ring Road and Moth Bagh, Subhash Park at Netaji Nagar.

1.1.3 NDMC invites detailed proposals (hereinafter referred to as "Proposal") for installing STP's to provide treated water for horticulture purposes (hereinafter referred to \_\_\_\_\_ Instruction as the "Project") in Three group, on PPP Model, New Delhi on a build, operate and supply the treated water with the installed capacity to the department for 12 years with his offer and transfer the same after 12 years i.e. closure of this offer..

1.1.4 The Proposals would be evaluated on the basis of the evaluation criteria set out in this RFP document ("Evaluation Criteria") in order to identify the Successful Bidder. The Successful Bidder ("Concessionaire") would then have to enter into a Concession Agreement with NDMC and perform the obligations as stipulated therein, in respect of Project.

1.1.5 The Concessionaire would be responsible for designing, financing, constructing/installing, operating and maintaining the STP's for a period as stipulated in **Article 2.2** of the Draft Concession Agreement subject to his fulfilling the requirements set out in this RFP document.

1.1.6 Terms used in this RFP document, which have not been defined herein, shall have the meaning ascribed to them in the Draft Concession Agreement.

## 1.2 Eligible Bidders

1.2.1 Applicants who finds themselves qualified for the Project (referred to as "Bidders") are eligible to submit their Proposal in response to this RFP document. Bidders shall acknowledge the receipt of this RFP document to the NDMC and shall notify their intention to bid for the Project in the format provided as **Appendix 1-A**.

1.2.2 Bidders shall upload scanned copy of all the eligibility criteria documents for evidence of their continued eligibility to the satisfaction of NDMC.

## 1.3 Eligibility Criteria

1.3.1 **Group-I, II & III:-** The bidder should have completed in last 7 years ending last day of month previous to the one in which the bids are invited, at-least two similar work, minimum 100 KLD capacity STP's having cumulative O & M experience of 6 years which may be for 1 plant to run for 6 yrs or 2 plants for 3 yrs or so.

1.3.2 Similar work means:- Design/Supply, installation, testing and commissioning of minimum 100KLD Sewage Treatment plant.

(a) **Group-I, II & III** -Average Annual turnover for the last three years should not be less than Rs.1.5 Crore, as certified by the registered chartered Accountant.

(b) The ESI & EPF registration to be made as per Labour Law or undertaking for complying the same, for international firms, if considered as successful bidder.

(c) Certificate of Registration for Sales Tax/Vat and Service Tax and Acknowledgement of up to date filed return or undertaking for complying the same, for international firms if considered as successful bidder.

(d) Affidavit that "I / We have not been debarred or black listed or suspended from the business from any department of /central/ State Government".

(e) Integrity Pact duly signed by the Contractor as per format defined in Annexure 'A'.

(f) An Affidavit on Stamp paper should be submitted which are as under:-

**I/We undertake and confirm that eligible similar work(s) has/have not been got executed through another contractor on back to back basis. Further that, if such a violation comes to the notice of Department, then**

I/We shall be debarred for tendering in NDMC in future forever. Also, if such a violation comes to the notice of Department before date of start of work, the Engineer –in -charge shall be free to forfeit the entire amount of Bid Security/Performance Security.

1.3.3 Each Bidder shall submit a Power of Attorney as per the format enclosed as **Appendix 2 A**, authorizing the signatory of the Proposal to commit the Bidder.

#### 1.4 Setting up of a Special Purpose Company for signing Project Concession Agreement

If the Successful Bidder is a consortium , it shall set up a Special Purpose Company, incorporated under the provisions of the Companies Act 1956 and in accordance with Shareholder commitments mentioned in the RFP document and the draft Concession Agreement, within six (6) weeks from the acceptance of the Letter of Intent ("LoI") for signing of the Concession Agreement. NDMC will sign the Concession Agreement with only the Special Purpose Company set up by the Successful Bidder for each Part. If the Successful Bidder is a single business entity, then it may choose to either set up a Special Purpose Company, or implement the project on its own.

##### 1.4.1 Additional Requirements for Proposals submitted by a Consortium

- (a) Wherever required, the Proposal shall contain the information required for each of the members of the Consortium .
- (b) )The members of the Consortium shall furnish a Power of Attorney duly signed by the authorized representative of the members as per the form at set out in **Appendix 2 B** (Format for designating the Lead Member or the Lead Technical Member and the Lead Financial Member as the case may be). The Lead Member or the Lead Technical Member and the Lead Financial Member, as the case may be should be the same as indicated in the Application for Qualification.
- (c) The Proposal shall be signed by the duly authorized signatory of the Lead Member and shall be legally binding on all the members of the Consortium . In case of a Consortium with one member as the Lead Technical Member and one member as the Lead Financial Member, the Proposal shall be signed by their respective duly authorized signatories and shall be legally binding on all the members of the Consortium ;
- (d) The Consortium shall submit a Memorandum of

Understanding ("MoU"), drafted specifically for this project, as part of its Proposal. The MoU shall inter alia, also convey their intent to form a special purpose Joint Venture Company ( JVC) with shareholding commitment(s) explicitly stated as mentioned below:

- (e) In case of a Consortium with a Lead Member, the Lead Member shall commit to hold a minimum equity stake equal to 50% of its paid up equity capital of the special purpose vehicle created, at all times during the Concession Period.
- (f) In case of a Consortium with a Lead Technical Member (LTM) and a Lead Financial Member (LFM), LTM should commit to hold not less than 10% and LFM should commit to hold not less than 41% of its paid up equity capital of the special purpose vehicle created, at all times during the Concession Period.

These shareholding commitments would be recorded in the Concession Agreement and any change therein would only be with the approval of NDMC. The MoU shall communicate the willingness of the Consortium to subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium. The MoU shall also clearly outline the proposed roles and responsibilities of each member at each stage.

- (i) All members of the Consortium shall be liable jointly and severally for the execution of the Project in accordance with the terms of the Concession Agreement and a statement to this effect shall be included in the MoU;
- (ii) All witnesses and sureties shall be persons of status and probity and their full names and addresses shall be stated below their signature. All signatures in the Proposal documents shall be dated.

A copy of the MoU should be submitted as part of the Proposal. The MoU entered into between the members of the Consortium should be specific to the Project and should contain the above requirements, failing which the Proposal would be liable to be considered non-responsive.

**1.5 Change in Composition of the Consortium**

Change in the composition of a Consortium will not be permitted by NDMC.

  
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**1.6 Number of Proposals**

Each Bidder should submit only one (1) Proposal for any or all group. Each group bid is to be submitted separately. Any Bidder or member of a Consortium, which submits more than one Proposal for the same Project would be disqualified and would also cause the disqualification of the Consortium in which it is a member.

**1.7 Proposal Preparation Cost**

The Bidder shall be responsible for all the costs associated with the preparation of its Proposal and its participation in the bidding process. NDMC will not be responsible or in any way be liable for such costs, regardless of the conduct or outcome of the Proposal.

**1.8 deleted**

**1.9 Amendments to RFP**

1.9.1 At any time prior to the Proposal Due Date, as indicated in the RFP Time Schedule, NDMC may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, amend the RFP by the issuance of Addenda.

1.9.2 Any Addendum thus issued would be in writing and sent to all the Bidders who have received and acknowledged the RFP document and shall be binding upon them. Bidders shall promptly acknowledge receipt thereof to NDMC.

1.9.3 In order to afford Bidders reasonable time to take the Addendum into account, or for any other reason, NDMC may, at its discretion, extend the Proposal Due Date.

**B. Preparation and Submission of Proposal**

**1.10 Language and Currency**

1.10.1 The Proposal and all related correspondence and documents shall be written in the English language. Supporting documents and printed literature furnished by the Bidder with the Proposal may be in any other language provided that they are accompanied by an appropriate translation into English. Supporting materials that are not translated into English may not be considered. For the purpose of interpretation and evaluation of the Proposal, the English language

translation shall prevail over the meaning printed in any language other than English.

- 1.10.2 The currency for the purpose of the Proposal shall be the Indian Rupee (INR). The conversion to Indian Rupees shall be based on the closing exchange rate published by the Reserve Bank of India. In all cases where the original figure is in foreign currency, such original figures in the relevant foreign currency and the INR equivalent thereof must be given. The exchange rate(s) applied shall have to be clearly stated. NDMC, however, reserves the right to use any other suitable exchange rate for the purpose of uniformly evaluating all Bidders.

### 1.11 Bid Security

- 1.11.1 Each Proposal shall be accompanied by a Bid Security of **Rs.5,00,000/- (Rupees Five Lacs only)**.
- 1.11.2 The Bid Security shall be kept valid throughout the Proposal Validity Period and would need to be extended, if so required by NDMC, for any extension in Proposal Validity Period.
- 1.11.3 The Bid Security shall be in the form of an irrevocable Bank Guarantee issued by a Scheduled commercial bank in favor of "The Secretary, New Delhi Municipal Council" as per the form set out in **Appendix 4**.
- 1.11.4 The Bid Security of every unsuccessful Bidder would be returned within a period of ten (10) weeks from the date of announcement of the Successful Bidder. The Bid Security submitted by the Successful Bidder would be released upon furnishing of the Performance Security in the form and manner stipulated in the Concession Agreement.
- 1.11.5 The Bid Security shall be forfeited in any of the following cases:
- (a) If the Bidder modifies/ withdraws its Proposal except as provided in **Clause 1.20**; or
  - (b) If the Bidder withdraws its Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period; or
  - (c) If the Successful Bidder fails to provide the Performance Security within the stipulated time or any extension thereof provided by NDMC; or
  - (d) If any information or document furnished by the Bidder turns out to be misleading or untrue in any material respect.

### 1.12 Validity of Proposal

- 1.12.1 The Proposal shall, in the form at set out in **Appendix 1 - B**, indicate that it would remain valid for a period not less than One Hundred Eighty (180) days from the Proposal Due Date ( " Proposal Validity Period").
- 1.12.2 Prior to expiry of the Proposal Validity Period, NDMC may request the Bidders to extend the period of validity for a specified additional period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be allowed to modify its Proposal, except as provided under **Clause 1.20** but would be required to extend the validity of its Bid Security for the period of extension and comply with **Clause 1.11** of this document in all respects.
- 1.12.3 The Successful Bidder shall, where required, extend the Proposal Validity Period till the date of execution of the Concession Agreement.

### **1.13 Bidder's Responsibility**

- 1.13.1 Bidders may carry out Project inspection/ site visit at any time at their cost.
- 1.13.2 Bidders are also put on notice that the sewage quantity provided by NDMC is only indicative and NDMC cannot be held liable in the event that these data's are not an accurate. Bidder may carry out sewage quality and quantity Investigations at their own cost and NDMC shall not be liable for any mistake or error or neglect by the Bidder in respect of this aspect.
- 1.13.3 The Bidder is expected to examine carefully the contents of all the documents provided. Failure to comply with the requirements of RFP shall be at the Bidder's own risk.
- 1.13.4 It shall be deemed that prior to the submission of Proposal, the Bidder has:
- (a) made a complete and careful examination of terms & conditions/ requirements, and other information set forth in this RFP document
  - (b) received all such relevant information as it has requested from NDMC; and
  - (c) made a complete and careful examination of the various aspects of the Project including but not limited to:
    - i. Bidders own validation of the Project Information Memorandum, of this RFP.
    - ii. The property on which the STP's are proposed;
    - iii. Existing facilities and structures;
    - iv. Condition of the buildings including but not limited to open spaces in and

- around the Project Site;
- v. The conditions of the access roads, ground conditions, and utilities in the vicinity of the Project Site;
- vi. Conditions affecting transportation, access, disposal, handling and storage of materials; and
- vii. All other matters that might affect the Bidder's performance under the terms of this RFP document.

1.13.5 NDMC shall not be liable for any mistake or error or neglect by the Bidder in respect of the above.

**1.14 Pre-Proposal Meeting**

1.14.1 To clarify and discuss issues with respect to the Project and the RFP, NDMC will hold Pre-Proposal meeting( s).

1.14.2 Prior to the Pre-Proposal meeting( s), the Bidders may submit a list of queries and propose deviations, if any, to the Project requirements and/ or the Concession Agreement. Bidders must formulate their queries and forward the same to NDMC as per RFP Time Schedule prior to the meeting. NDMC may, in its sole discretion or based on inputs provided by Bidders that it considers acceptable, amend the RFP.

1.14.3 Bidders may note that NDMC will not entertain any deviations to the RFP at the time of submission of the Proposal or thereafter, without prejudice to deviations, if any, to the Technical Submission, substantiated by the Bidder vide **Appendix 5 A**. The Techno-Commercial Proposal to be submitted by the Bidders shall be unconditional and the Bidders would be deemed to have accepted the terms and conditions of the RFP with all its contents including the Draft Concession Agreement. Any Proposal with deviations from the contents of this RFP document or Proposals that lays down any condition shall be regarded as non- responsive and would be rejected.

1.14.4 NDMC will endeavor to hold the Pre-Proposal meeting as per RFP Time Schedule.  
The details of the meeting will be separately communicated to the Bidders.

1.14.5 Attendance of the Bidders at the Pre- Proposal meeting(s) is not mandatory. However, subsequent to the meeting, NDMC may not respond to queries from any Bidder who has not attended the Pre-Proposal meeting(s).

1.14.6 All correspondence / enquiries should be submitted to the following in writing by e-mail/ registered post / courier:

ATTN OF : Executive Engineer  
Sewerage Project Division  
Address : Office of Executive Engineer  
Sewerage Project, 1<sup>st</sup> floor E.S.S  
Todarmal Lane, Bengali Market,  
New Delhi-110001  
Phone No. : 011-23753129  
e-mail: sewerageproject@gmail.com

#### 1.15 Clarifications by NDMC

A prospective Bidder requiring any clarification on the RFP document may notify NDMC in writing or through e-mail within such date as specified in RFP Time Schedule. At its sole discretion, NDMC may forward to each Bidder, a copy of NDMC's response, including a description of the enquiry but without identifying its source. No interpretation, revision, or other communication from NDMC regarding this solicitation is valid unless it is in writing and is signed by Executive Engineer, Sewerage Project Division, NDMC.

#### 1.16 Format and Signing of Proposal

1.16.1 Bidders would provide all the information as per this RFP and in the specified format. NDMC reserves the right to reject any Proposal that is not in the specified format.

Bidders who wish to participate in this proposal will have to register on E-procurement of Delhi. To participate in online proposals, bidders will have to procure Digital Signature Certificate (type II or type III) as per Information Technology Act 2000 using which they can sign their electronic bids. Bidder may contact e- Procurement cell, NDMC of IT&C, Government of Delhi for further assistance. Bidders who already have a valid Digital Certificate need not procure a new digital certificate. Before electronic submission of proposal, it should be ensured that all the proposal papers including conditions of contract are read, understood by the Applicant. The uploaded document of the bid shall contain no alteration, or additions, unless notified. In case the bidder makes addition and/or correction, the provision written in the original document, read with the addendum or corrigendum issued shall prevail.

1.16.2 The **Proposal** should be submitted in two parts:

**Part I :**

**Part I (A) : Other Submissions**

This should include the following:

- i. Covering Letter-cum- Project/s Undertaking as per **Appendix 1-B**
- ii. Power of Attorney as per **Appendix 2-A**, authorizing the

- iii. signatory of the Proposal to commit the Bidder
- iii. Power of Attorney as per **Appendix 2-B**, wherever required
- iv. Memorandum of Understanding (MoU), as applicable under **Clause 1.4 (d)**
- v. Anti-Collusion Certificate as per **Appendix 3**
- vi. Bid Security as per **Appendix 4** (separate for each Project bid for)
- vii. The original Volume I of the RFP Document duly signed on each page of the document by the Authorized Signatory.
- viii. Integrity Pact duly signed by the Contractor as per format defined in Annexure 'A'.

***Where the Bidder is submitting Proposals for multiple groups (i.e. for more than one group), separate sets of Part I ( A) documents ( with separate Bid Security for each group) should be submitted in separate covers.***

**Part I (B): Technical Submissions**

Technical Submissions shall include the Bidder's Proposal as per guidelines provided in **Section 2** and the Compliance Chart as per the format set out in **Appendix 5- A**.

**Part-II: Techno - Commercial Bid**

Bidder shall submit their offer only in online electronic format as per the format set out in **Appendix-5-B**

1.16.3 The Bidder shall prepare one original of the Proposal, clearly marked "ORIGINAL" for part-1 A and part-1B only. In addition, the Bidder shall make One (1) Copy of the Part I of the Proposal, clearly marked "COPY". In the event of any discrepancy between the original and the copy, the original shall prevail. Original or **Copies of Part II i.e. appendix-5.B of the proposal should Not be submitted in physical form.**

1.16.4 If the Proposal consists of more than one volume, Bidder must clearly number the volumes and provide an indexed table of contents.

1.16.5 The Proposal and its Copy shall be typed or printed and the Bidder shall initial each page. All the alterations, submissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal.

**1.17 Sealing and Marking of Proposals**

1.17.1 The "PART-I SUBMISSION" envelope should have separate sealed envelopes for Part I (A) and Part I (B) submissions clearly marked on the cover as "PART- I (A) SUBMISSION" or "PART- I (B) SUBMISSION" as the case may be.

- 1.17.2 The original and copy of the Proposal shall be provided in separate envelopes, duly marking the outer envelopes as "**ORIGINAL**" and "**COPY**".
- 1.17.3 The original and copy of the Proposal should then be sealed in one common envelope.
- 1.17.4 All the envelopes shall indicate the Name and Address of the Bidder ( of the Lead Member or the Lead Technical Member and the Lead Financial Member, as the case may be, in case of a Consortium ).
- 1.17.5 All the envelopes shall clearly bear the following identification:  
**"Proposal to develop 100 to 500 KLD capacity STP's (10 Nos. in Three group) at different locations in NDMC"**

**All the envelopes shall be addressed to:**

- 1.17.6 Executive Engineer (SP)  
 Todermal Lane, Bengali Market,  
 New Delhi-110001  
 Ph.: 011-23753129
- 1.17.7 If the envelopes are not sealed and marked as instructed above, the Proposal may be deemed to be non-responsive and liable for rejection. NDMC assumes no responsibility for the misplacement or premature opening of the Proposal submitted if the same is not in accordance with the prescribed format.
- 1.18 Proposal Due Date**
- 1.18.1 Proposals should be submitted before 3:00 PM (IST) on the Proposal Due Date as indicated in Tender Notice, at the address provided in **Clause 1.17.6** in the manner and form as detailed in this RFP. Proposals submitted by either facsimile transmission or telex or e-mail will not be accepted.
- 1.18.2 NDMC, at its sole discretion, may extend the Proposal Due Date by issuing an Addendum in accordance with **Clause 1.9**.
- 1.19 Late Proposals**  
 Any Proposal received by NDMC after the Proposal Due Date will be returned unopened to the Bidder.
- 1.20 Modification and Withdrawal of Proposals**
- 1.20.1 The Bidder may modify or withdraw its Proposal after submission, provided that written notice of the modification or withdrawal is received by NDMC before the Proposal Due Date. No Proposal shall be modified or withdrawn by the Bidder after the Proposal Due Date.

- 1.20.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked and delivered in accordance with the provisions of Clause 1.16 and Clause 1.17 with envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" and also "PART- I SUBMISSION" as appropriate.
- 1.20.3 In case of withdrawal of a Proposal during the interval between the Proposal Due Date and expiration of the Proposal Validity Period, the Bid Security shall automatically stand forfeited in accordance with **Clause 1.11** of this document.
- 1.21 Tests of Responsiveness**
- 1.21.1 Prior to evaluation of Proposals, NDMC will determine whether each Proposal is responsive to the requirements of the RFP. A Proposal shall be considered responsive if;
- (a) it is received before 3:00 PM (IST) on the Proposal Due Date
  - (b) it is signed, sealed, and marked as stipulated in **Clause 1.16** and **Clause 1.17**
  - (c) it contains the information and documents as requested in the RFP
    - (a) it contains information in formats specified in the it is RFP
    - (e) accompanied by the Bid Security as set out in **Clause 1.11**
    - (f) it mentions the validity period as set out in **Clause 1.12**
    - (g) it provides the information in reasonable detail. ("Reasonable Detail" means that, but for minor deviations, the information can be reviewed and evaluated by NDMC without communication with the Bidder). NDMC reserves the right to determine whether the information has been provided in reasonable detail.
  - (h) there are no inconsistencies between the Proposal and the supporting documents
  - (i) it is in accordance with the other provisions of this RFP document.
- 1.21.2 A Proposal that is substantially responsive is one that confirms to the preceding requirements without material deviation or reservation. A material deviation or reservation is one which,
- (a) affects in any substantial way, the scope, quality, or performance of the Project Facility, or
  - (b) limits in any substantial way, inconsistent with the RFP document, NDMC's rights or the Bidder's obligations under the Concession Agreement, or
  - (c) unfairly affects the competitive position of other Bidders resending substantially responsive bids.
- 1.21.3 NDMC reserves the right to reject any Proposal which in its opinion is



non- responsive and no request for modification or withdrawal shall be entertained by NDMC in respect of such Proposals.

### 1.22 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders would not be disclosed to any person not officially concerned with the process. NDMC would treat all information submitted as part of the Proposal in confidence and will ensure that all who have access to such material treat it in confidence. NDMC would not divulge any such information unless ordered to do so by any Government authority that has the power under law to require its disclosure.

### 1.23 Clarifications by Bidders

To assist in the process of evaluation and award of Proposals, NDMC may, at its sole discretion, ask any Bidder for clarification/ s on its Proposal or substantiation of any of the submissions made by the Bidder. The request for such clarification or substantiation and the response shall be in writing or by facsimile. No material change in the substance of the Proposal would be permitted by way of such clarification/ substantiation.

1.24 Escalation annually in bid price:- Escalation @5% per annum shall be admissible after the one year of commercial operation date

### 1.25 Proposal Evaluation: Stage I – Other Submissions

1.25.1 In Stage I evaluation, the Part-I (A)-Other Submissions of the Proposal would first be checked for responsiveness with the requirements of the RFP.

1.25.2 The Stage II evaluation, the Part- I ( B) - Technical Submissions of a Bidder shall be taken up only after the contents of the Other Submissions are found to meet the requirements of this RFP, i.e., the Part 1 ( A) submission is found to be responsive in terms of the requirements under **Clause 1.21**.

1.25.3 NDMC reserves the right to reject the Proposal of a Bidder without opening the Part I ( B) and Part-II Submissions if, in its opinion, the contents of Part - I ( A) - Other Submissions are not substantially responsive with the requirements of this RFP.

### 1.26 Proposal Evaluation: Stage II – Technical Submissions

1.26.1 In Stage II of the evaluation process, Part I (B) Submission of all the Bidders who pass the Part-I (A) evaluation would be evaluated.

1.26.2 In Stage II, the Part I(B) – Technical Submissions of the Proposal would

first be checked for responsiveness with the requirements of the RFP.

- 1.26.3 In case the Proposal is found to be responsive in terms of the requirements under **Clause 1.2.1**, the Technical Submission of the Bidder would be evaluated in accordance with the conditions set out in this RFP document.
- 1.26.4 NDMC would have the right to review the Part-I(B) Technical Proposals and seek clarifications where necessary.
- 1.26.5 NDMC may request the Bidder to make a visual presentation on the Project Proposal. No marks or extra weightage shall be assigned to the presentation. NDMC reserves the right to call for presentations from any / all of the Bidders
- 1.26.6 The evaluation of the Techno- Commercial Bid ( i.e., the Part II of submission online vide Clause 1.16 ) would be taken up only after the contents of the Part 1 ( B ) – Technical Submissions are found to meet the requirements of this RFP. NDMC reserves the right to reject the Proposal of a Bidder without opening the Part II submissions Submitted online if, in its opinion, the contents of the Technical Submission are not substantially responsive with the requirements of this RFP.

### 1.27 Proposal Evaluation: Stage III – Techno- Commercial Bid

- 1.27.1 The Part-II, downloaded viz., **Techno- Commercial Bid** of all the Bidders who pass the Part I (B) evaluation, for particular project, will be opened in the presence of the Bidders' representatives who choose to attend. The Bidders' representatives who are present shall be required to sign and record their attendance.
- 1.27.2 The **Techno- Commercial Bid** would be evaluated and ranked on the basis of the evaluation criteria set out in **Section 2**. The Bidder obtaining the highest rank after evaluation of the **Techno- Commercial Bid**, shall, subject to terms and conditions set out under **Section 2** be declared as the Preferred Bidder.

### 1.28 Declaration of Successful Bidder

- 1.28.1 NDMC may either choose to accept the Proposal of the Preferred Bidder or invite him for presentations and/ or discussions, however, without warranting an alteration/ permitting an alteration to its quote under **Techno- Commercial Bid**.
- 1.28.2 Prior to proceeding with the nomination as Successful Bidder, NDMC may determine to its satisfaction that no circumstances, in particular, the Preferred Bidder's work in hand, future commitments and current litigation, have arisen or intervened that would change

NDMC's opinion as to whether the Preferred Bidder is still qualified to satisfactorily implement the Project.

1.28.3 In the event the Preferred Bidder is declared the preferred bidder for more than one project of NDMC ( including through separate tendering), NDMC may require the Bidder to demonstrate, to the satisfaction of NDMC, their capability to implement the Project, if awarded to them.

1.28.4 Upon acceptance of the Proposal of the Preferred Bidder with or without invoking the provisions under **Clauses 1.28.1 to Clause 1.28.4** herein above, NDMC shall declare the Preferred Bidder as the Successful Bidder.

**1.29 Notification/s**

NDMC will notify the Successful Bidder by a Letter of Intent (LOI) that its Proposal has been accepted.

**1.30 NDMC's Right to Accept or Reject the Proposal**

1.30.1 NDMC reserves the right to accept or reject any or all of the Proposals without assigning any reason and to take any measure as it may deem fit , including annulment of the bidding process, at any time prior to award of Concession, without liability or any obligation for such acceptance, rejection or annulment.

1.30.2 NDMC reserves the right to invite revised Proposals from Bidders with or without amendment of the RFP at any stage, without liability or any obligation for such invitation and without assigning any reason.

1.30.3 NDMC reserves the right to reject any Proposal if at any time:

- (a) a material misrepresentation made at any stage in the bidding process is uncovered; or
- (b) the Bidder does not respond promptly and thoroughly to requests for supplemental information required for the evaluation of the Proposal

This would lead to the disqualification of the Bidder. If the Bidder is a Consortium , then the entire Consortium would be disqualified/ rejected. *If such disqualification/ rejection occur after the Proposals have been opened and the Successful Bidder gets disqualified/ rejected, then NDMC reserves the right to:*

- (a) take any such measure as may be deemed fit in the sole

discretion of NDMC, including annulment of the bidding process.

**1.31 Acceptance of Letter of Intent (Lol) and Execution of Concession Agreement**

1.31.1 Within two (2) weeks from the date of issue of the Lol, the Successful Bidder shall accept the Lol and return the same to NDMC. The Successful Bidder shall execute the Concession Agreement within six (6) weeks of the issue of Lol or within such further time as NDMC may agree to in its sole discretion.

1.31.2 NDMC will promptly notify other Bidders that their Proposal has been unsuccessful and their Bid Security will be returned as early as possible as and in any case not later than ten (10) weeks from the date of announcement of the Successful Bidder.

**1.32 Performance Security**

1.32.1 The Successful Bidder shall furnish Performance Security by way of an irrevocable Bank Guarantee issued by a scheduled bank in India in favor of The Secretary. NDMC, as required under the Concession Agreement. Value of Performance Security should be minimum two months treated water cost.

1.32.2 Failure of the Successful Bidder to comply with the requirements of **Clause 1.31.1** and/ or **Clause 1.32.1** shall constitute sufficient grounds for the annulment of the Lol, and forfeiture of the Bid Security. In such an event, NDMC reserves the right to

(a) **Not used**

(b) take any such measure as may be deemed fit in the sole discretion of NDMC, including annulment of the bidding process.

## EVALUATION METHODOLOGY

### 2.1 Guidelines for submission of Project Proposal

The Bidder would be required to furnish the following as part of their Project Proposal (Part I (B) - Technical Submission)

#### 2.1.1 *Project Appreciation*

Under this item, the Bidders should provide a brief description of their understanding of the Project.

#### 2.1.1.2 *Project Layout and Design*

2.1.1.1 The Bidder should provide project layout and design for each item under Project Facility and shall inter alia, include the following. The provision of drawings, where applicable and feasible, need be ONLY of preliminary and conceptual in nature, and of scale 1: 100.

- (a) Conceptual Plan for the STP's including the supporting preliminary designs and drawings for all the mandatory facilities as indicated in Schedule 2 of the draft Concession Agreement;
- (b) Architecture layout and area allocation for each facility such as primary, secondary and territory treatment, intake of raw sewage and treated water storage area and O&M staff working space etc.

#### 2.1.2 *Plan of Implementation*

The Bidders should provide their plan for implementation of the Project including an appropriate Time Activity Chart.

#### 2.1.3 *Resource Allocation*

The Bidders should provide the plan for resource allocation for the Project viz. plant and equipment to be deployed, personnel at site etc. The bidder should also provide an indication of the

- (i) proposed arrangements for financial tie ups – debt and equity – for the project,
- (ii) the extent of financial tie-ups, if any already achieved for the project at the time of bidding, **expressed as a percentage** of the total fund requirement envisaged for the project, and the aggregate equity contribution envisaged for the project, **expressed again as a percentage** of the total project cost.

***The capital resource deployment, viz., project cost & details thereof are NOT being requested under this submission and bidder's are strictly advised not to provide these details under this submission.***

### 2.2 Compliance chart

Along with the Project proposal, the Bidder shall submit details as per the compliance chart form at set out in **Appendix 5 -A**, along

with relevant supporting documents indicating the bidder's compliance to the Construction Requirements and O&M Requirements as set out in the Draft Concession Agreement – **Schedules 1, 2 and 4** and development control norms and fixed design parameters as set out in **Schedule 1** of the Draft Concession Agreement.

**2.3 Evaluation of Technical submission.**

The Bidder's Technical Submission would be evaluated to check the adequacy and appropriateness of the proposed technology for the Project purposes and its conformance to the Construction Requirements and O&M Requirements ( as set out in the Draft Concession Agreement – between **Schedules 2, 3 and 4** and development control norms and fixed design parameters as set out in **Schedule 1** of the Draft Concession Agreement).

**2.4 Evaluation of Part II submissions- Techno- Commercial Bid: Treated water rates.**

The Part II submission online, viz., **Techno- Commercial Bid** of Bidders who have passed the stage II evaluation, for the particular Project, would be downloaded and evaluated on the basis of the lowest **Net Treated Water Rates** received for each group from the bid submitted by the bidders through e-procurement systems, as per the format prescribed in **Appendix5-B**.

**Pre-bid Integrity Pact as per Annexure-I.**

The bid of bidders / contractors who don't sign the integrity pact shall not be considered.

Detail of Independent External Monitor (IEM)

1. Dr. U.K. Sen, IEM  
Email : ukxen@hotmail.com
2. Sh. V.K. Gupta, IEM  
Email : vinod101951@gmail.com

In case of any complaint about this tender, the same can be addressed direct to IEM's or to Vigilance Deptt. of NDMC.

## CONTENTS OF PROPOSAL

### 2.1 Part I (A) - Other Submissions.

The Part I (A) Submission of the Proposal shall consist of:

- i. Covering Letter-cum- Project/s Undertaking as per **Appendix 1-B**
- ii. Power of Attorney as per **Appendix 2 - A**, authorizing the signatory of the Proposal to commit the Bidder
- iii. Power of Attorney as per **Appendix 2-B**, wherever required
- iv. Memorandum of Understanding (MoU), wherever required
- v. Anti-Collusion Certificate as per **Appendix 3**
- vi. Bid Security as per **Appendix 4**
- vii. Integrity Pact duly signed by the Contractor as per format defined in Annexure 'A'.

### Part-I (B) – Technical Submission

The Part I (B) Technical Submission shall consist of:

- i. Project Proposal
- ii. Compliance chart as per **Appendix 5-A**

**Part II Techno- Commercial Bid in the form at Appendix 5-B (No physical submission is required. It is compulsory to upload)**

**Annexure-I**

**PRE-CONTRACT INTEGRITY PACT**

**General**

This pre-bid pre-contact Agreement (hereinafter called the Integrity Pact) is made on \_\_\_\_\_ day of the month of \_\_\_\_\_ 20...., between on one hand the New Delhi Municipal Council acting through Shri \_\_\_\_\_, The Executive Engineer (hereinafter called the "Principal/Owner", which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and M/s \_\_\_\_\_ represented by Shri \_\_\_\_\_ (hereinafter called the "Bidder(s)/Contractor(s)" which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns ) of the Second Part.

**Whereas** the Principal/Owner proposes to procure (Name of work the Store/ Equipment/Item) through the Bidder(s)/Contractor(s) and the Bidder(s)/Contractor(s) is willing to offer / has offered the same.

**Whereas** the Bidder(s)/Contractor(s) is a private company/public company/ Government undertaking/ partnership/ registered export agency, constituted in accordance with the relevant law in the matter and the Principal/Owner is the municipal government of New Delhi established as per NDMC act 1994 performing its functions on behalf of the Council.

**Now, therefore,**

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence/prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to: Enabling the Principal/Owner to procure the desired said work/ Services/ Stores / Equipments at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption during tendering, execution & public procurement, **and**

Enabling Bidder(s)/Contractor(s) to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the Principal/Owner will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties here to hereby agree to enter into this Integrity Pact and agree as follows:

**Commitments of the Principal/Owner**

- 1.1 The Principal/Owner undertakes that no official of the Principal/Owner, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder(s)/Contractor(s), either for themselves or for any person, organization or third party related to the contract in exchange for an advantage



- in the bidding process, bid evaluation, contracting or implementation process related to the contract.
- 1.2 The Principal/Owner will, during the pre-contract stage, treat all Bidder(s)/Contractor(s) alike, and will provide to all Bidder(s)/Contractor(s) the same information and will not provide and such information to any particular Bidder(s)/Contractor(s) which could afford an advantage to that particular Bidder(s)/Contractor(s) in comparison to other Bidder(s)/Contractor(s).
  - 1.3 All the officials of the Principal/Owner will report to the CVO, NDMC any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
  2. In case any such preceding misconduct on the part of such official(s) is reported by the Bidder(s)/Contractor(s) to the CVO, NDMC with full and verifiable facts and the same is prima facie found to be correct by the NDMC, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the NDMC and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the NDMC the proceedings under the contract would not be stalled.

### **Commitments of Bidder(s)/Contractor(s)**

3. The Bidder(s)/Contractor(s) commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following:
  - 3.1 The Bidder(s)/Contractor(s) will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Principal/Owner, connected directly or indirectly with the bidding process, or to any person, organization or third part related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
  - 3.2 The Bidder(s)/Contractor(s) further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees brokerage or inducement to any official of the Principal/Owner or otherwise in executing the contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the New Delhi Municipal Council for showing or forbearing to show favour or disfavor to any person in relation to the contract or any other contract with the New Delhi

Municipal Council.

- 3.3 Bidder(s)/Contractor(s) shall disclose the name and address of agents/Brokers/representatives/ Intermediaries and Indian Bidder(s)/Contractor(s) shall disclose their foreign Principals or associates at the time of bidding.
- 3.4 Bidder(s)/Contractor(s) shall disclose the payments to be made by them to such agents/brokers/representatives/ intermediaries, in connection with this bid/contract at the time of bidding.
- 3.5 **Deleted.**
- 3.6 The Bidder(s)/Contractor(s), either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in Connection with the contract and the details of services agreed upon for such payments. A copy of contract so made with agents /brokers/intermediaries shall be submitted.
- 3.7 The Bidder(s)/Contractor(s) will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. Bidder shall remain responsible to maintain safety & confidentiality of his bid documents during bid process.
- 3.8 The Bidder(s)/Contractor(s) will not accept any advantage in exchange for any corrupt practice, unfair means, and illegal activities.
- 3.9 The Bidder(s)/Contractor(s) shall not use improperly, for purposed of competition or personal gain, or pass on to others, any information provided by the Principal/Owner as part business relationship regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder(s)/Contractor(s) also undertake to exercise due and adequate care lest any such information is divulged.
- 3.10 The Bidder(s)/Contractor(s) commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts, either to principal/owner or to IEMs so appointed by NDMC.
- 3.11 The Bidder(s)/Contractor(s) shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.12 If the Bidder(s)/Contractor(s) or any employee of the Bidder(s)/Contractor(s) or any person acting on behalf of the Bidder(s)/Contractor(s), either directly or indirectly, is a relative of any of the officers of the Principal/Owner, or alternatively, if any relative of an officer of the Principal/Owner has financial interest/ stake in the Bidder(s)/Contractor(s) firm, the same shall be disclosed

by the Bidder(s)/Contractor(s) at the time of filing of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.

- 3.13 The Bidder(s)/Contractor(s) shall not lend to or borrow any money form or enter into any monetary dealings or transaction, directly or indirectly, with any employee of the Principal/Owner.

**4. Previous Transgression**

- 4.1 The Bidder(s)/Contractor(s) declares that no previous transgression occurred in the last Five years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged here under or with any Public Sector Enterprise in India or New Delhi Municipal Council that could justify Bidder(s)/Contractor(s) exclusion from the tender process.

- 4.2 The Bidder(s)/Contractor(s) agrees that if it makes incorrect statement on this subject, Bidder(s)/Contractor(s) can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5. **Deleted.**

**6. Sanctions for Violations**

- 6.1 Any breach of the aforesaid provisions by the Bidder(s)/Contractor(s) or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder(s)/Contractor(s)) shall entitle the Principal/Owner to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre contract negotiations without assigning any reason or giving any compensation to the Bidder(s)/Contractor(s). However, the proceedings with the other Bidder(s)/Contractor(s) would continue.
- (ii) The Earnest Money Deposit (in pre-contract stage) and/or Security Deposit/Performance Bond / Guarantee (after the contract is signed) shall stand forfeited and the Principal/Owner shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder(s)/Contractor(s).
- (iv) To recover all sums already paid by the Principal/Owner, and in case of an Indian Bidder(s)/Contractor(s) with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a Bidder(s)/Contractor(s) from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due

- to the Bidder(s)/Contractor(s) from the Principal/Owner in connection with any other contract for any other stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the Bidder(s)/Contractor(s), in order to recover the payments, already made by the Principal/Owner, along with interest.
  - (vi) To cancel all or any other contracts with the Bidder(s)/Contractor(s). The Bidder(s)/Contractor(s) shall be liable to pay compensation for any loss or damage to the Principal/Owner resulting from such cancellation/ rescission and the Principal/Owner shall be entitled to deduct the amount so payable form the money(s) due to the Bidder(s)/Contractor(s).
  - (vii) To debar the Bidder(s)/Contractor(s) from participation in future bidding processes of the New Delhi Municipal Council for a period ranging from six months to maximum five years. However if the bidder takes corrective measures against transgressions, subject to satisfaction of Principal/Owner & IEMs, the period of debar can be reviewed.
  - (viii) To recover all sums paid in violation of this Pact by Bidder(s)/Contractor(s) to any middleman or agent or broker with a view to securing the contract.
  - (ix) In case where irrevocable Letter of Credit have been received in respect of any contract signed by the Principal/Owner with the Bidder(s)/Contractor(s), the same shall not be opened.
  - (x) Forfeiture of Performance Bond/Guarantee in case of a decision by the Principal/Owner to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.
- 6.2 The Principal/Owner will be entitled to take all or any of the actions mentioned at para 6.1 (i) to (x) of this Pact also on the Commission by the Bidder(s)/Contractor(s) or any one employed by it or acting on its behalf (whether with or without the knowledge of the Bidder(s)/Contractor(s)), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.
- 6.3 The decision of the Principal/Owner to the effect that a breach of the provisions of this Pact has been committed by the Bidder(s)/Contractor(s) shall be final and conclusive on the Bidder(s)/Contractor(s). However, the Bidder(s)/Contractor(s) can approach the Independent Monitor(s) appointed for the purposes of this Pact.

IEMs shall examine the transgression and its severity and submit the report to Chairman, NDMC for further action after providing an opportunity and hearing to the affected parties.

7. **Fall Clause:** Deleted

8. **Independent External Monitors**

- 8.1 The Principal/Owner has appointed Independent External Monitors (hereinafter referred to as IEMs) for this Pact in consultation with the Central Vigilance Commission whose names and email IDs have been given in the NIT.
- 8.2 The task of the IEMs shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this pact.
- 8.3 The IEMs shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 8.4 Both the parties accept that the IEMs have the right to access all the documents relating to the project/procurement, including minutes of meetings.
- 8.5 As soon as the IEMs notices, or have reasons to believe a violation of this Pact, they shall so inform to Chairman, NDMC.
- 8.6 The Bidder(s)/Contractor(s) accepts that the IEMs have the right to access without restriction to all Project documentation of the Principal/Owner including that provided by the Bidder(s)/Contractor(s). The Bidder(s)/Contractor(s) will also grant the IEMs, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to subcontractors. The IEMs shall be under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) confidentiality.
- 8.7 The Principal/Owner will provide to the IEMs sufficient information about all meetings among the parties related to the Project provided such meeting could have an impact on the contractual relations between the parties. The parties will offer to the IEMs the option to participate in such meetings.
- 8.8 The IEMs will submit a written report to the Chairman, NDMC within 8 to 10 weeks from the date of reference or intimation to him by the Principal/Owner/Bidder(s)/Contractor(s) and, should the occasion arise, submit proposals for correcting problematic situation. However an opportunity of hearing shall be provided by the IEMs to the buyers /bidders before submitting their written report.

9. **Facilitation of Investigation.**

In case of any allegation of violation of any provisions of this pact or payment of

commission, the Principal/Owner or its agencies shall be entitled to examine all the documents including the Books of Accounts of the Bidder(s)/Contractor(s) and the Bidder(s)/Contractor(s) shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

**10. Law and Place of Jurisdiction.**

This pact is subject to Indian Law. The place of performance and jurisdiction is the seat of the Principal/ Owner.

**11. Other Legal Actions.**

The action stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

**12. Validity**

12.1 The validity of this Integrity Pact shall be from date of its signing and extend upto 12 months beyond the defects liability period of the contracts. In case Bidder(s)/Contractor(s) is unsuccessful, this Integrity Pact shall expire after six months from the date of the signing of the contract by the successful bidder.

12.2 Should one or several provision of this Pact turn out to be invalid, the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intention.

13 The parties hereby sign this Integrity Pact at \_\_\_\_\_ on \_\_\_\_\_

Principal/Owner

Bidder(s)/Contractor(s)

Name of the Officer,

Chief Executive Officer

Designation

**New Delhi Municipal Council**

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_

Witness

1. \_\_\_\_\_

2. \_\_\_\_\_

\* Provisions of these clauses would need to be amended / deleted in line with the policy of the Principal/Owner in regard to involvement of Indian agents of foreign suppliers.

APPENDIX 1 - A

FORMAT FOR ACKNOWLEDGEMENT OF RECEIPT OF RFP DOCUMENT AND NOTICE OF INTENT TO SUBMIT PROPOSAL

To,

The Executive Engineer  
Sewerage Project Division  
Bengali Market, Todarmal Lane,  
New Delhi-110001

Dear Sir,

**Re: PPP Project to develop 100 to 500 KLD capacity STP for developing STP and subsequent operation for a period of Twelve years**

The undersigned hereby acknowledges and confirms receipt of all the Parts ( Part I Part II and Part III ) of the Request for Proposal ( RFP ) document for the captioned project from the New Delhi Municipal Council ( NDMC ) and conveys its intention to submit its Proposal for taking up the Project on a build, operate and supply the treated water with the installed capacity to the department for 12 years and Transfer basis.

----- Signature of the Authorized Person

----- Name of the Authorized Person

Date : -----

Note:

1. On the Letterhead of the Bidder or Lead Member of Consortium.
2. To be signed by the Lead Member in case of a Consortium.
3. The acknowledgement should be sent within 3 weeks of receipt of the RFP Document but should not be later than the closing of bid.



APPENDIX 1 - B

FORMAT FOR COVERING LETTER-CUM-PROJECT UNDERTAKING

To,

The Executive Engineer  
Sewerage Project Division  
Bengali Market, Todarmal Lane,  
New Delhi-110001

Dear Sir,

**Re: PPP Project to develop 100 to 500 KLD capacity STP for developing STP and subsequent operation for a period of Twelve years**

Being duly authorized to represent and act on behalf of \_\_\_\_\_ (hereinafter referred to as "the Bidder"), and having reviewed and fully understood all of the information provided in the Request for Proposal (RFP) document provided to us by NDMC in respect of the captioned Project.

We confirm that our Proposal is valid for a period of One Hundred Eighty (Eighty) (180) days from (Proposal Due Date).

We also hereby agree and undertake as under:

Not with standing any qualifications or conditions, whether implied or otherwise, contained in our Proposal we hereby represent and confirm that our Proposal is unqualified and unconditional in all respects and we agree to the terms of the proposed Concession Agreement, a draft of which also forms a part of the RFP document provided to us.

\_\_\_\_\_ Signature of the Authorized Person

\_\_\_\_\_ Name of the Authorized Person

Date \_\_\_\_\_

Note:

1. On the Letterhead of the Bidder or Lead Member of Consortium
2. To be signed by the Lead Member in case of a Consortium

APPENDIX 2-A

**FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF PROPOSAL**  
**(On Rs. 100 Stamp paper duly attested by Notary Public)**

**POWER OF ATTORNEY**

Know all men by these \_\_\_\_\_  
presents, We \_\_\_\_\_  
\_\_\_\_\_ ( name and address of the registered office) do hereby  
constitute, appoint and authorize Mr. / Ms. \_\_\_\_\_( name  
and residential address) who is presently employed with us and holding the  
position of \_\_\_\_\_ as our attorney, to do in our name and  
on our behalf, all such acts, deeds and things necessary in connection with or  
incidental to development .....  
.....(hereinafter referred to as "  
NDMC") situated at Palika Kendra, Sansad Marg, New Delhi, including signing  
and submission of all documents and providing information/responses to NDMC  
in all matters in connection with our Proposal.

We hereby declare that all acts, deeds and things done by our said attorney  
pursuant to this Power of Attorney shall always be deemed to have been  
ratified by us and done by us.

Accepted

Dated this the \_\_\_\_\_ Day of \_\_\_\_\_ 20

For \_\_\_\_\_

(Name, Designation and Address \_\_\_\_\_ Signature)

(Name, Title and Address of the Attorney) Date: \_\_\_\_\_

**Note:**

1. To be executed by the Lead Member in case of a Consortium.
2. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure.
3. Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
4. A certified copy of the appropriate resolution/ document conveying authority to the person signing this Power of Attorney shall be enclosed in lieu of the Power of Attorney.

- 
5. In case of partnership firm : name and address of principal office of the partnership firm to be provided

**APPENDIX 2-B**

**FORMAT FOR POWER OF ATTORNEY FOR DESIGNATING LEAD MEMBER OF CONSORTIUM**

*(On a Rs. 100 Stamp Paper duly attested by Notary Public)*

**POWER OF ATTORNEY**

Whereas, the New Delhi Municipal Council ("NDMC") has invited proposals from qualified Applicants for taking up on build, operate and supply the treated water with the installed capacity to the department for a 12 years and Transfer basis,..... of NDMC situated at Palika Kendra, Sansad Marg, New Delhi.

Whereas, the Consortium being one of the qualified Applicants is interested in bidding for the Project involving design, financing, construction, operation and maintenance of the Parking facility and the Commercial Area in accordance with the provisions of the Concession Agreement and undertaking development of the Project in accordance with the terms and conditions of the Request for Qualification ( RFQ Document), Request for Proposal (RFP Document) and other connected documents in respect of the Project.

Whereas, it is necessary under the RFP Document for the members of the Consortium to designate a Lead Member with all necessary power and authority to do for and on behalf of the Consortium , all acts, deeds and things as may be necessary in connection with the Consortium's Proposal for the Project, or in the alternative to appoint one of them as the Lead Member who, would have all necessary power and authority to do all acts, deeds and things on behalf of the Consortium , as may be necessary in connection with the Consortium's Proposal for the Project.

**NOW THIS POWER OF ATTORNEY WITNESSETH THAT;**

We, M/ s \_\_\_\_\_ and M/s \_\_\_\_\_ ( the respective names and addresses of the registered office, in case of companies/principal office, in case of partnership firms) do hereby designate M/ s \_\_\_\_\_ being one of the members of the Consortium , as the Lead Member of the Consortium , to do on behalf of the Consortium , all or any of the acts, deeds or things necessary or incidental to the Consortium 's Proposal for the Project, including submission of Proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with NDMC, any other Government Agency or any person, in connection with the Project until culmination of the process of bidding and thereafter till the

Concession Agreement is entered into with NDMC.

We hereby agree to ratify all acts, deeds and things lawfully done by the Lead Member and our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us Consortium.

OR

We, M/s. -----, M/s -----, M/s. ----- and M/s. ----- (the respective names and addresses of the registered office) do hereby designate M/s ----- (name and address of registered office) being one of the members of the Consortium as the Lead Technical Member and M/s ----- (name and registered office) also being one of the members of the Consortium, as the Lead Financial Member, of the Consortium who, acting jointly, shall do, all or any of the acts, deeds or things necessary or incidental to the Consortium's bid for the Project including submission of application/ proposal, participating in conferences, responding to queries, submission of information/ documents and generally to represent the Consortium in all its dealings with NDMC, any other Government Agency or any person in connection with the Project until culmination of the process of bidding and thereafter till the Concession Agreement is entered into with NDMC.

We hereby agree to ratify all acts, deeds and things lawfully done by Lead Member/ Lead Technical Member and the Lead Financial Member our said attorney pursuant to this Power of Attorney and that all acts deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us/ Consortium.

Dated this the \_\_\_\_\_ Day of 20...

\_\_\_\_\_ (Executants)

(TO BE EXECUTED BY BOTH MEMBERS OF THE CONSORTIUM)

*Note: The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure (for a body corporate).*

*Also, where required, the executants(s) should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favour of the Person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

\_\_\_\_\_  
Strike out whichever is not applicable.

**APPENDIX 3**

**FORMAT FOR ANTI - COLLUSI ON CERTIFICATE**

**Anti-Collusion Certificate**

We hereby certify and confirm that in the preparation and submission of our Proposal for ..... at ..... New Delhi, we have not acted in concert or in collusion with any other Bidder or other person( s) and also not done any act, deed or thing which is or could be regarded as anti-competitive.

We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Proposal.

Dated this \_\_\_\_\_ Day of \_\_\_\_ 20\_\_

\_\_\_\_\_ (Name of the Bidder)

\_\_\_\_\_ (Signature of the Authorized Person)

\_\_\_\_\_ (Name of the Authorized Person)

*Note:*

1. *On the Letterhead of the Bidder*
2. *To be executed by both members in case of Consortium*

\_\_\_\_\_  
Names of all members in case of Consortium

APPENDIX 4

**FORMAT FOR BID SECURITY**  
(To be issued by a Scheduled Bank in India)

B.G. No. \_\_\_\_\_ dated \_\_\_\_\_

This Deed of Guarantee executed at  
\_\_\_\_\_ by \_\_\_\_\_ (Name of Bank)

**In favor of**

The Secretary, New Delhi Municipal Council ( hereinafter called " NDMC") having its office at Palika Kendra, Sansad Marg, New Delhi, which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns;

**WHEREAS**

- A. M/s \_\_\_\_\_ Ltd., a company registered under provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_ ( hereinafter called" the Bidder") which expression shall unless it be repugnant to the subject or context thereof include its/ their executors administrators, successors and assigns, intends to bid for developing \_\_\_\_\_, New Delhi on build, operate and supply the treated water with the installed capacity to the department for 12 years and Transfer basis.

(hereinafter referred to as the Project).

- B. In terms of **Clause 1.11** of the Request for Proposal Document dated \_\_\_\_\_ issued in respect of the Project ( hereinafter referred to as " RFP Document") the Bidder is required to furnish to NDMC an unconditional and irrevocable Bank Guarantee for an amount of Rs.13,00,000/ - (Rupees Thirteen Lacs only) as Bid Security for the Project.
- C. The Guarantor has at the request of the Bidder and for valid consideration agreed to provide such Bank Guarantee being these presents:

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

- a. The Guarantor, as primary obligor shall, without demur, pay to NDMC an amount not exceeding **Rs.5,00,000/-** (Rupees Five Lacs only), within 5 days of receipt of a written demand from NDMC calling upon the Guarantor to pay the said amount.
- b. Any such demand made on the Guarantor by NDMC shall be conclusive and absolute as regards the forfeiture of Bid Security and the amount due and payable by the Guarantor under this Guarantee.
- c. The above payment shall be made without any reference to the Bidder or any other person and irrespective of whether the claim of NDMC is disputed by the Bidder or not.
- d. This Guarantee shall be irrevocable and remain in full force for a period of 12 months from \_\_\_\_\_ (date) to \_\_\_\_\_ (date) or for such extended period as may be mutually agreed between NDMC and the Bidder and shall continue to be enforceable till all amounts under this Guarantee are paid.
- e. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder/ the Guarantor or any absorption, merger or amalgamation of the Bidder/the Guarantor with any other person.
- f. In order to give full effect to this Guarantee, NDMC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the RFP Document or other documents or by extension of time of performance of any obligations granted to the Bidder or postponement/ non exercise/ delayed exercise of any of its rights by NDMC against the Bidder or any indulgence shown by NDMC to the Bidder and the Guarantor shall not be relieved from its obligations under this Bank Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise or omission on the part of NDMC or any indulgence by NDMC to the Bidder to give such matter or thing whatsoever which under the law relating to sureties would but for this provision have effect of so relieving the Guarantor.
- g. The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

Notwithstanding anything contained herein above:



1. Our liability under this Bank Guarantee shall not exceed **Rs.5,00,000/-** (Rupees Five lacs only);
2. This Bank Guarantee shall be valid up to ..... (12 months from the proposal submission date)
3. We are liable to pay Guaranteed amount or any part thereof under this Bank Guarantee only and only if you serve upon us a written claim or demand on or before ..... (Date of Expiry of Bank Guarantee)

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREIN ABOVE WRITTEN.

Signed and Delivered by

\_\_\_\_\_ Bank by the hand

of Mr. \_\_\_\_\_  
its \_\_\_\_\_ and authorized official.

#### COMPLIANCE CHART FORMAT

The construction of Project Facilities shall be in accordance with the Development and Design Control Norms, Construction requirements and O&M requirements as spelt out in this RfP document (read together with the Draft Concession Agreement, its Schedules and the Project Information Memorandum). The **Schedules 1, 2 and 3** of the Draft Concession Agreement, between them, captures the Development and Design Control Norms, Construction requirements and O&M requirements.

The bidder is required to stipulate in the last column, of table below, either **A** or **B** :

- A. That the stipulations relating to Development, Design Control Norms and Construction and O&M requirements shall be complied with, OR
- B. That the stipulations relating to Development, Design Control Norms and Construction and O&M requirements would have certain deviations

If the response under the last column of table below is **B**, then the Bidder is required to justify the necessity for the deviation in quantitative and qualitative terms in the last column of the table below.

**NDMC reserves the right to accept in full or in part or reject the deviations. Bidders may note that, notwithstanding NDMC's acceptance, in part or full or rejection of the deviations provided below by the bidder, the bid shall be unconditional and there shall be no change in the techno - commercial bid. It may also be noted that, the fixed design parameter's, development control norms in schedule 1 of draft Concession Agreement and covenants mentioned under table 2.1 of C**



**Appendix 5-A**

**Clause 1.1 in schedule 2 of draft Concession Agreement should be strictly adhered to by the bidders.**

**TECHNICAL PROPOSAL REQUIREMENTS - CHECKLIST FOR COMPLIANCE**

SI No	Design/ Output Parameter	<p><u>Indicate A or B i.e., Compliance to/ Deviation from related provisions in Schedules 1, 2 &amp; 4 of the Draft Concession Agreement</u></p> <p>ONLY where specified, bidder is required to mention the relevant detail against the particular parameter. If the Indication is B, i.e., if there is a deviation, then the bidder is required to cite the related article and justify his deviation from the same</p>																																																			
1	Parameter of treated water																																																				
	<p>Minimum standard of water acceptable to the department</p> <table border="1"> <thead> <tr> <th data-bbox="360 1048 459 1077">Sr</th> <th data-bbox="459 1048 778 1077">Parameter</th> <th data-bbox="778 1048 1034 1077">Horticulture</th> </tr> </thead> <tbody> <tr><td>1</td><td>Turbidity (NTU)</td><td>&lt;2</td></tr> <tr><td>2</td><td>SS</td><td>10</td></tr> <tr><td>3</td><td>TDS</td><td>2100</td></tr> <tr><td>4</td><td>pH</td><td>6.5 to 8.3</td></tr> <tr><td>5</td><td>Temperature C</td><td>Ambient</td></tr> <tr><td>6</td><td>Oil &amp; Grease</td><td>10</td></tr> <tr><td>7</td><td>Minimum Residual Chlorine</td><td>1</td></tr> <tr><td>8</td><td>Total Kjeldahl Nitrogen as N</td><td>10</td></tr> <tr><td>9</td><td>BOD</td><td>10</td></tr> <tr><td>10</td><td>Chemical Oxygen Demand (COD)</td><td>AA</td></tr> <tr><td>11</td><td>Dissolved Phosphorous as P</td><td>2</td></tr> <tr><td>12</td><td>Nitrate Nitrogen as N</td><td>10</td></tr> <tr><td>13</td><td>Faecal Coliform, MPN/100 mL</td><td>100</td></tr> <tr><td>14</td><td>Helminthic Eggs/litre</td><td>AA</td></tr> <tr><td>15</td><td>Colour</td><td>Colourless</td></tr> <tr><td>16</td><td>Odour</td><td>Aseptic which means not septic and not foul odour</td></tr> </tbody> </table>	Sr	Parameter	Horticulture	1	Turbidity (NTU)	<2	2	SS	10	3	TDS	2100	4	pH	6.5 to 8.3	5	Temperature C	Ambient	6	Oil & Grease	10	7	Minimum Residual Chlorine	1	8	Total Kjeldahl Nitrogen as N	10	9	BOD	10	10	Chemical Oxygen Demand (COD)	AA	11	Dissolved Phosphorous as P	2	12	Nitrate Nitrogen as N	10	13	Faecal Coliform, MPN/100 mL	100	14	Helminthic Eggs/litre	AA	15	Colour	Colourless	16	Odour	Aseptic which means not septic and not foul odour	
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**Note:-**All units in mg/l unless specified; AA-as arising when other parameters are satisfied.

A tolerance of plus 5% is allowable when yearly average values are considered.

*(Signature)*  
E.E. (SM)

2.	Maximum Depth of construction, below ground	Mention detail
3.	Maximum Height of the STP plant above the ground level	Mention detail
4.	No tree is permissible to cut /fell at any cost. The trees falling in the layout need to be prevented from felling; this includes shifting and change in the layout of Sewage Treatment Plant. The Contractor should cut and dispose the tree which are falling in the layout of their scope of work awarded to them after obtaining necessary clearance from the concerned authorities only in case of absolute necessity when no other option is left, for which, it will be responsibility of NDMC to get the permission from respective department at its own cost, however, the concessionary will try to preserve as much trees as it can and assist NDMC for getting the permission. The quoted rates shall include this expenditure for cutting of trees and no extra payment shall be made towards the same. However, NDMC shall make the statutory payment to the concerned authorities on demand in this regard.	
5.	The bidder has to make the provision of connecting line from feeder line to STP up to 30m. In case the distance of connecting line from feeder line to STP increases from 30m, it will be reimburse by NDMC on the basis of DSR 2014 rate without any escalation for the line exceeding 30Ms.	
6.	The treated water thus received will only be supplied to NDMC and if any other department is willing to purchase the treated water then the same can only be allowed with prior permission from NDMC.	
7.	The designated capacity of the STP mentioned in RFP at the stated locations is minimum however, if bidder suggest installation of more capacity of STP will be considered	

8.	The capacity of the storage tank of treated water of should be equal the capacity of the plant	
<b>B.</b>	<b>Sewage Treatment Technology</b>	
1	Name of the primary, secondary and tertiary treatment technology	Mention detail
2	Name of Technology supplier and Country of Origin.	Mention detail
3	Number of projects of similar nature as the one proposed, with capacity : a) in India b) abroad	Mention detail
4	Number of years of operation of the technology provided	Mention detail
5	If Technology provider is a foreign firm, details of the arrangement for maintenance and servicing they have in India	Mention detail
<b>C</b>	<b>Utilities</b>	
1	Electrical a) Total Installed Power requirement for treatment plant (in KW and KVA)	Mention detail
3	Underground storage a) capacity of raw sewage storage facility provided b) Capacity of treated water storage facility	Mention detail
<b>D</b>	<b>Project cost</b>	
1	Extent of financial tie-up achieved for the project at the time of bidding expressed as a percent age of the estimated total project cost	Mention detail
2	The bidder's equity contribution expressed as a percent age of the estimated total project cost.	Mention detail

----- (Name of the Bidder)

----- (Signature of the Authorized Person)

----- (Name of the Authorized Person)

Appendix 5-B

Financial Bid

Group-I,II & III

Item No.	Description of item	Quantity in KL	Rate	Rate in words	Unit	Amount
1	<p><b>Group-I*</b> Supply of treated water with minimum specified parameter mentioned in Appendix from Sewage Treatment Plant with the capacity output installed / constructed by using the municipal sewage provided free of cost for twelve years of concession period from the location of Sanjay Park Lake 300 KLD, Park in between Satya Sadan and Railway Line Around Khushak Nallah 500 KLD, near Junction of Ring Road and Shanti path at Moti Bagh 100 KLD and Subhash Park at Netaji Nagar 100 KLD</p>	36,00,000			Per kilo litre	
2	<p><b>Group-II*</b> Supply of treated water with minimum specified parameter mentioned in Appendix from Sewage Treatment Plant with the capacity output installed / constructed by using the municipal sewage provided free of cost for twelve years of concession period from the location of Nehru Park 500 KLD, Developed Rose Garden at Shanti Path towards Nyaya Marg 300 KLD, Rose Garden at Shanti Path towards Niti Marg 100 KLD, Gole Market in between junction of Peshwa Road and R.K. Ashram 200 KLD.</p>	39,60,000			Per kilo litre	
3	<p><b>Group-III*</b> Supply of treated water with minimum specified parameter mentioned in Appendix from Sewage Treatment Plant with the capacity output installed / constructed by using the municipal sewage provided free of cost for twelve years of concession period from the location at Lodhi Garden 500KLD and Bharti Nagar 500KLD. <b>Note:-*if any bidder is not willing to quote for all group then he may quote Zero (o) figure in the group for which the bidder is not interested. (Schedule of quantity is for 12 years)</b></p>	36,00,000			Per kilo litre	

The availability and existence of plot area is marked against each and every site locations and non of the bidder shall be allowed to exceed the specified area.

Sr. No.	Locations of proposed STP	Capacity	Available area
1	Sanjay Park Lake	300 KLD	500 M <sup>2</sup>
2	Park in between Satya Sadan and Railway Line Around Khushak Nallah	500 KLD	600 M <sup>2</sup>
3	Nehru Park	500 KLD	400 M <sup>2</sup>
4	At Moti Bagh Junction of Ring Road and Moth Bagh.	100 KLD	100 M <sup>2</sup>
5	Subhash Park at Netaji Nagar	100 KLD	300 M <sup>2</sup>
6	Lodhi Garden	500 KLD	450 M <sup>2</sup>
7	Bharti Nagar	500 KLD	600 M <sup>2</sup>
8	Developed Rose Garden at Shanti Path towards Nyaya Marg	300 KLD	300 M <sup>2</sup>
9	Rose Garden at Shanti Path towards Niti Marg	100 KLD	150 M <sup>2</sup>
10	Gole Market in between junction of Peshwa Road and R.K. Ashram	200 KLD	330 M <sup>2</sup>

**Average parameters of Raw Sewage at Okhla STP received from DJB for reference only.**

Sr. No.	Characteristics	Units	Jan-15	Feb-15	March-15	April-15	May-15	June-15	July-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Average
1	Temperature	C	17.0	20.3	22.5	28.0	30.0	30.0	29.0	30.0	31.0	28.0	24.0	20.0	25.8
2	pH value	-	7.1	7.13	7.19	7.3	7.3	7.4	7.4	7.2	7.3	7.3	7.3	7.2	7.3
3	Conductivity	µm/c	1250	1272	1185	1282	1382	1331	1195	1143	1330	1331	1364	1192	1273
4	T. Alkalinity	mg/l	369	366	342	346	409	342	307	328	368	381	368	355	356
5	Chlorides	mg/l	157	171	148	160	181	156	148	183	163	178	179	152	162
6	Oxy. Abs	mg/l	56.4	57.8	56	56	59	54	52	51	53	54	57	52	54.7
7	T. Solids	mg/l	1024	1066	1015	1022	1115	1062	978	955	1020	1062	1124	968	1035
8	TSS	mg/l	275	304	304	260	280	277	264	272	222	241	331	258	273
9	Dissolved Solids	mg/l	749	762	712	762	835	785	714	683	798	822	793	719	762
10	BOD 3 day	mg/l	144	176	176	160	177	151	137	138	154	157	179	163	163
11	COD	mg/l	400	401	443	362	391	384	292	337	397	372	389	396	384
12	Ammonia-N	mg/l	44	44	43	44	45	41	38	40	42	42	43	44	42
13	Phosphates	mg/l	2.7	3.1	2.9	3.0	3.5	2.7	2.5	3.0	3.7	3.0	3.2	3.0	3.0
14	Oil & Grease	mg/l	6.7	4.0	5.5	6.0	8.0	4.2	6.0	6.0	3.7	6.0	6.0	-	5.8

E.E. ISM

Information regarding Sewerage Collection point for proposed STP site locations for reference only. However, this may be verified by bidder at his site inspection before bidding.

Sr. No.	Site location	Depth of manholes	Dia (mm)	metre	Remarks
1	Sanjay Park Lake 300 KLD	3.70 mtr	1905		
2	Park in between Satya Sadan and Railway Line Around Khushak Nallah 500 KLD	4.40 mtr	1000		
3	near Junction of Ring Road and Shanti path at Moti Bagh 100	3.40 mtr	400		
4	KLD and Subhash Park at Netaji Nagar 100 KLD.	5.40 mtr	300		
5	Nehru Park 500 KLD	4.30 mtr	1067		
6	Developed Rose Garden at Shanti Path towards Nyaya Marg 300 KLD	3.80 mtr	300		
7	Rose Garden at Shanti Path towards Niti Marg 100 KLD	5.00 mtr	250		
8	Gole Market in between junction of Peshwa Road and R.K. Ashram 200 KLD	2.20 mtr	500		
9	Lodhi Garden 500 KLD	6.20 mtr	1675		
10	Bharti Nagar 500 KLD	5.20 mtr	1675		

E.E.(SM)

(2)



CONCESSION AGREEMENT

between

New Delhi Municipal Council ("NDMC")

and

\_\_\_\_\_  
(Concessionaire)

for

**Group-I** Sanjay Park Lake 300 KLD, Park in between Satya Sadan and Railway Line Around Khushak Nallah 500 KLD, near Junction of Ring Road and Shanti path at Moti Bagh 100 KLD and Subhash Park at Netaji Nagar 100 KLD.

**Group-II** Nehru Park 500 KLD, Developed Rose Garden at Shanti Path towards Nyaya Marg 300 KLD, Rose Garden at Shanti Path towards Niti Marg 100 KLD, Gole Market in between junction of Peshwa Road and R.K. Ashram 200 KLD.

**Group-III** Lodhi Garden 500 KLD, Bharti Nagar 500 KLD,

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This Concession Agreement entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ (Month), Two Thousand and Six at Delhi,

**BETWEEN**

The Chairperson, on behalf of the New Delhi Municipal Council a body corporate constituted under the New Delhi Municipal Council Act, 1994 having its office at Pallika Kendra, Sansad Marg, New Delhi hereinafter referred to as "the Concessing Authority" or "NDMC" which expression shall unless repugnant to the context include its successors and assigns, OF THE ONE PART,

**AND**

\_\_\_\_\_, a company incorporated under provisions of the Companies Act, 1956, having its registered office at \_\_\_\_\_, hereinafter referred to as "Concessionaire" which expression shall unless repugnant to the context include its successors and permitted assigns, OF THE OTHER PART.

**WHEREAS,**

- A. The consistent and increasing demand of water for horticulture in NDMC area during summer and winter is to be required for maintaining / improving green area's. The valuable resources of scare water is recycled upto the standard of horticulture demand in NDMC area by continuous availability of raw material for the Sewage Treatment Plant i.e. sewage. NDMC is desirous to improve the availability of raw water for horticulture and dependency on UFW currently provided by CPWD by developing infrastructure STP's. With this objective, development of STP's infrastructure is proposed under a Public Private Partnership at ten identified locations, viz. at Lodhi Garden, Sanjay Park Lake, Park in between Satya Sadan and Railway Line around Khushak Nallah, Nehru Park, Bharti Nagar, Both Rose Garden, Gole Market in between junction of Peshwa Road and R.K. Ashram, At Moti Bagh Junction of Ring Road and Moth Bagh, Subhash Park at Netaji Nagar.
- B. NDMC, after evaluating the aforesaid Proposals accepted the Proposal submitted by the Concessionaire/Consortium and issued

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Letter of Acceptance No. \_\_\_\_\_ dated \_\_\_\_\_ to the Concessionaire /Consortium for implementing the Project.

- C. In accordance with the terms of the Proposal submitted by the Consortium, the Consortium has caused the Concessionaire to be incorporated as a special purpose company (as hereinafter defined)<sup>1</sup> to implement the Project.
- D. The Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :-**

## ARTICLE 1

### DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

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


**“Additional Cost”** shall mean the additional capital expenditure and/or the additional operating costs or both as the case may be, which the Concessionaire would be required to incur as a result of Change in Law.

**“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with **Article 7.1**.

**“Agreement”** shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

**“Applicable Law”** shall mean all laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law and that are in force and effect, as of the date hereof, and which may be promulgated or brought into

<sup>1</sup> In case the bidder is a Consortium

  
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force and effect hereinafter in India including judgements, awards, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

**"Applicable Permits"** shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

**"Appointed Date"** shall mean the date of this Agreement .

**"Arbitration Act"** shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

**"Book Value"** means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly certified by the Expert.

**"Change in Law"** shall have the meaning ascribed thereto in **Article 9**.


**"COD"** or **"Commercial Operations Date"** shall mean the date on which the Engineer-in-Charge has issued the Provisional Completion Certificate or the Completion Certificate in accordance with the provisions of **Article 5.4**.

**"Completion Certificate"** shall mean the certificate issued by Engineer-in-Charge certifying, that:

- (i) the Concessionaire has constructed the STPs in accordance with the Construction Requirements; and

**"Concession"** shall have the meaning ascribed thereto in **Article 2.1** of this Agreement.

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“**Concessionaire Event of Default**” shall have the meaning ascribed thereto in **Article 8.1(a)**.

“**Concession Period**” means the period of Concession specified in **Article 2.2**, as applicable.

“**Consortium**” shall mean the consortium consisting of (i) M/s. **AAAA** (ii) M/s. **BBBB** (iii) M/s. **CCCC** and (iv) M/s. **DDDD** formed/ acting pursuant to the Memorandum of Understanding dated \_\_\_\_\_ entered into by them, for the purpose of submitting their proposal for undertaking the Project through the Concessionaire, a special purpose company formed and incorporated by them in India.

“**Members**” Members shall mean each member shall have more than 25% Equity.

“**Construction Period**” shall mean the duration commencing from the Appointed Date to the date of issue of Completion Certificate.

“**Construction Requirements**” shall mean the requirements as to construction of the STPs as set out in **Schedule 2**.

“**Construction Works**” shall mean all works and things required to be undertaken by the Concessionaire in accordance with the Construction Requirements.

“**Contractor**” shall mean any Person with whom the Concessionaire has entered into/may enter into any of the Project Agreements.

“**Cure Period**” shall have the meaning ascribed thereto in **Article 8.2(a)(iii)** of this Agreement.

“**Drawings**” shall mean all of the drawings, designs, calculations and documents pertaining to the Project submitted by the Concessionaire in connection with the Project.

“**Emergency**” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the STPs including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

**"Encumbrance"** shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facilities.

**"EPC Contract"** shall mean the contract if any entered into by the Concessionaire for the purpose of design, engineering, procurement of equipment and materials (including by import thereof) and construction of the Project in accordance with the provisions of this Agreement.

**"Financial Close"** means the date on which the Financing Documents and the Equity Documents have become effective, and the Concessionaire has access to the funds/financial assistance committed there under.

**"Financing Documents"** shall mean collectively the documents evidencing Lenders' commitment to finance the Project.

**"Financial Year"** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

**"Force Majeure"** or **"Force Majeure Event"** shall mean an act, event, condition or occurrence as specified in **Article 7**.

**"Good Industry Practice"** shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

**"Government Agency"** shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local,

having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“**Handback Requirements**” shall have the meaning ascribed thereto in **Article 10**.

“**Implementation Schedule**” shall mean the monthly milestone schedule to be submitted by the Concessionaire in accordance with **Article 5.3** of this Agreement.

“**Independent Engineer**” shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with **Article 4** for supervision and monitoring of compliance by the Concessionaire with the Construction Requirements and Handback Requirements and to undertake, perform, carry out the duties, responsibilities, services and activities set forth in **Schedule 4**.

“**Lenders**” shall mean financial institutions, banks, funds and trustees for bond holders or debenture holders, who provide funds to the Concessionaire for financing the cost of construction of the STPs or any part thereof.

“**Master Plan**” shall mean Master Plan of Delhi 2021.

“**Material Adverse Effect**” shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“**Month**” “the calendar month as per the Gregorian calendar

“**NDMC Event of Default**” shall have the meaning ascribed thereto in **Article 8.1(b)**.

“**O&M Contract**” means the contract, if any, entered into by the Concessionaire for the operation and maintenance of the STPs in accordance with the provisions of this Agreement.

“**O&M Manual**” shall mean the manual in respect of the operation and maintenance of the STPs to be prepared by the Concessionaire in accordance with **Schedule 3**.

“**O&M Requirements**” shall mean the requirements as to operation and maintenance of the STPs set forth in **Schedule 3**.

“**Operations Period**” shall mean the period commencing from COD and ending at the expiry of the Concession/Termination.

  
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**"Performance Security"** shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with **Article 5.1**.

**"Person"** shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

**"Preliminary Notice"** shall mean the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

**"Project"** shall mean design, financing, construction, operation and maintenance of STPs at the Project Sites in accordance with the provisions of this Agreement.

**"Project Agreements"** shall mean collectively this Agreement, EPC Contract, O&M Contract and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

**"Project Requirements"** shall mean collectively the Construction Requirements, O&M Requirements and Handback Requirements or any of them as the context may admit or require.

**"Project Site"** shall have the meaning ascribed thereto in Recital A of this Agreement.

**"Remuneration"** shall mean all fees, costs, charges and expenses payable to the Independent Third Party in accordance with the terms of his appointment.

**"Request for Proposal" or "RfP"** shall mean the RfP dated ... issued by NDMC for this Project.

**"Rupees" or "Rs."** refers to the lawful currency of the Republic of India.

**"Scheduled Project Completion Date" or "SPCD"** shall mean the date 6 months from the Appointed Date.

**"Substitution Agreement"** shall mean the agreement substantially in the form set out at **Schedule 8**, to be entered into between NDMC, Lenders and the Concessionaire.

**"Tax"** shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law.

**"Techno-Commercial Report"** shall mean the report in respect of the Project prepared by NDMC and provided by NDMC to the bidders as part of bidding documents.

**"Termination"** shall mean early termination of the Concession Period which shall immediately result in termination of this Agreement, pursuant to Termination Notice

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or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

**"Termination Date"** shall mean the date specified in the Termination Notice as the date on which Termination occurs.

**"Termination Notice"** shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

**"Tests"** shall mean the tests to be carried out in accordance with the Construction Requirements or the O&M Requirements and if not expressly specified in either of the said requirements, as instructed by the Engineer –in -Charge, in accordance with this Agreement.

**"Year"** shall mean a period of 12 Months commencing from the appointed date and every 12 Month period thereafter during the term of this Concession Agreement

  
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## 1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (c) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (d) the words "include" and "including" are to be construed without limitation;
- (e) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (f) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- (h) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (i) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (j) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (k) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or Engineer –in –Charge in this behalf and not otherwise;
- (l) references to "Construction" includes investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto

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## ARTICLE 2

### CONCESSION

#### Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessioneing Authority hereby grants and authorises the Concessionaire to design, engineer, finance, construct, operate and maintain the Project and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement. (the "Concession").

#### 2.1 Concession Period

The Concession hereby granted is for a period of 12 years commencing from the Appointed Date during which the Concessionaire is authorised to implement the Project in accordance with the licence hereby granted and to provide STPs and services in accordance with the provisions hereof (hereinafter referred to as the "Concession Period").

Provided, in the event of an early termination of the Concession/ this Agreement by the Parties in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the date of termination of the Concession/this Agreement.

## ARTICLE 3

### PROJECT SITE

#### 3.1 Handover of Project Site

- (a) NDMC shall, subject to submission of Performance Security in terms of provisions of Article 5.1, within 10 days from the date of this Agreement , grant permission/ licence to the Concessionaire to enter upon and utilise the Site for the construction pursuant to and purpose of implementing the Project in accordance with this Agreement.
- (b) Upon the permission being granted pursuant to the preceding sub-article 3.1 (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to develop implement the Project and provide STPs in accordance with the provisions of this Agreement.

#### 3.2 Rights, Title and Use of the Project Site

- (a) The Concessionaire shall have the right to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same at their own cost.
- (b) The Concessionaire shall have the right to enter into License Agreements in the form set forth in Schedule 13 with suitable Persons, in respect of the Commercial Facilities subject to the conditions set forth under this Agreement provided such License Agreements are placed for NDMC's record within 15 days of execution.
- (c) The Project Site and STPs shall be and continue to vest in NDMC. The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site and/or the Project Facilities, save and except as set forth and permitted under this Agreement .
- (d) The Concessionaire shall not without the prior written approval of NDMC use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

#### 3.3 Peaceful Possession as Licensee

NDMC, as Concessioneing Authority, hereby warrants that:

- (a) The Project Site together with the necessary access/ right of way/ way-leaves has been leased to NDMC and that NDMC has full powers to hold, dispose of and deal with the same consistent with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.

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- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, be permitted peaceful use of the Project Site as Licensee. Licensee shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Licensor's Assets during the License Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, NDMC shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

### 3.4 Applicable Permits

The Concessionaire shall obtain and maintain all Applicable Permits including those indicated in **Schedule 3** as is required for the Project. Such Applicable Permits shall be obtained in such sequence as is consistent with the requirements of the Project.

## ARTICLE 4

### INDEPENDENT/ Third Party

#### 4.1 Procedure for Appointment

The appointment of Independent Engineer is kept optional and incase the NDMC or concessionaire shall feel the need of Independent Engineer, then, with the mutual consent (through tender) an Independent Engineer shall be appointed and NDMC will pay 100% fee for the Independent Engineer/thirt party and testing charges, but incase, if any sample is failed during testing, than the fee of testing shall be borne by the concessionaire in totality.

## ARTICLE 5

### CONCESSIONAIRE'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

#### 5.1 Performance Security

- (a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to NDMC, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to NDMC, in the form as set forth in **Schedule 4**, ("Performance Security") for a sum of Rs. 20,00,000/- (Rupees Twenty Lacs only).
- (b) The Performance Security shall be kept valid up to the satisfactory /Successful commissioning of the plant from the Appointed Date and further till the concession period (i.e O&M of 12 years)..

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to NDMC's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

#### 5.2 Financing Arrangement

- (a) The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.
- (b) The Concessionaire shall achieve Financial Close on or before 90 days from the Appointed Date.

#### 5.3 Drawings

- (a) The Concessionaire shall, subject to the Construction Requirements, as set forth in **Schedule 2** and Approved Development Control Norms including those set forth in **Schedule 1** and **Schedule 2**, prepare the Drawings for Project of installation of STP Provided that, the Concessionaire shall, in any event be solely responsible for the adequacy of the Drawings.
- (b) The Concessionaire shall submit the Drawings to NDMC within 15 days after signing of agreement. with a schedule with 3 monthly milestones for implementation of the Project ("Implementation Schedule");

#### 5.4 Project Implementation

##### (a) Construction Works

- i. The Concessionaire shall design, engineer, procure and construct the STPs in accordance with the Construction Requirements as set out in the Schedules to this Agreement
- ii. The Concessionaire shall adhere to the Implementation Schedule and the Construction Requirements during the Construction Period and achieve COD for the Project on or before the Scheduled Project Completion Date.
- iii. The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements.
- iv. The Concessionaire shall, before commencement of Construction Works:
  - have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Engineer-in-Charge/NDMC and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - obtained approval of NDMC for the Drawings and carried out such changes as may be suggested by NDMC towards conformity with the Construction Requirements; and
  - all Applicable Permits required for commencement of Construction Works have been obtained.
- v. For the purposes of determining that Construction Works are being undertaken in accordance with the Construction Requirements, Approved Development Control Norms and the Drawings approved pursuant to **Article 5.3(a)**, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the Engineer-in-Charge and such Tests shall be carried out under the supervision of Engineer-in-Charge. The Concessionaire shall

maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

- vi. The Construction Works shall be deemed to be complete and ready for commercial operations only after the satisfaction of the Engineer-in-Charge.
- vii. "Provisional COD for at least commissioning of two plants shall be given for the purpose of starting the project, but the COD of the project shall only be given after successful commissioning of last project of the group in a six months period. However, if Three out of four STP's or one out of two (third group) are commissioned in first six months period, but the rest is not commissioned in due period, then an extension of six months shall be considered with penalty and beyond that the project shall be scrapped with penalty to be levied for project opportunity lost of treated water for one year period. Time issue will be dealt on proportionate basis"

#### 5.5 Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the STPs in accordance with the O&M Requirements in terms of **Schedule 3**.
- (b) The Concessionaire may undertake operations and maintenance of the STPs by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- (c) The Concessionaire shall, during the Operations Period:
  - i. have requisite organisation and designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project Facilities, to deal with the personnel deployed by NDMC for monitoring proper operations and maintenance of the Project, consistent with the O&M Manual and the O&M Requirements, and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. The concessionaire shall display and upload the treated water quality parameters on NDMC Website every week. In case the treated water quality is found below the acceptable limit, then the payments for last 15 days shall be recovered from the running bills of the concessionaire. NDMC shall also checked the treated water quality randomly (preferably forte nightly) to ensure the quality of treated water.
- (d) In the event, the Concessionaire has failed to operate and maintain the STPs in accordance with the O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the NDMC ("Notice to Remedy"), NDMC may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the STPs at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by NDMC on account of such repair and maintenance within 7 days of receipt of NDMC's claim therefor.
- (e) The Concessionaire shall be deemed to be in material breach of O&M Requirements, if NDMC, acting reasonably and in accordance with the

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provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,

- i. the maintenance of the STPs or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
  - ii. there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the STPs or any part thereof is not safe for operations;
- (f) Upon occurrence of a Material Breach of O&M Requirements, NDMC shall, without prejudice to and notwithstanding any other consequences provided therefor under this Agreement, be entitled to terminate this Agreement.

## 5.6 Insurance

### (a) Premium Payment

The Concessionaire shall, in accordance with Good Industry Practice, at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect the STPs during the Concession Period.

The Concessionaire shall maintain a register of entry in order of premia paid towards the STPs and proof of payments made shall be submitted to NDMC whenever requested for.

### (b) Un-insurable Risks

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement. However the concessionaire shall intimate to NDMC in time if any such ceasure is made by the insurance company due to any reason.

## 5.7 Legal Compliance

The Concessionaire shall, ensure that all aspects of the STPs during the Concession Period and processes employed in the construction, operation and maintenance thereof shall conform to the extant applicable laws, including those pertaining to environment, labour, health and safety aspects including, policies and guidelines related thereto.

## 5.8 Shareholding

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The Concessionaire shall ensure that M/s \_\_\_ (LEAD MEMBER/ SELECTED BIDDER)\_\_\_\_\_ <sup>2</sup> hold not less than 51% of the paid up share capital of the Concessionaire during the entire Concession Period.

Or

The Concessionaire shall ensure that M/s. (LEAD TECHNICAL MEMBER)\_\_\_\_\_ <sup>3</sup> hold not less than 10% of the paid up share capital of the Concessionaire during the entire Concession Period and M/s. (LEAD FINANCIAL MEMBER)\_\_\_\_\_ <sup>7</sup> hold not less than 41% of the paid up share capital of the Concessionaire during the entire Concession Period, and together, the M/s. (LEAD TECHNICAL MEMBER)\_\_\_\_\_ <sup>4</sup> and M/s. (LEAD FINANCIAL MEMBER)\_\_\_\_\_ <sup>7</sup> hold not less than 51% of the paid up share capital of the Concessionaire during the entire Concession Period.

<sup>2</sup> Name of the Lead Member (in case of Consortium) or the selected Bidder (in case the selected Bidder is a single entity)

<sup>3</sup> Name of LTM and LFM (in case of a Consortium comprising LTM and LFM)

<sup>4</sup> Name of LTM and LFM (in case of a Consortium comprising LTM and LFM)

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## 5.9 Specific Obligations

### (a) Compulsory operation and maintenance for treating sewerage.

Here it should be ensured by the concessionaire that all the STPs (in a pocket) are working all the time and annual repair/maintenance etc shall be taken during rainy season only i.e. between 15<sup>th</sup> July to 15<sup>th</sup> Sept.

Only raw sewage shall be supplied free of cost, rest all expenses shall be borne by the Concessionaire.

## 5.10 General Obligations

The Concessionaire shall at its own cost and expense:

- (a) investigate, study, design, finance, construct, operate and maintain the STPs in accordance with the provisions hereof;
- (b) obtain all Applicable Permits and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law governing the operations of the Project Facilities, as the case may be, at all times during the Concession Period;
- (d) ensure and procure that each Project Agreements contains provisions that would entitle NDMC or a nominee of NDMC or the Lender or the Lender's nominee to step into the same at NDMC's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (e) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project Facilities;
- (f) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- (g) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the STPs and hereby indemnifies NDMC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall NDMC be treated as employer in this regard;
- (h) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits issued time to time.

- (i) be responsible for all the health, security, environment and safety aspects of the project i.e. to develop 100 to 500 KLD capacity STPs, as the case may be, at all times during the Concession Period;
- (j) ensure that the STPs remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (k) be responsible for the shifting of utilities if any with due permission if any required and in the manner stipulated by the relevant Government Agency;
- (l) ensure that the shifting of utilities is carried out in a manner so as to cause least damage and inconvenience to the users thereof;
- (m) upon receipt of a request thereof, afford access to the STPs to the authorised representatives of NDMC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the STPs and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- (n) Pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities;
- (o) Upon Termination, vacate the Project Site and hand back the STPs in accordance with the Hand back Requirements.
- (p) Any residual or by product shall be the property of the concessionaire and he shall be free to use as per their will.
- (q) As fixed by department time to time, no pre-fixing of electrical charges and agency to quote according the variable rates.

#### 5.11 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- i. Force Majeure Event, subject to **Article 7.1**;
- ii. NDMC Event of Default;
- iii. Compliance with written instructions of the NDMC or the directions of any Government Agency in writing, other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

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## ARTICLE 6

### NDMC's OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, NDMC shall have the following obligations :

#### 6.1 Specific Obligations

- (a) NDMC shall grant permission/licence to enter upon and utilise the the Project Site to the Concessionaire pursuant to and in accordance with this Agreement;
- (b) Prior to handover of the Project Site, NDMC shall
  - i. make arrangements to relocate all the occupants of the Project Site, to an alternative site as may be suitably identified by NDMC;
  - ii. remove all encroachments from the Project Site;
- (c) NDMC shall grant/assist in obtaining all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from NDMC under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorisation for avilment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by NDMC in the form as set out in **Schedule 5**, within 15 (fifteen) days from receipt of request from the Concessionaire to make available such authorisation.
- (d) Without prejudice to the generality of the preceding sub-clause (c), the NDMC shall provide all assistance for transfer of the utilities if any at the Project Site. Further, NDMC shall compensate the Concessionaire for the costs incurred by the Concessionaire in shifting of such underground utilities. Except up to 30 meter laying of connection/feeder sewer line for supply of continuous sewage to Treatment plant which is included in the project cost.
- (e) NDMC shall grant/assist in obtaining necessary permissions and approvals to the Concessionaire so as to enable the Concessionaire to meet his obligations relating to the Construction Requirements and shall take necessary steps for regulation of traffic and/or removal of obstructions and other impediments, if any, to facilitate the same.

## 6.2 General Obligations

NDMC shall :

- (a) upon a reasonable request from the Concessionaire, in writing, assist, by issuing letters of recommendation, the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- (b) assist the Concessionaire, by issuing letters of recommendation, in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/STPs and implementing this Agreement in accordance with the provisions hereof;
- (c) observe and comply with all its obligations set forth in this Agreement.
- (d) Steering Committee shall be constituted to take final technical decision. The committee shall be headed by Chief Engineer (Civil), which shall be binding to both the parties. Representative of concessionaire shall also be the member of Steering Committee.
- (e) For the sake of releasing payment to the concessionaire, it will be ensured by NDMC that monthly bill shall be made and 75% of billed amount will be made in 7 days (working days) and rest after checking of bill.
- (f) NDMC shall ensure consuming the BOQ Quantity with the variation of above and below 5% and if it fails then balance will be reimbursed on an annual average quantity by NDMC.

- 6.3 **Price Escalation:-** Escalation annually in bid price @5% per annum shall be admissible after the one year of commercial operation date

## ARTICLE 7

### FORCE MAJEURE

#### 7.1 Force Majeure Events

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party"), and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and results in Material Adverse Effect shall constitute Force Majeure Event:

- (a) earthquake, flood, inundation and landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, contractors or agents of the Concessionaire;
- (d) acts of terrorism;

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- (e) strikes, labour disruptions, any other industrial disturbances or public unrest not arising on account of the acts or omissions of the Concessionaire; or
- (f) war, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war;

## 7.2 Notice of Force Majeure Event

- (a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify Engineer –in- charge and the other Party of the same setting out, inter alia, the following in reasonable detail:
  - (i) the nature and extent of the Force Majeure Event;
  - (ii) the estimated Force Majeure Period;
  - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event; and
  - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby;

## 7.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 9.2 (a);
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;

## 7.4 Termination due to Force Majeure Event

If a Force Majeure Event leads to a situation that in the reasonable judgement of the Parties, the Project Facilities cannot be restored ("Total Loss") or if a Force Majeure Event subsists for a period exceeding 180 days either Party shall be entitled to terminate this Agreement by a notice in writing in respect thereof ('Termination Notice').

Following the issue of Termination Notice by a Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that the Project Site and Project Facilities are handed back to NDMC by the Concessionaire on the Termination Date free from all Encumbrance.

## 7.5 Liability for other losses, damages on a Force Majeure Event

Save and except as expressly provided in this **Article 7**, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event. However, liquidated damages at the following rates will be applicable in case of STP is shut down for following %ages:

1. If STP is shut down upto 10%: Liquidated damages will be 50% of the cost of water.
2. If STP is shut down upto 10%-20%: Liquidated damages will be 75% of the cost of water.
3. If STP is shut down more than 20%: Liquidated damages will be 100% of the cost of water.

## ARTICLE 8

### EVENTS OF DEFAULT AND TERMINATION

#### 8.1 Events of Default

Event of Default means either Concessionaire Event of Default or Concessioneing Authority Event of Default or both as the context may admit or require.

##### (a) Concessionaire Event of Default

Any of the following events shall constitute an event of default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of one or more reasons set out in **sub- article 5.11** of **Article 5**;

- (i) The Concessionaire has failed to adhere to the Construction Requirements and the Implementation Schedule and such failure, in the reasonable estimation of the Engineer-in-Charge, is likely to delay achievement of COD beyond 60 days of the Scheduled Project Completion Date.
- (ii) The Concessionaire has failed to achieve COD within 60 days from the Scheduled Project Completion Date.
- (iii) The Concessionaire is in Material Breach of O&M Requirements.
- (iv) Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading.
- (v) The Concessionaire has created any Encumbrance on the Project Site in favour of any Person save as otherwise expressly permitted under this Agreement.
- (vi) The Concessionaire has failed to ensure minimum shareholding requirements specified in **sub-article 5.8** of **Article 5**.
- (vii) A resolution has been passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
- (viii) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction except for the purpose of

amalgamation or reconstruction with the prior consent of NDMC, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided further that:

- a) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Commencement Date and
  - c) each of the Project Agreements remains in full force and effect.
- (x) A default has occurred under any of the Financing Documents and any of the Lender(s) has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable.
- (xi) The Concessionaire has abandoned the Project Facilities.
- (xii) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- (xiii) The Concessionaire has suffered an attachment levied on any of the assets located or comprised in the Project Site/Project Facilities, causing a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.
- (xiv) The Concessionaire has otherwise been in Material Breach of any of its other obligations and terms and conditions under this Agreement and the RFP.
- (xv) The concessionaire is not able to run all the STP's minimum to 90 % of its capacity at all the times or otherwise as specified by Engineer –in-charge.
- (xvi) To resolve the dispute for termination of contract and assess the cost of establishment, NDMC shall pay a lumpsum amount of Rs.50 lacs, depreciable as per passing of time.
- (xvii) In case, concessionaire fails to provide minimum 2/3<sup>rd</sup> quantity of treated water on fortnightly average basis or fails to maintain quality of treated water continuously for 15 days, concessionaire will be at fault and his agreement shall be terminated without issuance of any notice to him.
- (b) **NDMC Event of Default**

Any of the following events shall constitute an event of default by NDMC ("**NDMC Event of Default**"), unless caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) NDMC is in breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire.
- (ii) NDMC has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iii) NDMC is unable to continue this Concession for any reason whatsoever including but not limited to (a) acts of expropriation, compulsory

acquisition or takeover by any Government Agency of the Project Site/Project Facilities, and (b) any judgement or order of a court of competent jurisdiction or statutory authority in India made against the Project or the Concessionaire which is not a consequence of an omission of the Concessionaire, is non-collusive and duly prosecuted by the Concessionaire.

- (iv) NDMC has unreasonably withheld or delayed grant of any approval or permission, which the Concessionaire is obliged to seek under this Agreement, and thereby caused Material Adverse Effect.
- (v) Any representation made or warranties given by NDMC under this Agreement has been found to be false or misleading.

## 8.2 Termination due to Events of Default

### (a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which the NDMC may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the NDMC shall subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement as hereinafter provided.
- (ii) If NDMC decides to terminate this Agreement pursuant to preceding **sub-article 8.2 (a) (i)**, it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to NDMC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessionaire's Proposal to Rectify**"). In case of non submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, NDMC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of 30 days to remedy / cure the underlying Event of Default (Cure Period). If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, NDMC shall be entitled to terminate this Agreement by issue of Termination Notice and to appropriate the Performance Security if subsisting.

### (b) Termination for NDMC Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of NDMC Event of Default, the Concessionaire shall be entitled to terminate this Agreement as hereinafter provided.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding **sub-article 8.2 (b) (i)** it shall in the first instance issue Preliminary Notice to NDMC. Within 30 days of receipt of Preliminary Notice, NDMC shall forward to the Concessionaire its proposal to

remedy/cure the underlying Event of Default the "**NDMC's Proposal to Rectify**". In case of non-submission of NDMC's Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

- (iii) If NDMC's Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, NDMC shall have further period of 30 days to remedy/cure the underlying Event of Default. If, however NDMC fails to remedy/cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

**(c) Termination Notice**

If a Party, having become entitled to do so decide to terminate this Agreement pursuant to the preceding **sub article 8.2 (a) or (b)**, it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

**(d) Obligation of Parties**

Following issue of Termination Notice by a Party entitled to do so, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continuity of service to the users of the Project Facilities,
- (ii) the Termination Payment, if any, payable by NDMC is paid to the Concessionaire on the Termination Date and
- (iii) the Project Facilities are handed over to NDMC by the Concessionaire on the Termination Date, free from any Encumbrance.

**(e) Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice may be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/consequences occasioned by the Event of Default which caused the issue of Termination Notice.

### 8.3 Termination Payments

Upon Termination of this Agreement, the Concessionaire shall be entitled to receive Termination Payment as under;

- (a) **Prior to COD**  
If the Agreement is terminated due to NDMC Event of Default (including Early Determination referred to in **Article 8.6**), the Concessionaire shall receive from NDMC, Termination Payment equal to prevailing Book Value of the Project Facilities.
- (b) **After COD**
  - (i) If the Agreement is terminated due to Concessionaire Event of Default, NDMC shall receive from Concessionaire Termination Payment equal to 100% of the Book Value of the Project Facilities, as on the Termination date.
  - (ii) If the Agreement is terminated due to NDMC Event of Default (including Early Determination referred to in **Article 8.6**), the Concessionaire shall receive from NDMC, Termination Payment equal to 110% of Book Value of the Project Facilities.

Provided that NDMC shall be entitled to deduct from the Termination Payment any amount due and recoverable under this Agreement by NDMC, from the Concessionaire as on the Termination Date.

### 8.4 Rights of Authority on Termination

Upon Termination of this Agreement for any reason whatsoever, NDMC shall upon payment of the Termination Payment to the Concessionaire have the power and authority to:

- (i) Enter upon the Project Site and take over the Project Facilities, subject to the provisions of the Substitution Agreement;
- (ii) prohibit the Concessionaire or any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Site / Project Facilities;
- (iii) step in or nominate any person to step in without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements, as NDMC may in its discretion deem appropriate with effect from such date as NDMC may specify;

Provided any sums claimed by counter party to any such Project Agreements as being due and owing for work or services performed or accruing on account of any act, omission or event prior to such date specified by NDMC for step in shall and shall always constitute debt between the Concessionaire and such counter party and NDMC shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provisions of this **sub-article 8.4**;



- (iv) Notwithstanding anything contained in this Agreement, NDMC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Site/facilities by the Concessionaire to NDMC shall be free from any such obligation.

Notwithstanding anything contained in this Agreement, the right of NDMC to vacant and peaceful possession of the Project Facilities, upon Termination is absolute. If the Concessionaire fails to deliver vacant and peaceful possession of the Project Facilities as contemplated in this provision, the Concessionaire shall be liable to pay to NDMC and NDMC shall be entitled to recover from the Concessionaire, an amount that represents a genuine estimate of the losses, damages and costs suffered by NDMC by way of liquidated damages. The parties agree that the said liquidated damages shall be calculated at the rate of 200% of the applicable Concession Fee for the year when the Concession is Terminated plus the costs incurred by NDMC for recovery of the Project Facilities. Such liquidated damages shall be recoverable from the Termination Date to the date when NDMC receives vacant and peaceful possession of the Project Facilities. Provided, the recovery of liquidated damages shall be without prejudice to the rights and remedies available to NDMC against the Concessionaire who shall be deemed to be a trespasser in illegal and unauthorized possession and occupation of the Project Site and Project Facilities, upon Termination.

## 8.5 Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## 8.6 Early Determination

Notwithstanding anything inconsistent contained anywhere in this agreement, in the event of early determination of this Agreement by NDMC without the consent of the Concessionaire or in the absence of any default by the Concessionaire, the procedure for Termination prescribed in the preceding sub articles shall not apply. In such an event, the Concessionaire shall be entitled to receive from NDMC, Termination Payment specified in the preceding **sub article 8.3**, as if and on the basis that this Agreement was terminated for NDMC's Event of Default.

## 9.1 Change in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:
- i. the enactment of any new Indian law;
  - ii. the repeal, modification or re-enactment of any existing Indian law including Rules and Regulations there under;
  - iii. A change in the interpretation or application of any Indian law by a court of record.
  - iv. All tendered rates shall be inclusive of all taxes and levies (except Service Tax) payable under respective statutes. However, if any further tax or levy or cess is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies/ cess, the contractor shall be reimbursed the amount so paid, provided such payments, if any, is not, in the opinion of the Engineer-in-Charge (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.

Provided that Change in Law shall not include:

- i. Coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
  - ii. Any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
  - iii. Any change in the rates of the Taxes.
- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur Additional Costs, the Parties may by mutual consent modify the terms of the Agreement, including but not

limited to by way of extension in the Concession Period, so as to mitigate the impact of Change in Law.

- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify NDMC of the following:
- i. the nature and the impact of Change in Law on the Project
  - ii. in sufficient detail, the estimate of the Additional Cost likely to be incurred by the Concessionaire on account of Change in Law
  - iii. the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimising the Additional Cost
  - iv. the relief sought by the Concessionaire
- (d) Upon receipt of the notice of Change in Law issued by the Concessionaire pursuant to preceding **sub-article 9.1(c)**, NDMC and the Concessionaire shall hold discussions and take all such steps as may be necessary as to determine the quantum of relief to be provided by NDMC to the Concessionaire.

NDMC shall within 30 days from the date of determination of quantum of Additional Cost, provide relief to the Concessionaire in the manner as mutually agreed upon by the Parties.

## ARTICLE 10

### HANDBACK OF PROJECT SITE

#### 10.1 Vesting

Without prejudice and subject to the Concession, the Project Site and the Project Facilities, including all improvements made therein by the Concessionaire, shall at all times vest in NDMC. Further the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shall apply to the Project Site.

#### 10.2 Obligations of Parties

##### (a) Concessionaire's Obligations

- i. The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the installed Project Facility to NDMC free of cost and in good operable condition.
- ii. At least 6 months before the expected expiry of the Concession Period, a joint inspection of the Project Facility shall be undertaken by Concessionaire, Engineer-in-Charge, NDMC and Independent Third Party (if any), shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs ("Installed STPs and its operating Hand back Requirements"), if any, to be carried out so as to conform to the Construction Requirements and O&M Requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least three months prior to the expected expiry of the Concession Period and ensure that the installed Project Facility continues to meet such requirements until the same are handed back to NDMC.

- iii. Engineer-in-Charge shall, within 45 days of the joint inspection undertaken under preceding **sub-article 10.2 (a) (ii)** prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to NDMC along with the installed Project Facility.
- iv. The Concessionaire hereby acknowledges NDMC's rights specified in **Article 8.6** enforceable against it upon Termination and its corresponding obligations arising there from. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- v. At least 06 months prior to the expiry of the Concession period, the Concessionaire shall, for due performance of its obligations relating to hand back of the installed Project Facility, submit to NDMC a bank guarantee, in the form as set forth in **Schedule 6** ("Hand back Guarantee"), from a bank acceptable to NDMC. The Hand back Guarantee shall be kept valid for a period of Twelve (12) months.

**(b) NDMC's Obligations**

NDMC shall, subject to NDMC's right to deduct amounts towards;

- i. carrying out works/jobs listed under **Article 10.2(a)(ii)**, which have not been carried out by the Concessionaire,
- ii. purchase of items, which have not been handed back to NDMC along with the installed Project Facility in terms of **Article 10.2(a)(iii)**, and
- iii. any outstanding dues, which may have accrued in respect of the installed Project Facility during the Concession Period duly discharge and release to the Concessionaire the Hand back Guarantee within 3 months from the expiry of the Concession Period.

**10.3 Default in Hand back**

Notwithstanding anything contained in this Agreement, the liability of the Concessionaire to handover possession as stipulated in **Article 10.2.(a)** is absolute. Without prejudice to anything contained hereunder, if the Concessionaire fails to deliver vacant and peaceful possession of the Project Facilities as contemplated in this provision, the Concessionaire shall be liable to pay to NDMC and NDMC shall be entitled to recover from the Concessionaire, an amount that represents a genuine estimate of the losses, damages and costs suffered by NDMC by way of liquidated damages. Such liquidated damages shall be recoverable from the Termination Date to the date when NDMC receives vacant and peaceful possession of the Project Facilities. Provided, the recovery of liquidated damages shall be without prejudice to the rights and remedies available to NDMC against the Concessionaire who shall be deemed to be a trespasser in illegal and unauthorized possession and occupation of the Project Site and Project Facilities, upon expiry of the License Period.

**ARTICLE 11  
DISPUTE RESOLUTION**

## 11.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in **sub-article 11.1 (b)** below.
- (b) Either Party may require such Dispute to be referred to the Chairperson, NDMC, and the Chief Executive Officer/Partner of the Concessionaire for the time being, for amicable settlement. In respect of disputes of a technical nature the Parties may engage an Expert. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of **Article 11.2** below.

## 11.2 Arbitration

### (a) Procedure

Subject to the provisions of **Article 11.1**, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be a sole arbitrator appointed by the Chairperson, NDMC, If there be no Chairperson, the administrative head of NDMC If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the appeal. It is also a term of this contract that no person, other than a person appointed by such Chairperson NDMC or the administrative head of NDMC as aforesaid, should act as arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all. It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the NDMC shall be discharged and released of all liabilities under the contract in respect of these claims. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment **69** thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause. It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award. It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties. It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be paid before the award is made and published, be paid half and half by each of the parties. The cost of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the

discretion of the arbitrator who may direct to any by whom and in what manner, such costs or any part thereof shall be paid and fix or settle the amount of costs to be so paid.

#### **Place of Arbitration**

The place of arbitration shall ordinarily be New Delhi but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

#### **(c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

#### **(d) Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

#### **(e) Performance during Arbitration**

Pending the submission of and/or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

## **ARTICLE 12**

### **REPRESENTATIONS AND WARRANTIES, DISCLAIMER**

#### **12.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warranties to NDMC that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's

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Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;

- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from NDMC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site/STPs shall pass to and vest in NDMC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or NDMC;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to NDMC or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by NDMC, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that NDMC shall not be liable for the same in any manner whatsoever to the Concessionaire.

#### 12.2 Representations and Warranties of NDMC

NDMC represents and warrants to the Concessionaire that:

- (a) NDMC has full power and authority to grant the Concession;

  
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- (b) NDMC has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes NDMC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against NDMC in respect of the Project, Project Site or Project Facilities.

### 12.3 **Obligation to Notify Change**

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same in writing.

## ARTICLE 13

### MISCELLANEOUS

#### 13.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of NDMC.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/Project Facilities, except with prior consent in writing of NDMC, which consent NDMC shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in **sub-articles 13.1 (a) and (b)** above shall not apply to:
  - i. liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
  - ii. Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
  - iii. assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

#### 13.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.



Provided the stipulation regarding interest for delayed payments contained in this **Article 13.2** shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### 13.3 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 13.4 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
  - iii. shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

### 13.5 Survival

Termination of this Agreement:

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

### 13.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

### 13.7 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery,



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recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

**if to NDMC:**

\_\_\_\_\_ (designation of authorised officer)

\_\_\_\_\_  
\_\_\_\_\_

Fax No. \_\_\_\_\_

**If to the Concessionaire:**

The Managing Director,

\_\_\_\_\_ Limited,

\_\_\_\_\_  
\_\_\_\_\_

Fax No. \_\_\_\_\_

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- i. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- ii. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

**13.8 Severability**

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

**13.9 No Partnership**

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Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

**13.10 Language**

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**13.11 Exclusion of Implied Warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

**13.12 Counterparts**

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of NDMC by:

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of :

1)

2)

*[Handwritten mark]*

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**SCHEDULE 1:**

**PROJECT SITE, FACILITIES, DEVELOPMENT & DESIGN CONTROL NORMS**

**1 PROJECT AREA**

**1.1 Location**

**Group-I** Sanjay Park Lake 300 KLD, Park in between Satya Sadan and Railway Line Around Khushak Nallah 500 KLD, near Junction of Ring Road and Shanti path at Moti Bagh 100 KLD and Subhash Park at Netaji Nagar 100 KLD.

**Group-II** Nehru Park 500 KLD, Developed Rose Garden at Shanti Path towards Nyaya Marg 300 KLD, Rose Garden at Shanti Path towards Niti Marg 100 KLD, Gole Market in between junction of Peshwa Road and R.K. Ashram 200 KLD.

**Group-III** Lodhi Garden 500 KLD, Bharti Nagar 500 KLD,

**1.2 Project Site**

The Project Site shall cover

- I. The area measuring in Square Meter spread and approximate dimensions as shown in following Table:

S. No.	Location	Area	Approximate available sewage
<b>Group-I</b>			
1.	Sanjay Park Lake- 300 KLD	500 Sq. M	2000 KLD
2.	Park in between Satya Sadan and Railway Line Around Khushak Nallah-500 KLD	600 Sq. M	2000 KLD
3.	Moti Bagh Junction of Ring Road and Shanti Path- 100 KLD	100 Sq. M	300 KLD
4.	Subhash Park at Netaji Nagar- 100 KLD	300 Sq. M	100 KLD
<b>Part -II</b>			
1.	Nehru Park- 500 KLD	400 Sq. M	1000 KLD
2.	Developed Rose Garden at Shanti Path towards Nyaya Marg- 300 KLD	300 Sq. M	500 KLD
3.	Rose Garden at Shanti Path towards Niti Marg- 100 KLD	150 Sq. M	300 KLD
4.	Gole Market in between junction of Peshwa Road and R.K. Ashram-200 KLD	330 Sq. M	400 KLD
<b>Group-III</b>			
1.	Bharti Nagar- 500 KLD	600 Sq. M	2000 KLD
2.	Lodhi Garden- 500 KLD	450 Sq. M	1500 KLD

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**FIXED DESIGN PARAMETERS**

1. The existing parameter of the sewage has to be assessed by the bidder at his own. However, **Average parameters of Raw Sewage at Okhla STP received from DJB for reference only.**

Sr. No.	Characteristics	Units	Jan-15	Feb-15	March-15	April-15	May-15	June-15	July-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Average
1	Temperature	C	17.0	20.3	22.5	28.0	30.0	30.0	29.0	30.0	31.0	28.0	24.0	20.0	25.8
2	pH value	-	7.1	7.13	7.19	7.3	7.3	7.4	7.4	7.2	7.3	7.3	7.3	7.2	7.3
3	Conductivity	µm/c	1250	1272	1185	1282	1382	1331	1195	1143	1330	1331	1364	1192	1273
4	T. Alkalinity	mg/l	369	366	342	346	409	342	307	328	368	381	368	355	356
5	Chlorides	mg/l	157	171	148	160	181	156	148	183	163	178	179	152	162
6	Oxy. Abs	mg/l	56.4	57.8	56	56	59	54	52	51	53	54	57	52	54.7
7	T. Solids	mg/l	1024	1066	1015	1022	1115	1062	978	955	1020	1062	1124	968	1035
8	TSS	mg/l	275	304	304	260	280	277	264	272	222	241	331	258	273
9	Dissolved Solids	mg/l	749	762	712	762	835	785	714	683	798	822	793	719	762
10	BOD 3 day	mg/l	144	176	176	160	177	151	137	138	154	157	179	163	163
11	COD	mg/l	400	401	443	362	391	384	292	337	397	372	389	396	384
12	Ammonia-N	mg/l	44	44	43	44	45	41	38	40	42	42	43	44	42
13	Phosphates	mg/l	2.7	3.1	2.9	3.0	3.5	2.7	2.5	3.0	3.7	3.0	3.2	3.0	3.0
14	Oil & Grease	mg/l	6.7	4.0	5.5	6.0	8.0	4.2	6.0	6.0	3.7	6.0	6.0	-	5.8

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2. The acceptable parameter of the treated water to be supplied are as under:-

Sr. No.	Parameter	Horticulture
1	Turbidity (NTU)	<2
2	SS	10
3	TDS	2100
4	pH	6.5to 8.3
5	Temperature C	Ambient
6	Oil & Grease	10
7	Minimum Residual Chlorine	1
8	Total Kjeldahl Nitrogen as N	10
9	BOD	10
10	Chemical Oxygen Demand (COD)	AA
11	Dissolved Phosphorous as P	2
12	Nitrate Nitrogen as N	10
13	Faecal Coliform, MPN/ 100 mL	100
14	Helminthic Eggs/litre	AA
15	Colour	Colourless
16	Odour	Aseptic which means not septic and not foul odour

Note:-All units in mg/l unless specified; AA-as arising when other parameters are satisfied. A tolerance of plus 5% is allowable when yearly average values are considered.

Storage capacity of treated water at-least 100% daily capacity of plants.

Note:- \* Here it should be ensured by the bidder that all the STPs (in a group) are working all the time during working hours and annual repair/maintenance etc shall be taken during rainy season only i.e. between 15<sup>th</sup> July to 15<sup>th</sup> Sept.

\*\* Only raw sewage shall be supplied free of cost, rest all expenses shall be borne by the Concessionaire.

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## SCHEDULE 2

### CONSTRUCTION REQUIREMENTS

#### 1. CONSTRUCTION REQUIREMENTS FOR STPs.

##### 1.1 GENERAL

- i. The capacity of the storage tank of treated water of should be 100% daily capacity of the plant
- ii. The storage tank of the treated water should preferably be below the ground level.
- iii. All the component/unit of plant should be protected from the vigorous variation of enviroment.
- iv. The operating unit (i.e pannel of electric and electronic devices) should be in a pucca structure
- v. The height of the plant is ristricted up to 4.0 mater from the ground level.
- vi. The tanker of capacity of 10000 ltr. Should be filled within 20 minutes i.e. the discharge capacity of supplying the treated water at ahead of 3.5 meter should not be less than 8.50 lps.
- vii. The flow meter should be installed for measuring the quantity of treated water to be installed at delivery pipe connected either to existing network of the system or over head pipe for feeding in to water tanker.
- viii. The cost of laying feeder liner up to 30 m for carrying sewer from existing manhole to STPs is inclusive in the agreement however the length of feeder line increases more than 30 m the cost of same will be reimburse by NDMC on the basis of DSR-2014 rates without any escalation for line exceeding 30m.
- ix. The arrangement of the delivery point for supplying the treated water by over head in to water tanker should be on pucca portion easily accessible to the tanker.

Provided that the Concessionaire shall ensure that the technology chosen is

- (a) Appropriate to the site and ground situation
- (b) Has a precedent for use in a project of similar nature and size
- (c) is supported by the technology/service provider for design, supply, implementation and on going maintenance
- (d) Addresses all issues of safety, including fire safety, operational safety, and environmental safety
- (e) Construction period is kept as 6 months from the date of Lol.

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## Table 2.1 - Covenants

- i. The Concessionaire may adopt appropriate designs conforming to Approved Development Control norms for the STPs and approved in accordance with this Schedule 1.

### 1.2.1 Other Facilities

#### 1.2.1.1 Lighting

The Concessionaire shall provide adequate lighting system at STPs.

#### 1.2.1.2 Signage

The Concessionaire shall provide illuminated signage in accordance with prescribed Norms at STPs and its all units.

The scheme for signage shall be finalised in consultation with the Engineer-in-charge.

#### 1.2.1.3 Drainage

The Concessionaire shall design and implement a drainage facilities in such a manner that there is no stagnation of water in the Project Site. The internal drainage system shall be connected to main common drain at an appropriate location in accordance with the approved drawings.

#### 1.2.1.4 Worker Amenities

The Concessionaire shall provide worker/employee amenities in accordance with Good Industry Practice and the applicable labour laws in Delhi.

#### 1.2.1.5 Safety Barriers

The Concessionaire shall provide, at appropriate locations, safety barriers to effectively manage pedestrian and vehicular traffic.

### 1.3 CODES AND STANDARDS

- a) The codes and standards applicable for the design of the Project/STPs are given in Table 2.3 below :

Table 2.3

Building Works and Electrical System	Road/Pedestrian Path Works
i. Central Public Works Department Specifications (CPWD);	i. Indian Road Congress (IRC) Codes and Standards
ii. Bureau of Indian Standards (BIS);	ii. Delhi Building Byelaws, 1983 and Delhi Master Plan 2021
iii. National Building Codes (NBC); and	
iv. CPWD Specifications on fire fighting and fire alarm systems	
v. CPHEEO manual	

- b) Electrical system shall be provided as per the following applicable codes:

Sl. No.	Code No.	Application Details
1	IS-10118 (Part I), 1982	Code of practice for selection, installation and maintenance of switch gear & control gear
2	IS-3646 (part-I), 1992 (Rev.-I) & part-II	Guide for interior illumination
3	IS-732, 1989 Rev. 3	Electrical wiring system
4	IS-3043, 1987	Code of practice for earthing
5	IS-13032, 1992 (Rev. 2)	MCB distribution boards for voltage up to and including 1000V AC
6	IS-12640, 1988	Residual current operated circuit breakers
7	IS-649, 1990 (Rev. -3)	PVC insulated cables for working voltage upto and including 1100 V AC.
8	IS-9537 (Part-I), 1980	Conduits for electrical installations-general requirements
9	IS-10322 (Part-I), 1982	General requirements of luminaries
10	IS-13118, 1991	Circuit breakers-general requirements
11	IS-13947 (Part-III), 1993	Air break switches for voltage not exceeding 1000V AC or 1200 V DC
12	IS-1248 (All parts), 1983, 1984, 1993	Electrical direct acting instruments
13	IS-2147, 1962	Degree of protection provided by enclosures for LV switch gear and control gear
14	National Electrical Code Part 4 Appendix	Recommended values of illumination and limiting values of Glare Index-Industrial Building (Parking Space Indoor and Outdoor)

c) Where the aforesaid are silent on any aspect, the following standards in order of preference shall be adopted in consultation with the Engineer-in-Charge, unless otherwise specified in this Schedule:

- (i) European standards for odour.
- (ii) American standards for odour.
- (iii) Suitable specification/standard devised by the Engineer-in-charge.
- (iv) Any other standard proposed by the Concessionaire and approved by the Engineer-in-charge.

#### 1.4 OVERALL DESIGN PARAMETERS

**Fixed Parameters:** The Concessionaire cannot alter the fixed parameters. the fixed parameters for the project are given in **Schedule 1**.

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#### 1.4.1.1 Fire Safety

Fire safety measures as recommended in applicable codes (Indian as well as International) listed in **Article 1.3** shall be implemented.

#### 1.4.1.2 Accessibility for Maintenance

The STPs Structure and Project Facilities shall be designed such that maintenance personnel has access to all storage spaces, machinery and electrical and electronic components in a safe manner.

### SCHEDULE 3

#### OPERATIONS AND MAINTENANCE REQUIREMENTS

##### General

- (a) The Concessionaire shall comply with the O&M Requirements set out in this Schedule. In doing so, the Concessionaire shall ensure that the STPs are maintained as per the O&M Manual for the Project.
- (b) In the planning and implementation of all works and functions associated with the operation and maintenance of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organising itself, adopting measures and standards, executing procedures including inspection procedures, and engaging contractors) in such manner, as will:
  - (i) Ensure the safety of personnel deployed on and users of the STPs or part thereof;
  - (ii) Keep the STPs from undue deterioration and wear;
  - (iii) Permit unimpaired performance of statutory duties and functions of any party in relation to the Project.
- (c) During the Concession Period, the Concessionaire shall ensure that the place of supply of treated water:
  - (i) is kept free from undue deterioration and undue wear;
  - (ii) The facility shall be open and available to users twenty-four hours;
  - (iii) applicable and adequate safety measures are taken;
  - (iv) members of the public are treated with due courtesy and consideration by its employees/ agents;
  - (v) users are provided with adequate information and forewarned of any event or any other matter affecting the Parking Facility to enable them to control/minimise any adverse consequences by such event or matter;
  - (vi) a complaint register to record grievances of any member of the public in relation to the operations and maintenance.
  - (vii) all materials used in the maintenance, repair and replacement of any of the STPs shall meet the Construction Requirements.
  - (viii) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

#### 1. Operation and Maintenance Manual and O&M Plans

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- (a) As provided in **Article** of this Schedule, prior to making application for the Completion certificate for the Project the Concessionaire shall finalise O & M Manual in consultation with the Engineer in charge.
- (b) Six weeks prior to the anniversary of COD each year, the Concessionaire shall submit an annual O&M Plan for the next year of operations.

## 2. Operation Requirements

The operations of the STPs shall include the following:

- (a) Supply of treated water to.
  - (i) The NDMC tanker of capacity of 10000 litre, which should be filled within 15-20 minutes.
  - (ii) Entry and Exit Area management : Directional/destination demarcation of Entry and Exit Areas for tankers taking the treated water and monitoring the same
  - (iii) Monitor Vehicle arrival and departures
- (b) Security
  - (i) Provision of round-the-clock security

## 3. Maintenance Requirements

### A. Routine Maintenance Activities

- (a) In order to ensure smooth and uninterrupted use of the STPs during normal operating conditions for all 24 hours of a day, routine maintenance of the STPS shall include but not be limited to:
  - (i) repairs to equipment, pavement, building and other civil works which are part of the Project Facilities;
  - (ii) replacement of equipment/consumables,
  - (iii) maintenance of the STPs area should be in accordance with Good Industry Practice and the guidelines issued by the government as well as under CPHEEO manual;
  - (iv) keeping the STPs area in a clean, tidy and orderly condition free of litter and debris;
  - (v) removing and disposing of in accordance with all Applicable Laws and Applicable Permits, all rubbish, debris, etc. including any and all equipment, supplies, materials and wastes brought or produced by the Concessionaire/Contractor;
  - (vi) taking all practical measures to prevent damage to the STPs/ Project Facilities;
  - (vii) undertaking maintenance works in accordance with the O & M Plan and O&M Manual;
  - (viii) preventing, with the assistance of concerned law enforcement agencies where necessary, any unauthorised entry to and exit from and any encroachments on the Project Facilities;

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- (ix) taking all reasonable measures for the safety of all the workmen, material, supplies and equipment brought to the Project Site. Explosives, if any, shall be stored, transported and disposed of by the Concessionaire in accordance with Applicable Laws/Applicable Permits.
- (b) The Concessionaire shall regularly carry out the necessary preventive maintenance activities for the STPs to ensure adherence to the Construction Requirements throughout the Concession Period.

All maintenance activities shall be planned and coordinated in such a that all the STPs (in a pocket) are working all the time and annual repair/maintenance etc shall be taken during rainy season only i.e. between 15<sup>th</sup> July to 15<sup>th</sup> September.

- (c) that the maintenance works shall generally be done during nights and holidays (if unavoidable) or major maintenance work/repair should be planned in the monsoon season so as to cause least disturbance.

#### **4. Inspections & Frequency**

The Concessionaire shall plan inspection programme for the STPs for its smooth operations as follows:

##### **4.1 Visual Inspection**

Visual Inspections are broad general inspections carried out frequently by maintenance engineers having adequate knowledge of building and STPs structures. The purpose of visual inspection is to report fairly obvious deficiencies, which could lead to accidents or maintenance problems. Such inspections should be frequent. The visual inspection may be carried out by visual assessment with careful observation of the specific object/item of the STPs for identification and for quantification of the deficiencies or damages of the STPs.

##### **4.2 Close Inspection**

Close inspections may be visual and/or by standard instrumental aids for assessment of defects/deficiencies of the STPs with careful observation of specific element(s). The close inspection would require detailed examination of the specific element of the STPs and should cover all the aspects against a checklist. This inspection is to be carried out by the engineer having good knowledge of the specific element to analysis the nature, and extent of defects/deficiencies, suggest suitable remedial measures to rectify/remedy them and quantify repair work.

##### **4.3 Thorough Inspection**

Such an inspection is to be carried out on the basis of comprehensive checklist of items related to the materials, condition and situation of the structure etc. This inspection is to be carried out by the engineer having good knowledge of the specific element to analysis the nature, and extent of defects/deficiencies, suggest suitable remedial measures to rectify/remedy them and quantify repair work.

##### **4.4 Frequency of Inspections**

The type of inspection and related frequency of various items of STPs have been indicated in the Table 1 below. The frequency of inspection can be suitably revised in consultation with the Engineer-in-Charge, if the situation so warrants.

**Table 4.1**

Asset	Daily	Monthly	Quarterly	Before and after Rainy Season
Equipment and Machineries	V	C	T	T
Leakages of Pipes and valves	V	C	T	T
Cleanliness of tanks		V	C	T

**LEGEND :**

V : Visual inspection

C : Close inspection

T : Thorough inspection

**5. Reporting Requirements**

The reporting and information that generally need to be provided by the Concessionaire are given below. The Requirements given below are indicative of the type of information to be provided. The format of such reports, recording requirements, software standards and number of copies required would be finalised in consultation with the Engineer-in-Charge. All reports and records shall be in the English language.

**5.1 Inspection Reports and Remedial Measures**

The periodicity of inspections for maintenance activities by the Concessionaire shall be set out in the O&M Manual and regular reports on the same shall be sent to the Engineer-in-Charge. Where required, the Concessionaire shall carry out any maintenance, repair or rehabilitation works found necessary as a result of such inspections.

**5.2 Monthly O & M Report**

During the Concession Period, within 3 days of the end of each fortnight, the Concessionaire shall upload following information on NDMC website:

- (i) Daily production of treated water (to be authenticated by flow meter, installed by the concessionaire).
- (ii) Details of major maintenance undertaken.
- (iii) Water Quality Report.
- (iv) Inspections undertaken by the Concessionaire during the month and action taken/ proposed thereafter;
- (v) O & M inspection compliance report
- (vi) Maintenance activities undertaken during the month ended,

(vii) Details of any Emergency and action taken

The format of the O&M Report would be finalised in consultation with the Engineer-in-Charge.

### 5.3 O & M Manual

(a) The O&M Manual prepared by the Concessionaire in consultation with the Engineer-in-Charge shall set out the operations and maintenance standards and details of the operations and maintenance activities to be undertaken during the Concession Period, so that the STPs shall at all times conform to the Design Requirements/specifications.

(b) The O&M Manual should have separate sections for operations and maintenance.

(c) The Manual should include without limitation the following aspects:

(i) Organisation structure with responsibilities of key personnel;

(ii) STPs operation Facilities Management and scheme for measurement of supplying treated water.

(iii) Safety Management Programme including the Emergency Response Protocol;

(iv) Inspection Procedures;

(v) Maintenance Standards (including Maintenance Intervention Levels);

(vi) Maintenance Programme;

(vii) Management information system;

(viii) Report Formats.

(d) The O&M manual shall be available on NDMC website indicating daily production of treated water.

### 6. Miscellaneous

(a) Inventory

(i) The Concessionaire shall maintain an inventory of all items comprised in the STPs (the "Inventory"), in a format to be developed in consultation with the Engineer-in-Charge.

(ii) Throughout the Concession Period the Concessionaire shall keep the Inventory updated to take account of works carried out on and other changes made to the Project Facilities, which shall be uploaded on NDMC website on fortnight basis.

(iii) A copy of the Inventory shall be submitted by the Concessionaire to the Engineer-in-Charge within fifteen (15) days of receipt of a request for the same.

**Table 1 : Penalty Structure for Operation & Maintenance Requirements**

Operation Requirement	How/ When measured	Measure	Performance Target	Tolerance	Penalty	Issue of Notice to Remedy by IE
Minimum Operation Hours of the supply of treated water from STP 8 hours per day	Each Calendar Month.  By the Engineer-in-charge  2 Random inspections of the each STPs (Site and/ or Logbook)	regularly-	Supplying of treated water is to be continued during the period	Nil	Rs 2,000 for non compliance for a day default  Payable Monthly	<u>Issue of Notice to remedy by the IE/ Engineer-in-Charge upon penalty payments for 15 days, failing which the agreement shall be terminated and assets shall be taken over by NDMC as per termination Clause.</u>
Housekeeping / Maintenance of Project facility	Each Calendar Month.  By the Engineer-in-Charge.  Rating of Monthly O&M Report into :  • Satisfactory • Non-Satisfactory	No of ratings as Satisfactory or Non-Satisfactory in the 6 month period	Minimum 4 "Satisfactory"  AND  Not more than 1 "Non-Satisfactory"	- 1 Satisfactory  + 0 Non-Satisfactory	Rs 1 lakh for non compliance at the end of 6 Months  (Payable – Half yearly)	As above



Table 2 : Penalty Structure for not achieving targets as per Agreement.

<u>% of Target Achieved</u>	<u>Deemed % Shortfall in 90% performance target for this month.</u>	<u>Penalty for the Month, payable Monthly</u>	<u>Action by IE/ Engineer-in-Charge</u>
<u>&gt; or = 95%</u>	<u>0%</u>	<u>Nil</u>	<u>=</u>
<u>90-95%</u>	<u>3%</u>	<u>Rs. 25000/-</u>	<u>Issue of Notice to remedy by the IE/ Engineer-in-Charge upon penalty payments for 15 days, failing which the agreement shall be terminated and assets shall be taken over by NDMC as per termination Clause.</u>
<u>85-89%</u>	<u>5%</u>	<u>Rs 50,000</u>	
<u>80-84%</u>	<u>10%</u>	<u>Rs 80,000</u>	
<u>75-79%</u>	<u>15%</u>	<u>Rs 1,35,000</u>	
<u>70-74%</u>	<u>20%</u>	<u>Rs 1,80,000</u>	
<u>&lt; or = 69%</u>	<u>Greater than 21%</u>	<u>Nil</u>	<u>Issue of Notice To remedy by the IE/ Engineer-in-Charge.</u>

## SCHEDULE 4

### PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE)<sup>5</sup>

THIS DEED OF GUARANTEE executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (Name of the Bank) having its Head/Registered office at \_\_\_\_\_ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

#### In favour of

New Delhi Municipal Council, represented by \_\_\_\_\_ (designation of authorised officer), New Delhi Municipal Council and having its office at Palika Kendra, Sansad Marg, New Delhi - 110001, hereinafter referred to as "NDMC", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

#### WHEREAS

- A. By the Concession Agreement entered into between NDMC and \_\_\_\_\_<sup>6</sup>, a company incorporated under the provisions of the Companies Act, 1956/firm, having its registered office/ permanent address at \_\_\_\_\_, ("the Concessionaire"), the Concessionaire has been granted the Concession to implement the Project.
- B. In terms of **Article 5.1** of the Concession Agreement, the Concessionaire is required to furnish to NDMC, an unconditional and irrevocable bank guarantee for an amount of Rs. 20,00,000 (Rupees Twenty Lac only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to achieving of COD by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

<sup>5</sup> To be issued by a Scheduled Bank in India

<sup>6</sup> In case of Consortium any members would be included as Parties to the Agreement and collectively referred to as 'the Concessionaire/Consortium' as the context may require.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. \_\_\_\_\_ (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achieving COD by the Concessionaire in accordance with the Concession Agreement.
3. The Guarantor shall, without demur, pay to NDMC sums not exceeding in aggregate Rs. 20,00,000/- (Rupees Twenty Lacs only), within five (5) calendar days of receipt of a written demand therefor from NDMC stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by NDMC and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, NDMC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by NDMC or any indulgence shown by NDMC to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by NDMC or any indulgence shown by NDMC, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>7</sup> unless discharged/released earlier by NDMC in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of 20,00,000/- (Rupees Twenty Lacs only),
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/ the Guarantor with any other Person.

<sup>7</sup> 06 months from the date of signing the Concession Agreement



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7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by \_\_\_\_\_ Bank

by the hand of Shri \_\_\_\_\_

its \_\_\_\_\_ and authorised official.

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## SCHEDULE 5

### FORMAT FOR LETTER OF AUTHORISATION

(To be given on NDMC letterhead)

#### To Whomsoever It May Concern

This is to confirm that pursuant to the Concession Agreement dated \_\_\_\_\_, entered into between the Chairperson, New Delhi Municipal Council and \_\_\_\_\_ ("the Concessionaire"), the Concessionaire has been authorised to *PPP Project to develop 100 to 500 KLD capacity STP's ( 10 Nos. in two parts) at different locations in NDMC area and run for 12 years* \_\_\_\_\_ (mention Name of the site) \_\_\_\_\_-and for that purpose, to apply for and obtain all approvals, licenses and permits required therein and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Engineer-in-Charge

New Delhi Municipal Council

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**SCHEDULE 6**

**HAND BACK GUARANTEE**

(PROFORMA OF BANK GUARANTEE)

**THIS DEED OF GUARANTEE** executed on this the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_ (Name of the Bank) having its Head/Registered office at \_\_\_\_\_ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

**In favour of**

New Delhi Municipal Council, represented by the Chairperson, having its office at Palika Kendra, Sansad Marg, New Delhi - 110001, hereinafter referred to as "NDMC", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

**WHEREAS**

- A. By the Concession Agreement entered into between NDMC and \_\_\_\_\_<sup>8</sup>, a company incorporated under the provisions of the Companies Act, 1956/firm having its registered office at \_\_\_\_\_ ("the Concessionaire") the Company/firm had been granted the Concession to implement the Project, as defined under the Concession Agreement mentioned hereinabove.
- B. In terms of **Article 10.2 or Article 10.3** as the case may be, of the Concession Agreement, the Concessionaire is required to furnish to NDMC, an unconditional and irrevocable bank guarantee for an amount of Rs.20,00,000/- (Rupees Twenty Lacs only), as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to hand back of the installed project facility<sup>9</sup>.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations under the Concession Agreement relating to hand back of the installed project facility.

<sup>8</sup> In case of Consortium any members would be included as Parties to the Agreement and collectively referred to as 'the Concessionaire/Consortium' as the context may require.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. \_\_\_\_\_ (hereinafter called "the Concessionaire") of all its obligations relating to hand back of the installed project facility.
3. The Guarantor shall, without demur, pay to NDMC sums not exceeding in aggregate Rs.20,00,000/- (Rupees Twenty Lacs only),, within five (5) calendar days of receipt of a written demand therefore from NDMC stating that the Concessionaire has failed to meet its performance obligations relating to hand back of the installed project facility. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by NDMC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, NDMC shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by NDMC or any indulgence shown by NDMC to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by NDMC or any indulgence shown by NDMC, provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until \_\_\_\_\_<sup>10</sup> unless discharged/released earlier by NDMC in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs.20,00,000/- (Rupees Twenty Lacs only),.
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire /the Guarantor with any other Person.

<sup>10</sup> 30 months from the date of issue of the Handback Guarantee in accordance with Article 10.2 and 10.3 of the Concession Agreement



7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under \_\_\_\_\_.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by \_\_\_\_\_ Bank

by the hand of Shri \_\_\_\_\_

its \_\_\_\_\_ and authorised official.

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