



# 24 x 7 Water Supply Project For Nagpur City

**Issued on:** *April 6, 2009*

**Tender No.:** 203/PR/07/08/08

*Volume-II: Part 3*

*PPP Contract (Revision-4)*

**Nagpur Municipal Corporation**

**Section VII- General Conditions**

**PPP Contract**

**Nagpur Municipal Corporation**

**PPP Contract for Water Supply in Nagpur- Maharashtra, INDIA**

## Table of Contents

1.	Definition and Interpretation .....	9
1.1	Definitions .....	9
1.2	Interpretation.....	18
1.3	Priority of Documents.....	19
2.	Appointment.....	20
2.1	NESL hereby appoints .....	20
2.2	Subject to the provisions .....	20
3.	Conditions Precedent.....	20
3.1	General Conditions .....	20
3.2	Conditions Precedent to be satisfied by the Operator .....	20
3.3	NA .....	21
3.4	Conditions Precedent to be satisfied by NESL and the Government Parties .....	21
3.5	Notice of Information and Fulfillment.....	22
3.6	Failure to satisfy conditions precedent.....	23
3.7	Conduct of the Business Pending to the Commencement Date .....	24
4.	Term of the transaction.....	25
4.1	NA .....	25
4.2	Duration .....	25
4.3	Extension of the Contract .....	25
4.4	NA .....	26
5.	Grant of Works and Services.....	26
5.1	Subject to and in .....	26
5.2	Operations and Maintenance: .....	26
5.2.1	The Operator shall have.....	26
5.2.2	Without prejudice to .....	26
5.3	Initial Performance Improvement Project:.....	27
6	Service Area, Service Perimeter .....	28
6.1	Service Area.....	28
6.2	Service Perimeter.....	28
6.3	Critical Zone Points .....	28
6.4	NA .....	28
6.5	Water Resources .....	28
7.	Transition Period arrangements.....	30
7.1	Transition Period .....	30
7.2	Liabilities/Revenues.....	30
7.3	Accounts Receivable to NMC .....	31
7.4	Existing Facilities .....	31
8.	Facilities Management .....	32
8.1	Return Assets .....	32
8.2	Optional Take-Back Assets (OTBA) .....	35
8.3	Own Assets .....	36
8.4	Special provisions applicable to Optional Take Back-Assets and to Own Assets .....	37
8.5	Control of the Inventories .....	37
8.6	Return of Assets at the expiry of the Contract .....	37
9.	Obligations of NESL .....	38
9.1	General Obligations of NESL.....	38
10.	Obligations of Government Parties .....	41
10.1	General Obligations of Government Parties .....	41
10.2	Retained Functions of NMC .....	41
11.	General Obligations of the Operator .....	41
11.1	General provisions regarding the provision of water services .....	41
11.2	Water Supply services in the Service Perimeter .....	43

11.3	Bulk Water Supply to communities located out of the Service Area.....	49
12.	Other Obligations of the Operator.....	50
12.1	Insurance.....	50
12.2	Obligations with Third Parties.....	51
12.3	Facilities management obligations.....	52
12.4	Disconnections.....	53
12.5	NA.....	53
12.6	Performance Bond.....	53
12.7	Procurement.....	54
12.8	Equity Capital.....	54
12.9	Operator's debt.....	55
12.10	Business Plan.....	55
13.	Employees.....	55
14.	Capital Works.....	57
14.1	Existing Projects.....	57
14.2	Initial Performance Improvement Project.....	58
15.	Accounting Systems.....	60
15.1	General Provisions.....	60
15.2	Depreciation and provisions applicable to Operators Assets.....	61
15.3	Eligible Operating Costs.....	62
15.4	Accounting Procedure applicable to Return Assets.....	62
15.4.1	Non-renewable Return Assets.....	62
15.4.2	Renewable Return Assets.....	63
15.4.3	Non-renewable Return Assets financed by the Operator.....	63
15.4.4	Renewable Return Assets financed by the Operator.....	63
15.4.5	Return Assets by Accession.....	63
15.4.6	Return Assets financed by third parties.....	63
15.5	Own Assets.....	63
16.	Remuneration of the Parties.....	63
16.1	Billing (Water Rates).....	63
16.2	NA.....	64
16.3	Remuneration of the Operator.....	64
16.4	Operator's Remuneration.....	65
16.5	Mode of payment of the Operator's Remuneration.....	65
16.5.1	The Parties expressly.....	65
16.5.3	NMC shall procure.....	66
16.5.4	NESL shall ensure.....	66
16.6	Sponsor Support.....	66
16.7	Standard Operator's Rate Adjustment.....	66
16.8	Index Adjustments.....	67
16.9	Adjustments to Bill of Quantities and Unit Prices.....	67
17.	Extraordinary Service Rate Adjustment.....	67
17.1	Grounds for Extraordinary Service Rates Adjustment (GEA).....	67
17.1A	Procedure for determination of an Extraordinary Service Rates Adjustment.....	68
17.2	Determination of Extraordinary Service Rates Adjustment.....	69
17.3	Interim decision by Arbitrator.....	70
17.4	General policies regarding Rate Rebasing.....	70
17.5	Operator's information.....	70
17.6	Adjustments for Changes in Law.....	71
18.	NA.....	72
19.	Information and Reporting Requirements.....	72
19.1	NA.....	72
19.2	General requirement to provide information.....	72
19.2.1	NA.....	72

19.2.2	Financial information .....	72
19.2.3	Assets information .....	72
19.3	Revised Master Plans.....	73
19.4	3-Year Investment Program Agreements.....	73
19.5	Annual Reporting.....	73
19.6	Audits.....	74
20.	Environmental Liabilities .....	74
21.	Expiry Date.....	75
21A.	Expiry Payments and Return of Assets .....	75
22.	Early Termination.....	76
22.1	Mutual Agreement.....	76
22.2	NESL Events of Early Termination.....	76
22.3	Operator Event of Early Termination .....	77
22.4	Continuity of Services .....	78
22.5	Early Termination Procedures.....	78
22.6	Liquidated Damages for Failure to meet Service Obligations.....	81
23.	Force Majeure.....	81
23.1	Definition of Force Majeure .....	81
23.2	Notice of Force Majeure.....	83
23.3	Duty to Minimize Delay .....	83
23.4	Consequences of Force Majeure.....	83
23.5	Hardship .....	84
24.	Dispute and Resolution .....	84
24.1	Amicable Settlement .....	84
24.2	Arbitration .....	85
24.3	Appointment of arbitrator.....	85
24.4	Procedures .....	85
24.5	Waiver of right .....	86
24.6	Costs of Arbitrator.....	86
24.7	Damages and Limitation on Liabilities .....	86
24.7.1	Limitation of Liability.....	87
24.7.2	Indirect or Consequential Loss.....	87
25.	Representations and Warranties .....	87
25.1	Representation and Warranties of NMC.....	87
25.1.1	Corporate Organisation .....	87
25.1.2	Authorisation.....	87
25.1.3	No violations: No consents or Approvals required .....	88
25.1.4	Financial Statements .....	88
25.1.5	NA.....	88
25.1.6	Facilities.....	88
25.1.7	Relationship Agreement.....	88
25.1.8	No other representations or warranties.....	89
25.2	Representation and Warranties of NESL.....	89
25.2.1	Corporate Organisation .....	89
25.2.2	Authorisation.....	89
25.2.3	No violations: No consents or Approvals required .....	89
25.2.4	Financial Statements .....	89
25.2.5	Assets .....	90
25.2.6	Relationship Agreement.....	90
25.2.7	No other representations or warranties.....	90
25.3	Representation and Warranties of the Commissioner.....	90
25.3.1	The Commissioner has full .....	90
25.3.2	No violations: No consents or Approvals required .....	91
25.3.3	Relationship Agreement.....	91
25.3.4	No other representations or warranties.....	91

25.4	Representations and Warranties of the Operator .....	91
25.4.1	Corporate Organisation .....	91
25.4.2	Authorization: .....	91
25.4.3	No violations: No consents or Approvals required: .....	91
26.	Miscellaneous .....	92
26.1	Taxes.....	92
26.2	Intellectual Property.....	93
26.3	Confidentiality .....	94
26.3.1	Scope of Confidentiality .....	94
26.3.2	Permitted Disclosure .....	94
26.4	Communications .....	94
26.4.1	Wherever provisions .....	94
26.4.2	Any approvals, certificates,.....	96
26.4.3	Notices from Consumers.....	96
26.5	Law and Language.....	96
26.6	Redressal of Public Grievances & Penalty for failure .....	96
26.7	Relationship .....	98
26.8	Default Interest .....	98
26.9	Severability .....	98
26.10	Survival.....	99
26.11	Stamp duty & registration charges.....	99

This contract (“**Contract**”) is executed at Nagpur on this \_\_\_\_ day \_\_\_\_\_ of 2010, amongst:

1. **Municipal Corporation of the City of Nagpur**, constituted under the City of Nagpur Corporation Act, 1948, and having its principal place of business at Civil Lines, Nagpur, Maharashtra, India (hereinafter referred to as “**NMC**” which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors, administrators and permitted assigns), acting through its Commissioner;
2. **The Commissioner**, Municipal Corporation of the City of Nagpur, (hereinafter referred to as the “**Commissioner**” which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors and permitted assigns);
3. **Nagpur Environmental Services Limited**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [●] (hereinafter referred to as “**NESL**” which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors, administrators and permitted assigns);

**AND**

4. [**Name of the Operator**], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [●] (hereinafter referred to as the “**Operator**” which expression shall, unless repugnant to the subject, context or meaning thereof, include its successors, administrators, and permitted assigns).

NMC and the Commissioner are hereinafter collectively referred to as the “**Government Parties**” and individually as the “**Government Party**”. NMC, Commissioner, NESL, and the Operator, are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

**RECITALS:**

Whereas:

- A. Pursuant to the City of Nagpur Corporation Act, 1948 (the “**Act**”), Government Parties are required to supply water within the City of Nagpur and accordingly have jurisdiction, supervision and control over the water works within the City of Nagpur;
- B. Pursuant to a resolution of Government of Maharashtra dated August 31, 2009 as part of the reforms and modernisation process initiated by NMC, NESL, wholly owned by NMC, has been appointed as the agent of NMC under Section 58B of

the Act for the purposes mentioned therein. The Government Parties have entered into the Relationship Agreement <sup>1</sup> whereunder NESL, *inter alia*, has been granted the exclusive right of operating the water supply services in the city of Nagpur and the use of Facilities in connection therewith. NMC has assigned to NESL the management, as implementing agency, of any future investment projects initiated by NMC for the development and rehabilitation of the municipal infrastructure for water supply. Further, as part of the initiative to achieve uninterrupted water supply to the City of Nagpur on a 24x7 basis, under the Relationship Agreement, the Government Parties have appointed NESL as the implementation agency to undertake the Initial Performance Improvement Project (as defined hereinafter).

- C. NESL intends to achieve uninterrupted water supply to the City of Nagpur on a 24x7 basis. For this purpose, NESL intends to appoint a private operator, to carry out some of its functions and obligations under the Relationship Agreement/ in respect of water supply and water-works, as its agent, for a period of 25-years, on the terms and conditions set forth in this Contract.
- D. NMC had initiated international competitive bidding by its Request for Qualification No. Tender No. 203/PR/07/08/08 (“**RFQ**”) for short listing of bidders for the Project (as defined hereinafter) and had shortlisted certain bidders. Thereafter, NMC had issued a request for proposal (“**RFP**”) containing the terms and conditions, and invited bids from the bidders shortlisted for undertaking the Project pursuant to the RFQ. After evaluation of the bids received, the bidder **[name of the bidder]** (“**Bidder**”) has been awarded the right to enter into this Contract.
- E. [Pursuant to the resolution dated [●] passed by the General Body of NMC and the resolution dated [●] passed by the Standing Committee of NMC, NMC and the Commissioner of NMC have been authorised to enter into this PPP Contract;]<sup>2</sup>
- F. Pursuant to NMC selecting the Bidder, the Bidder/ constituents of the Bidder established **[name of the special purpose company]**, a special purpose company to be the Operator in compliance with the requirements set out in the RFP;
- G. The Parties wish to record the terms on which the Operator is being granted the right to operate and maintain the Facilities in the Service Area (as defined hereinafter) for the period specified herein.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings described herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto, intending to be legally bound, agree as follows:

---

<sup>1</sup> To be executed prior to execution of this Contract.

<sup>2</sup> Reference to the resolutions to be inserted as and when available. Section 63(c) of the CNC Act provides that any contract which involves expenditure in excess of rupees fifteen lakhs would require the previous approval of the Standing Committee.



## 1. Definition and Interpretation

### 1.1 Definitions

In the Contract the following words and expressions shall have the meanings stated below, unless the context otherwise requires:

- (i) **“Accounting Year”** means any 12-month period ending on the 31<sup>st</sup> of March.
- (ii) **“Act”** means the City of Nagpur Corporation Act, 1948 (Act II of 1950) as amended from time to time.
- (iii) **“Agreement for Supply of Water”** means the agreement required to be entered into with Consumers pursuant to the Bye-Laws.
- (iv) **“Applicable Law”** or **“Laws”** means any laws and subordinate legislation, including any ordinance, decree, resolution, decision, act, directive, municipal statute or other law, regulation or bye-law, or any rule, code or direction or any licence, consent, permit, authorization, concession or other approval, including any conditions attached thereto (whether relating to the environment or otherwise) of the Union of India or any state, city, municipality or other political sub-division or part thereof or of any government entity, regulator or statutory person (whether autonomous or not) which has jurisdiction and includes any judgments, decrees, injunctions, orders, writs of any court of record applicable to this Contract and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Contract.
- (v) **“Bye-Laws”** means the [City of Nagpur Corporation Assessment and Collection of Water Rate Bye-Laws, 2009] framed under the Act as amended from time to time.
- (vi) **“Bidding Documents”** means the documents submitted by the Bidder and accepted by NMC in connection with the bid pursuant to the RFQ and RFP issued by NMC.
- (vii) **“Business Plan”** shall have the meaning ascribed to such term in Clause 12.10.
- (viii) **“Business Planning Assumptions”** means the assumptions on the basis of which the Operator submitted the Bidding Documents, and which are set forth in Schedule 21.
- (ix) **“Capital Works”** means the works which are described under Clause 14.

- (x) **“Cash Flows”** means (i) in the context of historical cash flows, both Receipts and Expenditures incurred by the Operator in the course of carrying out its obligations under the Contract as available from books of accounts and audited financial statements, and (ii) in the context of future cash flows as estimated in the Business Plan, the aggregate of (a) both anticipated Receipts and Expenditures to be incurred by the Operator in the course of carrying out its obligations under this Contract and (b) from and after the second Rate Rebasing Date, any Expiry Payment to be paid by NESL to the Operator on the Expiry Date pursuant to Clause 21A.1.
- (xi) **“Change in Law”** means the occurrence of any of the following after the twenty eighth (28<sup>th</sup>) Day preceding the date of submission of the second stage Bid pursuant to the RFQ and RFP issued by NMC:
- (1) enactment, passing or other introduction of any new Applicable Law;
  - (2) repeal, modification, revoking, overturning, amendment, abrogation or re-enactment (in whole or in part) of any existing Applicable Law;
  - (3) coming into effect of any Applicable Law or a change in the interpretation or application of any Applicable Law ;
  - (4) any withdrawal of a Government Authorisation or any Government Authorisation ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefor being made, or being renewed on terms or subject to conditions which adversely affect the terms of this contract when compared to the original Government Authorisation;
  - (5) imposition of a requirement for any Government Authorisation, or, after the date of grant of any Government Authorisation, a change in the terms and conditions attaching to such Government Authorisation or the attachment of any new terms or conditions to such Government Authorisation;
  - (6) grant of any Government Authorization on terms and conditions which may prejudicially affect the performance of obligations by the Operator or the grant of any Government Authorisation on terms and conditions other than those previously confirmed in writing by a Governmental Authority; or
  - (7) introduction of (including new categories or heads of), or a change in the rate of, any Tax, levy, impost, duty, charge, surcharge, fee, deduction or withholding in the nature of tax wherever sought to be

imposed, levied, collected, withheld or assessed by any Governmental Authority or under any Applicable Laws.

- (xii) **“Clause”** means a clause of this Contract.
- (xiii) **“Closing Date”** means the date on which the Parties execute the Memorandum of Agreement.
- (xiv) **“Commencement Date”** means the Day immediately following the Closing Date, or such later date as indicated in the Memorandum of Agreement executed pursuant to Clause 3.5 (v) hereof.
- (xv) **“Commissioner”** shall have the meaning assigned to such term in Section 5(9) of the Act.
- (xvi) **“Communities”** shall mean the communities and villages listed in Schedule 2 of this Contract.
- (xvii) **“Conditions Precedent”** means the conditions precedent to the execution of the Memorandum of Agreement, as listed in Clause 3.
- (xviii) **“Consumer”** means any person with whom the Commissioner has entered into an Agreement for Supply of Water pursuant to the provisions of the Act and the Bye-Laws.
- (xix) **“Consumer Price Index” or “CPI”** means the consumer price index for Nagpur (T-40) as published by the Ministry of Labour and Employment, Government of India for the city of Nagpur, and any index which replaces the Consumer Price Index.
- (xx) **“Contract”** means this Contract, the Annexures, the Schedules and the Letter of Bid, as amended from time to time in accordance with the provisions of the Contract.
- (xxi) **“Cost”** means all expenditure reasonably incurred (or to be incurred) by the Operator, including, overhead and similar charges, but does not include profit.
- (xxii) **“Critical Zone Points”** shall mean the points of the distribution network within the Service Perimeter at which the flow and pressure measuring devices are installed.
- (xxiii) **“DPR”** shall mean the Detailed Project Report for Initial Performance Improvement Project, a copy of which is attached hereto as Schedule 25.
- (xxiv) **“Day”** means a calendar day and **“Year”** means 365 or 366 consecutive

calendar days, as the case may be.

- (xxv) **“Delegate”** shall have the meaning given to the term in Clause 11.1A(i).
- (xxvi) **“Dispute Notice”** shall have the meaning given to such term in Clause 24.1(i).
- (xxvii) **“Direct Payments (DP)”** shall mean the payments by NESL / NMC for Raw Water & Electricity Charges for excess quantum of Raw Water & Energy consumed by Operator in comparison with Contractual Technical Efficiency and penalties under Clause 26.6 of General Conditions or any other payments by NESL / NMC on account of operator.
- (xxviii) **“Encumbrance”** means any mortgage, charge (whether fixed or floating), pledge, lien, option, right of pre-emption, right of retention of title or any other form of security, interest or any obligation (including conditional obligation) to create any of the same.
- (xxix) **“Escrow Agent”** means a bank mutually acceptable to NESL and the Operator, and appointed as escrow agent and trustee of the NESL Escrow Account in accordance with Schedule 5.
- (xxx) **“Existing Facilities”** means all assets specifically listed in Schedule 7 and Schedule 8, and shall include the assets constituting the Existing Projects, which are made available to the Operator on the Commencement Date.
- (xxxi) **“Existing Projects”** means the ongoing and scheduled projects as per Schedule 14 or any separable components of such projects, which have been awarded by NMC and which are being funded (wholly or partly) under the JNNURM Finance Agreement.
- (xxxii) **“Expansion Projects”** means the works required to provide for the extension and/or upgrading of the Facilities for production, transport and/or distribution of water, as necessary to meet the demand of water supply services in the Service Area. **“Expansion Projects”** shall include, without limitation, all studies, engineering designs, construction of works and procurement of supplies as necessary to provide for increasing transport, storage and the distribution capacity of water supply. The scope of works of the Expansion Projects shall not include installation of any supply pipe, meter protection box, meter, or any other devices which form part of service connection facilities required to connect a Consumer to a distribution pipe.
- (xxxiii) **“Expenditure”** means all expenditure incurred by the Operator in the course of carrying out its obligations under this Contract, including expenditure in and towards operation and maintenance of the Facilities, capital investment incurred by the Operator, indemnity payments to a third party and all Taxes (but excluding income tax) applicable to the Operator’s

activity but excluding bad debt provisions and depreciation provisions.

- (xxxiv) **“Expiry Date”** means the date falling on the 25<sup>th</sup> anniversary of the Commencement Date or, if earlier, the date on which NESL or the Operator terminate the Contract in accordance with the terms hereof.
- (xxxv) **“Extraordinary Service Rates Adjustment”** shall have the meaning given to such term in Clause 17.
- (xxxvi) **“Equity”** means, at any date of determination, the sum of (a) the aggregate amount of issued and paid up equity share capital of the Operator as well as any share premium paid in respect thereof, (b) the aggregate amount of advances by the shareholders of the Operator (or their affiliates), paid in cash, against equity share capital of the Operator, (c) the aggregate principal amount of any loans provided by the shareholders (or their affiliates) which is outstanding, repayable after the expiry of the contract and (d) the aggregate amount of all funds (including share premium) received from the issue of the non redeemable preference shares or redeemable preference shares which are redeemable after the expiry of contract, convertible debentures, warrants, or such other equity linked instruments.
- (xxxvii) **“Facilities”** means all fixed and other assets of NMC and/or NESL, whether present or future, in respect of which, NESL under this Contract has granted/ will grant a right to use to the Operator for delivering the Services, and any other item as may be specified in this Contract as forming part of the Facilities, including without limitation, land, buildings, equipment and other movable and immovable property forming part of the Facilities. For the avoidance of doubt, the term “Facilities” shall include of Existing Facilities and New Facilities.
- (xxxviii) **“Force Majeure”** shall have the meaning given to such term in Clause 23.1.
- (xxxix) **“General Conditions”** means the part of the Contract which contains Clauses 1 to 26.
- (xl) **“Governmental Authority”** means any ministry, department, division or sub-division of the Government of India or the State Government, including without limitation, any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, having appropriate jurisdiction over all or any part of the Facilities or the performance of all or any of the Services or obligations of the Operator or the works required to be performed under or pursuant to this Contract;

- (xli) **“Government Authorisation”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the provisions of Services or performance by the Operator of its obligations under this Contract.
- (xlii) **“Initial Performance Improvement Project”** or **“IPIP”** means the projects, or any separable component of such projects, which are required to be executed by the Operator pursuant to Clause 14.2 of this Contract.
- (xliii) **“Intellectual Property”** means all patents, design rights, copyrights, trademarks, service marks, trade names, trade secrets, know-how, rights in inventions and all other intellectual property rights of any nature whatsoever, whether registered or unregistered, and including all applications and rights to apply for any of the same, relating to the Facilities, and where applicable, the Services.
- (xliv) **“Investment Program Agreements”** shall have the meaning given to such term in Schedule 10.
- (xliv) **“IPIP Escalation Instalment”** shall have the meaning given to such term in Clause 14.2(iv) hereof.
- (xlv) **“JNNURM”** means the Jawaharlal Nehru National Urban Renewal Mission scheme being implemented by the Ministry of Urban Development, Government of India.
- (xlvii) **“JNNURM Finance Agreement”** means the agreement dated [24th March, 2006] entered into amongst Government of India through Ministry of Urban Development, State Government of Maharashtra through its Governor and NMC, for providing grants to NMC under JNNURM.
- (xlviii) **“Letter of Intent (LoI)”** means the letter issued to successful bidder by NESL indicating therein, the intention of NESL / NMC to accept the bid, subject to compliance of conditions mentioned in the letter.
- (xlix) **“Letter of Acceptance”** means the letter of formal acceptance, signed by [NMC/NESL], and addressed to the Bidder indicating acceptance of the Letter of Bid.
- (l) **“Letter of Bid”** or **“Bid”** means the document titled Letter of Bid, which was submitted by the Bidder as part of the Bidding Documents, and which includes the offer signed by the Bidder.
- (li) **“Master Plan”** means the master plan for water supply for the City of

Nagpur set forth in Schedule 12 hereof.

- (lii) **“Memorandum of Agreement”** means the letter agreement to be executed by each of the Parties acknowledging that each of the Conditions Precedent required to be fulfilled by the other relevant Parties have been satisfied or waived.
- (liii) **“Net NESL Amount”** shall have the meaning set out in Schedule 5.
- (liv) **“New Facilities”** means any Expansion Projects but which do not constitute any Rehabilitation Works or Replacement Works of Existing Facilities, undertaken after the Commencement Date.
- (lv) **“NESL Escrow Account”** shall have the meaning given to such term in Schedule 5.
- (lvi) **“Operator Event of Early Termination”** shall have the meaning given to such term in Clause 22.3.
- (lvii) **“Operator Loans”** means any indebtedness incurred by the Operator after commencement date in connection with the provision of Services or performance of its obligations under this Contract, including without limitation, any indebtedness to finance or refinance the construction or refurbishment of the Facilities, employee severance costs, other transitional costs incurred by the Operator.
- (lviii) **“Operator’s Remuneration”** means the Operator’s remuneration for provision of Services, which shall be an amount calculated in accordance with Schedule 5.
- (lix) **“Operator’s Rate”** means the gross rate expressed in Indian Rupees applicable per cubic meter of water supply, as offered in the bid price form submitted by the Operator as part of the Bid is applicable from the date of commencement and as adjusted from time to time, pursuant to the terms hereof.
  - a) **“Operators Net Rate”** means the rate arrived after deducting the direct payments, which are the raw water cost, power cost, repayment of principal amount infused by the operator in asset creation and other amounts as decided, from the Operators Rate.
- (lx) **“Optional Take-Back Assets”** means the Facilities described in Clause 8.2.
- (lxi) **“OTB Assets Condition Report”** shall have the meaning given to such term in Clause 8.2.2.
- (lxii) **“Own Assets”** means the Facilities described in Clause 8.3.

- (lxiii) **“Performance Bond”** shall have the meaning given to such term in Clause 12.6.
- (lxiv) **“Project”** means collectively, the provision and management of Services, implementation of IPIP and such other works as are required to be implemented by the Operator under this Contract.
- (lxv) **“Rate Rebasing”** shall have the meaning given to the term in Clause 17.4(i).
- (lxvi) **“Rate Rebasing Date”** means the Day falling immediately after the expiry of each period of five (5) years with the first of such five (5) year periods commencing on the Commencement Date and every subsequent five (5) year period commencing on the expiry of the previous five (5) year period.
- (lxvii) **“Rate Rebasing Period”** means, in the case of first Rate Rebasing Period, the period commencing on the Commencement Date and ending on the Day preceding the fifth anniversary of the Commencement Date and, in the case of subsequent Rate Rebasing Periods, the period commencing on the Day immediately following the last Day of the previous Rate Rebasing Period and ending on Day immediately preceding the fifth anniversary of the commencement of such subsequent Rate Rebasing Period, provided that the last Rate Rebasing Period shall end on Expiry Date.
- (lxviii) **“Receipts”** shall mean all cash receipts of the Operator on account of payments of any monies (including from JNNURM) by NESL excluding any income arising from treasury operations, dividends and interest received.
- (lxix) **“Rehabilitation Works”** means any works and supplies relating to the infrastructure and the equipment, for which necessary renewal had not been carried out before the Commencement Date, and whose actual technical performance does not match any more with the technical performances registered at the time of their commissioning.
- (lxx) **“Relationship Agreement” or** means the agreement dated [●] entered into between the Government Parties and NESL pursuant to which NESL has been *inter alia* granted the right to supply water and the right to use the Facilities in connection therewith, a copy of which is attached hereto in Schedule 17.
- (lxxi) **“Renewal”** means all the studies, designs, work and supplies necessary to change (such change required due to reasons such as breakdown, high costs of maintenance etc.) an equipment/ infrastructure forming a part of the Facilities used by the Operator for treatment, storage, transport and



distribution of water or an important part of such equipment, where such change is necessary to restore the equipment so that it can be used for the purpose it was meant for .

- (lxxii) **“Replacement Works”** mean the works required to be undertaken by the Operator in accordance with Schedule 11 as well as any additional replacement works as may be considered appropriate to compensate increased physical degradation of any Non Renewable Return Assets. Replacement works shall also cover repairs and rehabilitation of civil works.
- (lxxiii) **“Return Assets”** means the Facilities described in Clause 8.1.
- (lxxiv) **“Return Assets Condition Report”** shall have the meaning given to such term in Clause 8.1.5.
- (lxxv) **“Revised Master Plan”** means the Master Plan as revised from time to time in accordance with Clause 19.3 and Schedule 10.
- (lxxvi) **“Sewage and Water Fund”** means the Sewage and Water Fund set up by NMC pursuant to Section 83B of the Act.
- (lxxvii) **“Service Area”** shall have the meaning given to such term in Clause 6.1(i).
- (lxxviii) **“Service Perimeter”** shall have the meaning given to such term in Clause 6.2 (i).
- (lxxix) **“Services”** means the water supply services to be provided by the Operator as required by this Contract, including, pursuant to Clauses 2 and 5.
- (lxxx) **“Standard Operator’s Rate Adjustment”** shall have the meaning given to such term in Clause 16.7.
- (lxxxii) **“State Government”** shall mean the government of the state of Maharashtra or the government of the state in which the City of Nagpur is situated, as the case may be.
- (lxxxii) **“Taxes”** or **“Tax”** means any Indian indirect taxes, sales tax, excise duties, customs duties, service tax, value added tax, local taxes, cess, charge, surcharge and any imposition of like nature (whether central, state, or local) charged, levied or imposed on the (a) the Operator, (b) Services, (c) goods, materials, equipment and services, incorporated in and forming part of the Project, (d) the construction, operation and maintenance of Facilities, or (e) right to use of the Facilities/ on the Facilities, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.

- (lxxxiii) **“Technical Lifespan”** means the normal usage lifespan of every asset. For Return Assets, the Technical Lifespan is specified by the asset category in Schedule 20.
- (lxxxiv) **“Term”** shall mean the period commencing on and from the date hereof until the Expiry Date.
- (lxxxv) **“Transition Period”** shall mean the period commencing on the Commencement Date and until the fifth anniversary of the Commencement Date.
- (lxxxvi) **“Third Party”** means a person or an entity other than a Party.
- (lxxxvii) **“Water Rates”** means the rates prescribed in the Bye-Laws being the rates at which the Parties shall supply water to the Consumers.
- (lxxxviii) **“Wholesale Price Index”** or **“WPI”** means the wholesale price index for manufactured products (T-39) in India, as published by the Reserve Bank of India, or any index which replaces the Wholesale Price Index.
- (lxxxix) **“24X7”** means continuity of supply of water within the Service Perimeter, 24 hours a day, through a network of pipes in which the water is subjected to a positive pressure being never less than 2 meters of water at all Critical Zone Points in the network at all times.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (i) words indicating one gender include all genders;
- (ii) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (iii) references to the word “includes” or “including” are to be construed without limitation;
- (iv) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (v) references to any law, statute, regulation, bye-law and rules shall include references to such law, statute, regulation, bye-law and rules, as it may, after the date of this Agreement, from time to time be amended,

supplemented or re-enacted;

- (vi) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (vii) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (viii) reference to “Government Parties” or any “Government Party” when used in the context of grant of any right/ power/ authority/ functions shall be construed to mean the Government Party which is entitled to grant such right/ power/ authority/ function under the provisions of the Act; and
- (ix) the marginal words and other headings shall not be taken into consideration in the interpretation of this Contract.

### **1.3 Priority of Documents**

The Contract contains the whole agreement and understanding between the Parties with regard to the matters dealt with in this Contract and supersedes any prior agreement, understanding, arrangement or promises, whether written or oral, relating to the subject matter of this Contract. The Parties expressly acknowledge that, in relation to the subject matter of this Contract, each of them assumes no obligations of any kind whatsoever other than as expressly set forth in this Contract or any agreement, document or instrument executed pursuant to this Contract. The different sections of the Contract (as attached hereto) are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the different sections of the Contract shall be in accordance with the following sequence:

- (1) The Addenda, if any, issued after 01.06.2010.
- (2) the General Conditions (Revision-4),
- (3) Schedule 10
- (4) Schedule 5
- (5) The Addenda if any issued prior to 1.06.2010
- (6) the DPR
- (7) the Schedules (except Schedule 5)
- (8) the Letter of Bid

## **2. Appointment**

**2.1** NESL hereby appoints the Operator, as its agent, and grants to it the exclusive right, power and authority to provide water supply within the Service Area.

**2.2** Subject to the provisions of this Contract, the Operator shall provide water supply services within the Service Perimeter.

## **3. Conditions Precedent**

### **3.1 General Conditions**

The obligations of each Party hereto to effect the transactions contemplated by this Contract shall be subject to the satisfaction of the following general conditions precedent:

- (i) No Applicable Law shall be in force or have been enacted, entered, promulgated, passed or enforced by any court of competent jurisdiction, or Governmental Authority or regulatory or municipal authority, or instrumentality having jurisdiction over the matter that restrains, prohibits or declares illegal the consummation of the transactions contemplated hereby;
- (ii) The execution of the escrow agreement by NESL and the Operator, in a form and manner mutually acceptable, with the Escrow Agent for the settlement of the NESL Escrow Account in trust with the Escrow Agent, to be operated strictly in accordance with the provisions of Schedule 5;
- (iii) The Parties shall have agreed upon the procedure for assignment of any manufacturer's warranties or other warranties to the Operator; and
- (iv) The Parties shall have mutually agreed to a time frame for exercise by the Delegates of the powers, duties, functions and authority conferred to them in respect of each of the sections listed in Clause 11.1A(i).

### **3.2 Conditions Precedent to be satisfied by the Operator**

The conditions precedent to be satisfied by the Operator, unless waived by NESL, are as follows:

NESL shall have received the documents mentioned below:

- (i) An opinion from a legal counsel to the Operator in a form reasonably acceptable to NESL, dated on or about the Closing Date, confirming that

the Operator is duly incorporated and existing under Indian law, and confirming the due execution of this Contract by the Operator;

- (ii) Certified true copies of the Certificate of Incorporation and the Articles and Memorandum of Association of the Operator;
- (iii) A certificate dated on or about the Closing Date, from a duly authorized officer of the Operator to the effect that the representations and warranties of the Operator contained in Clause 25.4 of this Contract are true and correct in all material respects as if made on such date except to the extent where a different time is specifically stated in any such representation and warranty; and
- (iv) Certified true copies of the resolution adopted by the Board of Directors of the Operator authorising the execution and delivery of the Contract.

### **3.3 NA**

### **3.4 Conditions Precedent to be satisfied by NESL and the Government Parties**

The conditions precedent to be satisfied by NESL and the Government Parties, unless waived by the Operator, are as follows:

- (i) NESL and the Government Parties shall have performed in all material respects the obligations required under the Contract to be performed by them at or prior to the Closing Date;
- (ii) The Operator shall have received the documents mentioned below:
  - (a) [An opinion from the legal counsel(s) to NESL in a form acceptable to the Operator dated on or about the Closing Date, and confirming, *inter alia*, the due incorporation of NESL, capacity and powers of NESL to enter into and perform the Contract and the due execution by and enforceability of this Contract against NESL;]
  - (b) An opinion from the legal counsel(s) to the Government Parties in a form acceptable to the Operator dated on or about the Closing Date, and confirming, *inter alia*, the capacity and powers of the Government Parties to enter into and perform the Contract and the due execution by and enforceability of this Contract against the Government Parties;
  - (c) Certified true copies of the Certificate of Incorporation, Certificate of Commencement of Business and the Articles and Memorandum of Association of NESL;
  - (d) A certificate dated on or about the Closing Date, from a duly

authorized officer of each of NMC and NESL to the effect that the representations and warranties of NMC and NESL contained in this Contract are true and correct in all material respects as on the Closing Date as if made on such date except to the extent where a different time is specifically stated in any such representation and warranty;

- (e) Certified true copies of resolutions adopted by the General Body and Standing Committee of NMC authorizing the execution, delivery and performance of this Contract and the Shareholder Guarantee;
- (f) Certified true copies of resolution passed by the board of directors of NESL authorizing the execution, delivery and performance of this Contract;
- (g) Certified true copies of all waivers, consents, approvals, or authorisations required to be obtained from, and all notices, declarations, reports or filings required to be made with, any Governmental Authority or regulatory authority or instrumentality in connection with the provision of Services, operation and maintenance of Facilities, or consummation of any other transactions contemplated hereby, including without limitation, those relating to the environment;
- (h) Certificate from an authorized officer of NMC confirming that the JNNURM Finance Agreement is in full force and effect; and
- (i) A guarantee issued by NMC for the benefit of the Operator, whereby NMC shall guarantee all of NESL's performance obligations and payment obligations arising under or pursuant to this Contract, including payment to the Operator of the Operator's Remuneration and the Early Termination Amount, in the form set forth in Schedule 17.

### **3.5 Notice of Information and Fulfillment**

- (i) NESL and the Government Parties shall issue a notice to the Operator and the Operator shall issue a notice to NESL and the Government Parties, specifying the status of satisfaction of Conditions Precedent required to be fulfilled by each such issuing Party ("**Notice of Information**"), not later than one hundred and twenty (120) Days from the date of issue of LoI.
- (ii) Within seven (7) Days of each Party having received the Notice of Information, the Parties shall meet to discuss in good faith whether the time stipulated in Clause 3.5 (iii) for the issuance of Notice of Fulfillment needs

to be extended. In the event the Parties agree that such time need not be extended or in the event the Parties fail to agree on an extension of time for the issuance of the Notice of Fulfillment, the Notice of Fulfillment shall be required to be issued as set forth in Clause 3.5 (iii).

- (iii) No later than one hundred and eighty (180) Days from the date of issue of LoI or within such period as may be agreed pursuant to Clause 3.5(ii), each Party shall be required to give notice to the other Parties (to be accompanied by appropriate supporting documentation evidencing such satisfaction) confirming that all conditions required to be fulfilled by it in accordance with Clause 3 have been satisfied or waived by the relevant other Party (“**Notice of Fulfillment**”).
- (iv) Upon the signing of Memorandum of Agreement (MOA) as per Clause 3.5 (v) , NMC shall return the Bid Security to the Operator.
- (v) Within thirty (30) days of (a) all the Parties having issued their Notice of Fulfillment; and (b) the performance bond submitted by the operator as per clause 12.6, the Bid Security being returned to the Operator, and provided that the conditions set forth in Clause 3.1 have been satisfied, the Parties shall sign the Memorandum of Agreement.

### **3.6 Failure to satisfy conditions precedent**

- (i) Each Party shall use its reasonable endeavours to procure the satisfaction of the Conditions Precedent required to be fulfilled by it as soon as practicable and shall cooperate in good faith with the other Parties for the satisfaction of the conditions precedent required to be satisfied by any other Party. Each Party shall be required to satisfy/ fulfil the conditions precedent required to be satisfied/ fulfilled by it no later than one hundred eighty (180) Days from the date of opening of LoI, or such date as may be mutually agreed by the Parties. Further, the Parties shall be jointly responsible and shall cooperate with each other for the satisfaction of the general conditions precedent specified in Clause 3.1.
- (ii) If any of the conditions specified in Clause 3 is not fulfilled (or waived by the non-defaulting Party that is entitled to waive such condition precedent) within the date as specified in this Clause 3.6 or if Notice of Fulfillment is not received, then such non-defaulting Party shall have the right to terminate the Contract immediately and none of the Parties hereto shall be liable to the other Parties for any damages or losses in respect thereof under law or otherwise, except to the extent provided under this Clause 3.6. Further, immediately upon such termination, the Bid Security shall be returned to the Operator, if not already returned to the Operator pursuant to Clause 3.5(iv), except to the extent set out in Clause 3.6(iii).

(iii) To the extent that the Operator's failure to fulfill the Operator's conditions precedent required to be satisfied by it under Clause 3.2 is caused by, or is a result of, the misconduct or negligence of the Operator, NMC shall be entitled to appropriate the Bid Security.

(iv) NA

### **3.7 Conduct of the Business Pending to the Commencement Date**

**3.7.1** NESL hereby covenants that, from on and from the date hereof and until the Commencement Date, unless the Operator shall otherwise consent to in writing, NESL shall conduct its business and operations in the ordinary and usual course and in a manner consistent with best practices and, without limiting the generality of the foregoing, NESL shall:

- (i) use its reasonable efforts to preserve and maintain the Facilities;
- (ii) maintain and cause to be maintained in accordance with best practices, all documents, agreements, contracts and other records of or in the possession of NESL or NMC, as the case may be, relevant to water supply and all related operations in Nagpur;
- (iii) at all times comply with all Applicable Laws;
- (iv) give prompt written notice to the Operator of:
  - (a) the commencement of any dispute or proceeding between NMC and/or NESL and/or any person which, if determined adversely to NMC and/or NESL, as the case may be, could reasonably be expected to have a material adverse effect on NMC's or NESL's operations and/or financial condition or the performance by NESL and/or NMC of its obligations hereunder or the Project,
  - (b) the occurrence of any event of default in connection with any agreement of NMC and/or NESL, or any event which, upon a lapse of time or the giving of notice or both, would become an event of default under any such agreement, and
  - (c) the occurrence of any other event which has or could reasonably be expected to have a material adverse effect on NMC's and/or NESL's operations and/or financial condition, the performance by each Party of its obligations hereunder, or the Project.
- (v) not waive any right owed to NMC and/or NESL, or enter into any contract which could affect the Operator's Remuneration hereunder;



- 3.7.1A** NESL hereby covenants that it shall pass all information and notices received from any of the Government Parties to the Operator, under this Contract or the Relationship Agreement.
- 3.7.2** A default by NESL in complying with this Clause 3.7 shall be treated as if it were a failure by NESL to satisfy the Conditions Precedent, and the Operator shall have the right (but not the obligation) to terminate the Contract immediately. In respect of such termination by the Operator, the consequences specified in Clause 3.6 (iv) shall apply.
- 3.7.3** Upon the occurrence of a Change in Law prior to the Commencement Date as a result of the exercise by any of the Government Parties of its powers/ authorities/ rights, which Change in Law, which has the effect of restraining, prohibiting or declaring illegal the consummation of the transactions contemplated hereby, the Operator shall be entitled (at its option) to terminate the Contract immediately. In respect of such termination by the Operator, the consequences specified in Clause 3.6(iv) shall apply. For the avoidance of doubt, it is hereby clarified that the provisions of this Clause 3.7.3 are without prejudice to the provisions of Clause 17.

#### **4. Term of the transaction**

**4.1 NA**

#### **4.2 Duration**

- (i) Other than Clauses [1, 3, 4.2, 9.1(i), 9.1(iv), 9.1(vi), 9.1(xi), 9.1(xii), 10.1, 12.2.1(i), 12.2.2(vi), 13, 16.6, 17.1, 17.1A, 17.2, 17.3, 17.6, 22, 23.5, 24, 25, 26.1, 26.1A, 26.3, 26.4, 26.5, 26.7, 26.8, 26.9, 26.10], the Contract shall come into effect at the Commencement Date and shall remain in full force and effect until the Expiry Date.
- (ii) No Party shall terminate this Contract or any part of it except in accordance with this Contract or as otherwise agreed in writing by the Parties.

#### **4.3 Extension of the Contract**

This Contract may be extended beyond the Expiry Date, upon agreement of all Parties, for an additional period of not more than the initial term of this Contract. Such an extension may be requested by any Party not later than twenty four months (24) months before the Expiry Date. In any circumstances, such extension of the Contract's term must be agreed by the Parties not later than three hundred and sixty five (365) Days before the Expiry Date.

4.4 NA

**5. Grant of Works and Services**

5.1 Subject to and in accordance with the terms and conditions contained herein, the Operator shall have the responsibility to undertake the Initial Performance Improvement Project. NESL hereby grants to the Operator the right to use the Existing Facilities for undertaking the Initial Performance Improvement Project.

**5.2 Operations and Maintenance:**

5.2.1 The Operator shall have the responsibility, to provide and manage the Services, as agent of NESL, during the term of the Contract in accordance with, and subject to the terms of this Contract and in conformity with Applicable Laws.

5.2.2 Without prejudice to Clause 5.2.3, the Operator shall have the responsibility to operate, maintain and manage the Facilities, and undertake certain works in respect of the Facilities specified in the Contract, during the term of the Contract in compliance with the quantities or unit prices stipulated in Schedule 16 (as adjusted from time to time), and in accordance with and subject to the terms of this Contract.

5.2.3 Subject to and in accordance with the other terms of the Contract, the Operator shall, as agent of NESL:

- (i) have the exclusive right, power and authority to provide and manage the Services in the Service Area, including without limitation, the right to:
  - (a) receive, transfer and collect raw/treated water
  - (b) store, and deliver water in the Service Area
  - (c) transport treated water in the Service Area
  - (d) use the Existing Facilities, including the right to monitor, manage, occupy, operate, repair, maintain, decommission and renew the Existing Facilities;
  - (e) be assigned/ transferred all responsibilities of NESL in relation to the New Facilities;
  - (f) upon a request made by NESL, supply bulk water to Communities, including communities listed in Schedule 2 hereof;
  - (g) meter, bill and collect payment from the Consumers for all Services;

- (h) access Consumers' properties for managing and disconnecting connections;
  - (i) collect any penalty or fine levied by the Government Parties in case of breach of the applicable Bye- Laws by a Consumer or any person to the extent authorized under the Act; and
  - (j) collect and return monies relating to Water Consumption Security Deposits, Consumer's meter deposits and any other deposits that may be specified under the Bye-Laws in connection with the Services.
- (ii) undertake the works of replacement of the Facilities, in accordance with the Replacement Works described in Schedule 11;
  - (iii) monitor, manage, operate, repair and renew the Existing Facilities as may be reasonably necessary for performance of its obligations hereunder;
  - (iv) have all rights of way and easements relating to the Facilities and access to the Facilities so that it may perform its obligations under this Contract, including the right to conduct any kind of work in the streets and other public places within the Service Area in relation to the Facilities.

**5.2.4** The Operator shall be entitled to in its discretion, but subject to the procurement policy set forth in this Contract:

- (i) enter into such contracts for the provision of services or purchase of any assets (including equipment and materials) as it considers necessary for the Facilities and perform such other acts as it considers necessary to comply with its obligations under this Contract;
- (ii) hire such persons (labour, professional, supervisory and managerial personnel) or organizations as the Operator may deem necessary with respect to the operation of the Facilities, including without limitation, accountants, engineers, lawyers and other professionals and specialists; and
- (iii) perform such other acts as it considers necessary to comply with its obligations under this Contract.

### **5.3 Initial Performance Improvement Project:**

The Operator shall undertake, as contractor, the Rehabilitation Works constituting the Initial Performance Improvement Project in accordance with the terms and conditions contained herein, in order to achieve 24 x 7 uninterrupted water supply services in the Service Perimeter.

## **6 Service Area, Service Perimeter**

### **6.1 Service Area**

- (i) The Service Area means the area covered by the territorial jurisdiction of NMC, as described in Schedule 1 hereof.
- (ii) NESL and the Operator agree that notwithstanding the extent of Service Area established on the Commencement Date, the Service Area may be modified by operation of law or it can be modified, upon agreement of NESL and the Operator, through an addendum to this Contract.

### **6.2 Service Perimeter**

- (i) The Service Perimeter is the boundary within which lands are located at a distance of not more than 200 meters from any point of any existing distribution facilities operated by the Operator within the Service Area, under this Contract.
- (ii) Notwithstanding the extent of the Service Perimeter established at the Commencement Date, the Service Perimeter shall be expanded from time to time upon the commissioning of any Expansion Projects of the distribution network. For the avoidance of doubt, it is hereby clarified that (a) the expanded Service Perimeter shall continue to be determined in accordance with Clause 6.2 (i), taking into account any new distribution facilities implemented as part of an Expansion Project.

### **6.3 Critical Zone Points**

The location and number of critical zone points shall be mutually agreed between NESL and the Operator no later than twenty four (24) months from the date of issue of LoI.

### **6.4 NA**

### **6.5 Water Resources**

- (i) NESL retains the exclusive right to, and shall be obligated to procure and provide raw water to the Operator in such quantities as is required by the Operator to provide treated water to the Government Parties to enable them to sell the same to the Consumers in the Service Area.] Such provision of raw water to the Operator shall be as stipulated in Schedule 12 hereof. Further, NESL retains the exclusive right to, and shall be obligated to, procure and provide raw water to the Operator in such quantities as is required by the Operator to provide treated water to the Government

Parties to enable the Government Parties to sell water to the Communities located out of the Service Area pursuant to Clause 11.3 hereof.

Provided however that in the event that NESL fails to supply to the Operator raw water necessary for the performance of its obligations hereunder:

- (a) the Operator shall be excused from the performance of its obligations, to the extent any failure of the Operator to perform its obligations is on account of such failure by NESL to supply the raw water resources;
  - (b) in the event of emergency or in order to maintain the continuity of the Services, the Operator shall be entitled (but not obligated), after notification to NESL, to procure / source raw / potable water from any facilities owned by entities other than the NESL, provided that the quality of the treated water supplied by the Operator to the Government Parties continues to be in conformity with the requirements of the Contract;
  - (c) the Operator shall be permitted to establish an intermittent schedule of water supply; and
- (ii) For the avoidance of doubt, it is expressly agreed that (a) in no event shall the exercise of any of the aforesaid rights by the Operator be construed as a waiver of any other rights and remedies of the Operator under this Contract or at law or equity, including without limitation, the rights and remedies which the Operator may have arising from a failure of NESL to supply raw water as provided in this Clause 6.5; and (b) failure of NESL to supply required quantity of raw water shall be an event of force majeure and dealt with as per clause 23. However NESL shall be supplying adequate raw water in accordance with the real water demand envisaged in the latest available Investment Program Agreement, in which case the situation will not be in the purview of force majeure clause. For the avoidance of doubt, it is hereby clarified that the expression “real water demand” in this sub-clause (ii) shall include volume of water billed to Consumers in the previous Accounting Year, losses envisaged in Schedule 3, and the growth factor of demand which may be mutually agreed between NESL and the Operator on the basis of data available in respect of two (2) immediately previous Accounting Years.
- (iii) In the event of a change in the chemical, physical or bacteriological composition of raw water provided by the NESL to the Operator:

- (a) which is of a long term nature, and as a result of which the water after being treated by the Operator is unable to meet the quality of water prescribed under Applicable Law; or
- (b) as a result of which, the Operator has to incur extra cost solely due to such change in composition,

then NESL, at the reasonable request of the Operator, shall in the case of sub clause (iii)(a) above, cause the construction of such New Facilities (at no cost to the Operator) as may be required to ensure that the raw water after treatment by the Operator is potable and complies with the quality requirements set forth under any such Applicable Law; and in the case of sub clause (iii)(b) above, promptly indemnify the Operator for such increased costs.

- (iv) Notwithstanding anything contained in the Contract, NESL shall be deemed to have fulfilled its obligation to supply the requisite quantity of raw water in the event it supplies an equivalent amount of treated water to the Operator provided that such treated water is potable and complies with the quality requirements set forth under Applicable Law or this Contract. The terms and conditions of supply of treated water from future projects to the Operator shall be mutually agreed between NESL and the Operator.

## **7. Transition Period arrangements**

### **7.1 Transition Period**

Transition Period shall be 60 Months from the date of commencement.

The Operator hereby covenants to develop its organization in a manner as may be necessary for the purposes of attaining ISO 9001 standards during 36 months from the date of commencement.

### **7.2 Liabilities/Revenues**

- (i) NESL shall bear all liabilities, including contingent liabilities related to any payable accounts, environmental contamination and other environmental liabilities, arising out of or in connection with the operation of the Facilities prior to the Commencement Date.
- (ii) The Operator (in accordance with and subject to Clause 16.5 and Schedule 5) shall deposit all revenues collected by the Operator arising out of the operation of the Facilities prior to the Commencement Date in the Sewage and Water Fund, and NESL shall procure that such monies are transferred forthwith in accordance with Clause 16.5.3 which monies shall then be

dealt with in accordance with the provisions contained in Schedule 5 of the Contract.

- (iii) NESL shall provide to the Operator at the Commencement Date, a list of all Consumer's deposits for meters supplied by NMC, which were collected by NMC from Consumers prior to the Commencement Date pursuant to the Bye-Laws (as existing at the time of such collection). At the time of disconnection of any Consumer(s), whether such Consumer became a Consumer prior to or after the Commencement Date, the Operator may refund such Consumer's deposit, provided that the meter is in good condition; and the Operator shall be entitled to a refund of an equivalent amount from NESL, upon submission of a copy of the Consumer's receipt to NESL.
- (iv) At the Commencement Date, NESL shall provide a list to the Operator of all the Consumers from whom NMC has collected the "Water Consumption Security Deposit" prior to the Commencement Date along with the details of the amounts so collected. At the time of disconnection of any Consumer, whether such Consumer became a Consumer prior to or after the Commencement Date, the Water Consumption Security Deposit paid by such Consumer shall be refunded by the Operator, on the Consumer ceasing to be a Consumer, upon notification of the Consumer's claim to, and after deducting arrears in compliance with the Bye-Laws. The Operator shall be entitled to a refund of an equivalent amount from NESL, upon submission of a copy of the Consumer's receipt to NESL.

### **7.3 Accounts Receivable to NMC**

- (i) On the Commencement Date, NESL shall provide to the Operator a list of all of NMC's accounts receivable relating to water supply.
- (ii) The Operator shall, forthwith, deposit all amounts collected in respect of such accounts receivable into the Sewage and Water Fund. Upon such deposits being made, NESL shall pay to the Operator a collection fee equal to a percentage of the amount collected, as specified in Schedule 18.

### **7.4 Existing Facilities**

Effective on the Commencement Date, the Operator shall have the right to use any items of Existing Facilities listed in Schedules 7, Schedule 8 and Schedule 22, in carrying out its responsibilities hereunder. Any item which the Operator determines as not required for the purpose of this Contract shall be retained by or disposed off at the discretion of NESL.

## **8. Facilities Management**

### **8.1 Return Assets**

#### **8.1.1 Definition of Return Assets**

The Return Assets consist of the Facilities, existing or to be built, which are necessary to provide the Services.

The Return Assets consist of together the assets listed in (i) to (iv) below:

- (i) The Facilities made available to the Operator by NESL at the Commencement Date, a preliminary list of which is attached hereto in Schedule 7, Schedule 8 and Schedule 22 which will be prepared within 12 months from the commencement date.
- (ii) Any works of Replacement as per Schedule 11 and major repairs.
- (iii) The New Facilities commissioned for the purpose of water supply in the Service Area and made available to the Operator by NESL, subsequent to the Commencement Date and in particular the following:
  - (a) The facilities integrated into the existing Return Assets, which are provided and financed by the Operator, being works of Renewal, Replacements or major repairs;
  - (b) New Facilities developed by the Operator as contractor and financed under specific arrangements set out to implement the IPIP.
  - (c) New Facilities developed by any person for NMC/ NESL and financed by NESL/NMC or by any Third Party for the implementation of the service expansion program as specified in Schedule 12, which may be modified from time to time hereunder.
- (iv) The following assets which are necessary or required to provide the Services:
  - (a) The right to use the lands which are required by the Operator for its use for the purposes of the Contract;
  - (b) The rights of way on lands which belong to the Government Parties and/or NESL and which support / are required for the purposes of accessing the Facilities;
  - (c) The right to use the equipment and works required for production, transport, distribution or supply of water and maintenance of



Facilities, including without limitation, the right to use the equipment and public works of production required by the Operator, including the assets listed in Schedule 7, Schedule 8 and Schedule 22 and the Existing Projects listed in Schedule 14 and to be made available to the Operator in accordance with the terms of this Contract;

- (d) Right to use the lands strictly necessary for the exploitation of such equipment and works mentioned in sub-clause (c) above; and
- (e) Right to use any buildings used by the Government Parties or NESL on the date hereof as workshops, laboratories, offices, warehouses or accommodation in connection with the supply of water, which are necessary for the management of drinking water supply systems or built on public property which is allocated to the Services.

### **8.1.2 Return Assets on Commencement Date**

Without prejudice to Clause 8.1.1, all assets being used by the water works department of NMC on the Commencement Date shall be made available to the Operator as Return Assets.

### **8.1.3 Return Assets System**

- (i) The Parties acknowledge that the Return Assets, existing at the Commencement Date, to be built, or to be subsequently provided, are and will be owned by the Government Parties or NESL, as the case may be, and NESL shall ensure that the same are allocated to the Services. The Operator acknowledges that the Return Assets created by the Operator (on behalf of NESL) in the course of performance of its obligations under the Contract, if any, shall be "ab initio", the property of NMC which will be the exclusive owner of such return assets irrespective of its development by the operator. For avoidance of doubts, it is made clear that the operator shall not be entitled to create any charge, encumbrance, mortgage, lien etc. on the said assets and in no case the liquidation of the said assets is permissible.
- (ii) The Parties further agree and acknowledge that the Return Assets shall be available for use by the Operator and the exclusive possession of the Return Assets shall be given to the Operator by NESL to enable it to use such Return Assets until the Expiry Date hereof.
- (iii) At the Expiry Date, the Operator shall transfer possession of the whole of the Return Assets to NESL, free of charge.
- (iv) The Operator acknowledges having sufficient knowledge of the quantity and description of assets as provided in Schedule 7, Schedule 8, Schedule 14 and Schedule 22.

- (v) NESL shall ensure that the Operator shall be assigned the full benefit of any manufacturer's and/or contractor's guarantee / warranty relating to the equipment and works.
- (vi) NESL shall be responsible for the commissioning of the Existing Projects and for making available to the Operator the corresponding facilities at the date set forth in Schedule 14, for use by the Operator in accordance with the terms of this Contract.

#### **8.1.4 Renewal of the Return Assets**

- (i) The Return Assets are divided, according to their nature or their Technical Lifespan, into (a) renewable Return Assets; (b) and non-renewable Return Assets.
- (ii) Renewable Return Assets mean the following Return Assets:
  - (a) Return Assets of which the Technical Lifespan mentioned in the Return Assets Condition Report falls due before the expiry of the 25<sup>th</sup> anniversary of the Commencement Date; and
  - (b) Return Assets which are required to be replaced by the Operator at least once before the expiry of the 25th anniversary of the Commencement Date, pursuant to and in accordance with Schedule 11.
- (iii) The Return Assets other than renewable Return Assets are non-renewable by the Operator. Such non-renewable Return Assets, either by their nature, or, because of their Technical Lifespan, are not required to be renewed by the Operator prior to the expiry of the 25th anniversary of the Commencement Date.
- (iv) Notwithstanding the aforesaid classification of Return Assets, the Operator shall carry out the Renewal of certain Return Assets under any Investment Program Agreements that may be mutually agreed between the Operator and NESL pursuant to Schedule 10 and 11.

#### **8.1.5 Inventory of Return Assets**

- (i) A preliminary list of the Return Assets is provided in Schedule 7, Schedule 8 and Schedule 22. The detailed list of the Return Assets, renewable and non-renewable, shall be set forth in a report to be prepared by the Operator as described in Clause 8.1.5(ii) below.

- (ii) Within twenty four (24) months from the Commencement Date, the Operator shall prepare a detailed descriptive inventory (“**Return Assets Condition Report**”) of the existing Return Assets on the basis of the list of Facilities provided in Schedule 7, Schedule 8 and Schedule 22 hereof and submit a copy thereof to NESL.
- (iii) The Return Assets Conditions Report shall classify on a graded scale the condition of the Return Assets and establish in particular, for each asset, the following data: designation, geographical location, date of acquisition, cost of acquisition, technical state and obsolescence.
- (iv) After the submission of the first Return Assets Condition Report, the Operator shall prepare and update with reference to each subsequent calendar year, an updated Return Assets Condition Report. Such updated Return Assets Condition Report shall include the repairs and renewals that may be required to provide the Services in accordance with the provisions hereof. The Operator shall submit the Return Assets Condition Report in electronic format in a form satisfactory to NESL, no later than ninety (90) days before the end of each Accounting Year.

## **8.2 Optional Take-Back Assets (OTBA)**

### **8.2.1 Definition of Optional Take-Back Assets**

The Optional Take-Back Assets are those assets (being fixed assets, real estate and/or movables), which are the assets belonging to the Operator at the Commencement Date or acquired or built by the Operator after the Commencement Date for the sole purpose of providing the Services and which are not financed by NMC or NESL.

Subject to the foregoing, the Optional Take-Back Assets consist of but are not limited to, the vehicles and specialized operational equipment, tools, consumables, computer hardware and specialized software, the data bases, as well as buildings used as workshop, office, store and laboratory.

### **8.2.2 Inventory of Optional Take-Back Assets**

- (i) Within a period of 12 (twelve) months from the Commencement Date, the Operator shall prepare a detailed inventory of the existing Optional Take-Back Assets (“**OTB Asset Condition Report**”).
- (ii) The OTB Asset Condition Report submitted by the Operator to NESL, shall establish in particular, for each asset, the following data: designation, geographical localization, date of acquisition, cost of acquisition, technical state and obsolescence.

- (iii) The Operator shall have the obligation to transfer the Optional Take-Back Assets to NESL or at the option of NESL to NMC, including those which the Operator may have replaced for any reason, at the Expiry Date, in accordance with Clause 8.2.3.
- (iv) The Operator shall prepare and update for each calendar year, the OTB Asset Condition Report, which shall be provided to NESL in electronic format no later than ninety (90) days before the end of each Accounting Year.

**8.2.3** The Operator shall, at the option of NESL exercisable no later than thirty (30) Days after the Expiry Date, transfer the Optional Take-Back Assets to NESL and the NESL shall pay to the Operator an amount equal to the net book value of such assets as recorded in the audited financial statements of the Operator. For the avoidance of doubt, the Operator shall retain the ownership of the Optional Take-Back Assets, in respect of which NESL does not exercise such option and shall be entitled to deal with such Optional Take-Back Assets in respect of which NESL does not exercise its discretion, in any manner it may deem fit, including without limitation, the sale of such remaining Optional Take-Back Assets.

**8.2.4** Notwithstanding anything contained in Clause 8.2.3, in case of termination of the Contract due to a NESL Event of Termination or a Force Majeure Event of Termination, the Operator shall have the option to sell off all or part of the Optional Take-Back Assets to NESL and NESL shall be obligated to purchase such Optional Take-Back Assets from the Operator for a consideration equal to the net book value of such assets as recorded in the audited financial statements of the Operator.

### **8.3 Own Assets**

#### **8.3.1 Definition of Own Assets**

The assets other than those mentioned in Clause 8.1 and Clause 8.2 above, and which are the property of the Operator, are hereinafter referred to as "Own Assets". They remain the property of the Operator at the Expiry Date of the Contract, unless NESL and the Operator agree to the contrary. The Own Assets consist of, in particular but are not limited to, the office buildings or housing buildings, non-specialized motor vehicles, materials, office furniture and non-specialized software, which due to their nature, situation or their installation, are not necessary for the provision of Services. .

#### **8.4 Special provisions applicable to Optional Take Back-Assets and to Own Assets**

- (i) The Optional Take-Back Assets and Own Assets shall at all times remain the property of the Operator. Provided however that the Operator shall not alienate, encumber, create charge or mortgage or third party interest in any Optional Take-Back Assets in any manner whatsoever without prior written approval of NESL.
- (ii) The Operator may, at any time, acquire or alienate or create an Encumbrance on its Own Assets, provided that any such alienation shall not have any negative effect on the provision of the Services in accordance with the terms hereof. The Operator shall, without any undue delay, notify NESL of any such acquisitions or alienations.

#### **8.5 Control of the Inventories**

- (i) NESL shall be entitled to verify Return Assets Conditions Report and OTB Asset Condition Report mentioned in Clause 8.1.5 and Clause 8.2.2 above respectively, pursuant to its right of audit as set forth in Clause 12.3.2, and NESL shall report any discrepancy to the Operator in this respect. Inventories shall be modified by the operator as per thr mutual agreement between the operator and the NESL.
- (ii) Notwithstanding anything to the contrary contained in this Contract, NESL and the Operator hereby expressly agree, that commencing on the last Day of every Accounting Year, the Assets Conditions Report and the OTB Asset Condition Report, as updated in respect of the immediately prior calendar year shall at all times on and thereafter, be binding on NESL and the Operator, for the purposes of making any determination under the terms hereof, including without limitation, for the purposes of making any determinations under Clause 21A.2.

#### **8.6 Return of Assets at the expiry of the Contract**

At the Expiry Date, NESL is automatically subrogated in the whole of the rights of the Operator related with the Return Assets. At the same date, the Operator is obliged to hand over to NESL, free of charge and without expenses to be incurred by NESL and in normal state of maintenance and operation, the whole of the Return Assets.

Whatever the cause of termination of the Contract,

- (i) the asset value after depreciation which is recorded in the closing balance sheet of the Operator constitutes a credit of the Operator on the NESL;
- (ii) the provision for renewal recorded in the closing Balance Sheet of the Operator is due by the Operator to the NESL;

- (iii) Any deficit of the contractual investments relating to completed Renewal Works compared to the Contract obligations of the Operator as per the date of termination of the Contract is due by the Operator to NESL.

If necessary, a balance shall be made between the amounts that the parties are owing to each other pursuant to the Contract and to the consequences of its expiry or Termination. NESL can call the Performance Bond to the extent of the residual amounts which would be due by the Operator in payment of the agreed compensation.

## **9. Obligations of NESL**

### **9.1 General Obligations of NESL**

NESL hereby undertakes, in addition to its other obligations under this Contract, to:

- (i) permit the Operator to access the Facilities prior to the Commencement Date to enable the Operator to takeover the Facilities on the Commencement Date in a manner which does not result in any interruption of Services;
- (ii) transfer to the Operator on the Commencement Date, all information, documents, records, accounts, invoices, statements, demands, notices, insurance demands and other correspondence in relation to the Facilities that are in the possession of NESL and/or the Government Parties as of the Commencement Date, and to forthwith transfer to the Operator all such information, documents, records, accounts, invoices, statements, demands, notices, insurance demands and other correspondence in relation to the Facilities that may come into NESL's possession during the term of the Contract;
- (iii) grant to the Operator the possession of and the right to use the Facilities in furtherance of its rights and obligations hereunder to provide the Services ;
- (iv) provide or procure such grants or renewals of Government Authorizations for the Facilities, Services and the maintenance of the Operator's tax status, as may be required by the Operator; and in the event that under Applicable Laws, only the Operator would be eligible to apply for any Government Authorizations, NESL shall procure and / or provide to the Operator, at the cost of the operator, all information, advice and assistance which the Operator may require in relation to the application for the grant and/or renewal of any such Government Authorization;
- (v) grant to the Operator within a reasonable period of time from the date of request of the Operator, such authority, permit, rights of way or easements in any property to enable the Operator to exercise any of its rights and perform its obligations under this Contract, including for the operation of

New Facilities, to the extent necessary, by way of acquiring authority, permit, rights, title or interest in any property, rights of way or easements. For this purpose, if required, NESL may procure the acquisition of such property by NMC (at the cost and expense of NESL/Government Parties) pursuant to the provisions of the Act and / or other Applicable Laws. For the avoidance of doubt, the Operator shall not be liable for the payment of any amounts by way of compensation in respect of the same.

- (vi) to hold harmless and indemnify the Operator against any claim, loss, damage, or liability in respect of anything done or intended to be done in good faith under the Operator's obligations under this Contract, to the extent such obligations have been performed in compliance with the Act or rules or bye-laws made under the Act.
- (vii) upon a request made by the Operator, provided that the Government Parties exercise their powers, rights and authorities under the Act, including without limitation:
  - (a) under Section 179 of the Act;
  - (b) to take action in the event any person contravenes Section 231 of the Act;
  - (c) to prohibit building operations permanently or temporarily when by reason of situation or nature of the land, the erection of buildings thereon would be likely to involve excessive expenditure in the provision of water supply;
  - (d) to not approve any site on which any person proposes to erect or re-erect any building, where such construction will obstruct or interfere with the water supply distribution network;
  - (e) to exercise its powers under Sections 374 & 375 of the Act, in case of a default or non-payment by a Consumer;
  - (f) to prosecute any person who obstructs NESL and/ or the Operator (or its authorised persons) in the performance or execution of its obligations hereunder or anything it is empowered or required to do under the Act or Bye-Laws, pursuant to NMC's powers under Section 395 of the Act;
- (viii) pay the Operator's Remuneration strictly in accordance with Clause 16 and Schedule 5.

- (ix) pay to the Operator on a monthly basis, an amount equal to the monies deposited by the Consumers towards costs and charges relating to the provision of a connection strictly in accordance with Clause 16 and Schedule 5.
- (x) protect its rights under the Relationship Agreement entered into with the Government Parties.
- (xi) Compensate operator in case of material loss arising out of grant of any waiver under or consent to any amendment, modification or termination of relationship agreement.

## **9.2 Retained Functions of NESL**

NESL shall retain, among others, the following responsibilities during the period of the Contract:

- (i) Monitoring, reporting and administering of NESL loans;
- (ii) Providing such other services or functions as are assigned by or required under this Contract and granted to NESL under the Relationship Agreement (other than those granted by NESL to the Operator under or pursuant to this Contract);
- (iii) Providing raw water supply to the Operator in accordance with the terms and conditions contained hereunder and in Schedule 13.
- (iv) Developing, financing and supervising any investment program for extension of the water supply facilities as required to meet the objectives established in the Master Plan, the Revised Master Plan and the Investment Program Agreements, and in particular, with respect to the production of water in sufficient quantity as required to address the Consumer / Communities demand;
- (v) Obtaining the entitlement of NMC / NESL to use raw water resources in sufficient quantity and appropriate quality as required by the Operator in accordance with Clause 6.5 and Schedule 13, so as to enable the Operator to address the demand of Government Parties for water in the Service Perimeter.
- (vi) Approving Services outside of the Service Area.

For the avoidance of doubt, it is clarified that NESL shall finance the cost of performing these retained functions and it is expressly agreed that the Operator shall not be responsible for contributing to the cost of NESL performing these functions.



## **10. Obligations of Government Parties**

### **10.1 General Obligations of Government Parties**

In addition to their other obligations under this Contract, the Government Parties hereby undertake to take all such actions, including without limitation, in its capacity as a party to the Relationship Agreement and as shareholder of NESL, executing all such agreements, deeds and documents as may be required to enable NESL to comply with its obligations under this Contract, including Clause 9 hereof.

### **10.2 Retained Functions of NMC**

The Operator agrees and acknowledges that the following responsibilities shall be retained by NMC during the period of the Contract:

- (i) Approving the Master Plan of water supply to the City of Nagpur as may be revised from time to time pursuant to Clause 19.3.
- (ii) Monitoring, reporting and administering NMC loans;
- (iii) Establishing any changes to the applicable tariff rates for water supply services in the Service Area;
- (iv) Establishing sector policies, and in particular special policies, governing water supply development in the slums, subject to and in accordance with the provisions of the Act.

## **11. General Obligations of the Operator**

### **11.1 General provisions regarding the provision of water services**

The Operator shall have the obligations set forth in this Clause 11.1 in respect of the Services.

Subject to the provisions of the Contract, the Operator covenants to:

- (i) comply with the provisions hereunder ;
- (ii) ensure that it provides treated water to the Government Parties, on behalf of NESL, in a manner such that all Consumers have equal access and treatment in conformity with the provisions of this Contract;
- (iii) monitor the level of satisfaction of the Consumers, as prescribed in Schedule 10; and

- (iv) ensure permanent, continuous and regular operation of the Facilities and also appropriate processing, transport and distribution of water of quality and pressure in compliance with the performance parameters set forth herein and in Schedule 10 hereof.
- (v) not to undertake, directly or by means of subsidiary companies or in any other manner, any other activities other than those specified in this Contract and which contribute directly to the performance hereof.

#### **11.1A Delegates of the Commissioner**

- (i) NESL shall procure that at all times for the term of the Contract, required number of municipal officers (“**Delegates**”) shall be severally authorised and empowered in terms of section 59(5) of the Act to act as the Commissioner’s delegates to:
  - (a) discharge, from time to time, the powers, functions and duties of the Commissioner under Sections 154, 201, 202, 205, 213, 215, 225, 354, 355, 356 and 357 of the Act;
  - (b) provide to the Operator the benefit of notice by any person under Section 203 of the Act;
  - (c) grant notice to any person under section 215; and
  - (d) exercise any right/ power/ authority in relation to or affecting water supply under or pursuant to any other provisions of the Act which specifically empower/ authorise the Commissioner.

Further, the Delegates shall either have the designation of Executive Engineer or shall be otherwise severally authorised and empowered to perform the duties/ powers/ functions/ authorities vested in the Executive Engineer or any other municipal officer who may be empowered/ authorised to act under the Bye-Laws. Such Delegates shall be exclusively assigned to the Operator, to enable the Operator to fully exercise its rights and perform its obligations under this Contract. The Delegates shall exercise their powers set forth in Clause 11.1A(i) upon a request made by the Operator. In order to ensure close coordination between the Delegates and the Operator, and to ensure smooth exercise of its rights and the undertaking by the Operator of its obligations hereunder, such Delegates shall be stationed by the Government Parties at a suitably located office of the Operator. For the avoidance of doubt, it is hereby clarified that (a) such Delegates shall continue to be employees of the Government Parties and shall continue to be governed by the service conditions as applicable to other employees of the Government Parties from time to time; and (b) the cost of salaries and other benefits paid by NMC to such Delegates as per

their service conditions, shall be reimbursed by NESL to NMC and operator to NESL.

- (ii) In the event the Delegates exercise their powers, duties, functions or authority in respect of any of the sections listed in Clause 11.1A(i) to reject a request made by the Operator or act otherwise than in accordance with the request made by the Operator, or fail to exercise their powers, duties, functions and authority within the time frame mutually agreed between the Operator and NESL pursuant to Clause 3.1(iv) hereof, the Operator shall have the remedies to recover the losses of operator on account of such failure.
- (iii) The Operator hereby acknowledges that the Delegates shall always be subject to the superintendence of the Commissioner while discharging the Commissioner's powers, functions and duties when acting on the Operator's request or information or otherwise, provided however that nothing contained in this Clause 11.1A(iii) shall prejudice the rights and remedies of the Operator contained in this Clause 11.1.

## **11.2 Water Supply services in the Service Perimeter**

### **11.2.1 NA**

### **11.2.2 Continuity of Service**

On and from the expiry of the Transition Period, the Operator shall provide water in a manner so as to ensure 24X7 supply of water to all connected Consumers within the Service Perimeter, subject to any Force Majeure events or interruptions resulting from the temporary failure of any Facilities (or part thereof) or any interruptions required for the repair or construction of the Facilities or where any repair or construction cannot reasonably be performed without interruption in the supply of water.

### **11.2.3 Obligation to make connections to a water main**

- (i) The Operator shall set up collection centres within the Service Perimeter where any person intending to apply for a water connection may deposit his application. The Government Parties to notify such collection centres as the only places where an application for seeking a water connection may be submitted. Upon collection of the applications, the Operator shall scrutinise the applications in accordance with the provisions of this Contract, the Act and the Bye-Laws (to determine the eligibility of the applicants). The Operator shall forward the application of applicant found eligible to the Delegates. NESL shall ensure that within three (3) Days of

such forwarding of the names of any eligible applicant, the Delegate(s) shall enter into an Agreement for Water Supply with such applicant and provide a copy of the same to the Operator. The Operator shall upon receipt of the copy of an Agreement for Water Supply, provide such connection within 7 days, subject to payment by such person of all applicable costs including cost of plumbing and water meter and charges as set forth in this Clause 11.2.3. For such connection, such person shall be liable to pay all applicable costs and charges in accordance with Schedule 21 and the Bye-Laws required to be incurred for providing the connection and the Operator shall collect the same on behalf of NESL. The Operator shall commence the supply of water upon the completion of all connection works and affixation of a metering device. The cost of plumbing and water meter shall be worked out by the operator as per the approved rate of NESL. Such cost shall also include the cost of road cutting if any and restoration to original or better condition thereof. The demand note for the above cost shall be issued to the intending consumer.

All charges as stated above shall be paid by the intending consumer to the operator for connection of water. The operator shall deposit the charges paid by the consumer in the sewage & water fund of NMC. The amount will be transferred by NMC to ESCROW account. The NESL shall reimburse to the operator the cost of water connection. Operator shall be fully responsible for the restoration of road cutting to the original or better condition thereof.

- (ii) Upon an application being made by any person who is entitled to a water supply connection under the Act and Bye-Laws and (a) who is situated within the Service Perimeter but a new distribution pipe is required to be laid to provide connection to such person, or (b) who is not situated within the Service Perimeter but is situated within the Service Area, the Operator shall give notice of such application having been made to NESL, and the Expansion Project required to connect such applicant. Upon completion of the required Expansion Projects by NESL and assignment of NESL's rights in the same to the Operator, the Operator shall as soon as reasonably practicable, subject to satisfaction by such person of any conditions prescribed under the Act and the Bye-Laws provide a connection to such person in accordance with Clause 11.2.3 (i).

### **11.2.3A Collection centres of the Operator**

The Operator shall ensure that any applicant or Consumer may pay any monies due from such applicant or Consumer under the Agreement for Supply of Water and / or the Bye-laws or the Act, as the case may be, at the collection centres set up pursuant to Clause 11.2.3(i). NESL shall ensure that such collection centres are designated and notified as authorised collection centres for the payment of the foregoing amounts.

### **11.2.3B Other collection centres**

In the event that the Government Parties and/or NESL accept (or permit any other person such as a bank to accept) any payment by an applicant or a Consumer of any amount due from such applicant or Consumer under the Agreement for Supply of Water and / or the Bye-laws or the Act, as the case may be, NESL shall ensure that all monies collected by it, the Government Parties or any such person are promptly dealt with in accordance with Clause 16.5.1.

### **11.2.4 Drinking Water Quality Standards**

The water supplied by the Operator in the Service Perimeter shall comply with the applicable drinking water quality standards as declared from time to time by the Central Public Health & Environmental Engineering Organisation, Ministry of Urban Development, Government of India, which compliance shall be required in a phased manner in accordance with the schedule for implementation of 24X7 supply. The Operator shall comply with any requirements in relation to sampling, record keeping or reporting as may be required under Applicable Laws.

### **11.2.5 Obligation to supply Water for Public Purposes**

- (i) The Operator shall make available an adequate supply of water for fire-fighting and other public purposes as NESL may reasonably request subject to any considerations arising from the actual technical conditions of the Facilities and the actual and adequate supply of raw water by NESL.
- (ii) The volume of water provided by the Operator for fire-fighting or to NESL shall be deemed to have been billed to and collected from the relevant authorities or NESL, as the case may be, for the purposes of Schedule 5, including the calculation of the Actual Technical Efficiency and the Actual Commercial Efficiency. The quantity of water required in particular for fire fighting and other public purposes shall be limited to 2% of the total water supply.

### **11.2.6 Provision of Water other than through a Water Main**

- (i) In circumstances where no water main exists , the Operator may make water available to NESL at the nearest service reservoir (for supply of water to consumers), other than through existing mains, such supply being done at the prevailing bulk water rate.

Provided that the Operator shall not be required to comply with the obligations contained in this Clause 11.2.6, if in the reasonable opinion of the Operator, the performance of the obligations contained in this Clause 11.2.6 are likely to affect the Operator's ability to provide 24x7 water supply within the Service Perimeter in accordance with the terms of this

Contract. For the avoidance of doubt, it is hereby clarified that the Operator shall not be under an obligation to provide 24x7 water supply for such consumers.

- (ii) Subject to the provisions contained in Clause 6.5, the Operator shall supply water, free of cost, through appropriate means to Government Parties, on behalf of NESL, for Consumers in respect of whom (i) supplies through a water main have been or is expected to be interrupted for more than 24 hours, or (ii) supplies through a water main have been or are expected to be subject to contamination. Such supply of water shall be made available by the Operator only during the subsistence of the interruption, and/or contamination / possibility of contamination of water supply, as the case may be.

For the avoidance of doubt, it is hereby clarified that the Operator shall not be under an obligation to provide 24x7 water supply for such Consumers.

- (iii) For the purposes of Schedule 5, including without limitation, calculation of the Actual Technical Efficiency and the Actual Collection Efficiency for the purposes of Schedule 3 and Schedule 5, the Operator shall be deemed to have billed and collected the amounts corresponding to volumes of water provided under this Clause 11.2.6 in any Accounting Year.
- (iv) NESL and the Operator expressly agree that the amounts collected by the Operator under this Clause 11.2.6 (i) shall be deposited by the Operator in the Sewage and Water Fund.

#### **11.2.7 Access and Rights of Way**

- (i) NESL shall procure and provide to the Operator, the right of use and occupation of public property, and in particular, of public streets or highways, to the extent required for the performance of the Services as well as matters ancillary or incidental to the Services, such as immersion, overhang, support, right of way, and any other rights, which the Operator may require in respect of the same.

Provided however that where such occupation results in any damage to any public streets, highways or public property, NESL shall have the right to require the Operator to restore the actually affected portion to a condition as existed prior to the commencement of works by the Operator.

- (ii) NESL shall ensure that the Operator is not required to pay any costs and charges for rights of way and easements relating to the Facilities and right to access to the Facilities so that it may perform its obligations under this Contract, including the right to conduct any kind of work in the streets and other public places within the Service Area in relation to the Facilities,

where such streets, public places, roads and highways belong to NMC or in respect of which NMC is in a position to grant rights of way and easements relating to the Facilities and right to access to the Facilities free of charge. Where NESL is required to pay any such charges under Applicable Law, for such rights of way and easements relating to the Facilities and right to access to the Facilities, the Operator shall without any undue delay pay such charges to NESL or pay the charges directly to the concerned department/authority, as the case may be.

- (iii) NESL shall procure and provide at its own cost, to the Operator, the right of use and occupation of private properties to the extent required in connection with the performance of the Services as well as matters ancillary or incidental to the Services, such as immersion, overhang, support, right of way, and any other rights, which the Operator may require in respect of the same.

Provided however that, in the exercise of any of the foregoing rights under this Clause 11.2.7, the Operator shall comply with any public safety requirements and have regard to the convenience of the inhabitants, as may be required under Applicable Laws.

#### **11.2.8 Operational Performance Obligations**

- (i) The supply of water by the Operator shall be in accordance with the performance parameters set forth in Schedule 10 hereof.
- (ii) The performance parameters contained in Schedule 10 may be revised on the expiry of each period of five (5) years with the first of such five (5) year periods commencing on the Commencement Date and every subsequent five (5) year period commencing on the expiry of the previous five (5) year period, if necessary, as may be determined by mutual agreement between the Operator and NESL, taking into consideration, results that have been obtained and any new objectives.
- (iii) Any request for such revision shall be addressed by the Operator or NESL not later than six (6) months before the expiry of the Rate Rebasing Period in progress. For the avoidance of doubt, the foregoing shall be without prejudice to the right of the Operator to request an Extraordinary Service Rates Adjustment under Clause 17 of this Contract.
- (iv) Notwithstanding the provisions of this Clause 11.2.8 or any other provision of the Contract, in the event that at any time during the term of the Contract, the Operator is unable to satisfy the performance parameters in any area within the Service Perimeter, for reasons beyond its control or due to certain conditions peculiar to such area as a result of which conditions the compliance with such performance parameters would require the

Operator to incur unreasonably excessive expenditure, the Operator shall be entitled to issue a notice to NESL requesting for appropriate modification of such specified performance parameter in respect of such area. Upon receipt of such notice, NESL and the Operator shall discuss in good faith an appropriate revision of such performance parameter and/or an extension to the Operator to comply with such performance parameter for such area. In the event of a failure of the Operator and NESL to mutually agree upon the revision of performance parameters as aforesaid, NESL and/or the Operator shall be entitled to proceed in accordance with Clause 24.

### **11.2.9 Interruptions in Water Supply**

Notwithstanding anything to the contrary contained in Clause 11.2.2 or any other provision of this Contract, but subject to provisions of the Act, the Rules and the bye laws:

- (i) the Operator shall be entitled to request the Delegates to prohibit or regulate the use of water by Consumers or Communities, for any uses other than domestic use, upon the occurrence of any event beyond its control (whether or not such event is an event of Force Majeure under this Contract) as a result of which the Operator is unable to provide the quantity of water required for such Consumers or the Communities;
- (ii) until the commissioning of any required Expansion Projects, the Operator shall be permitted to establish an intermittent schedule of water supply which shall be submitted to NESL and notified by the Government Parties to the Consumers;
- (iii) the Operator shall be entitled to make interruptions in the distribution of water supply:
  - (a) for any repairs, Rehabilitation Works, Renewal Works, Expansion Projects, development of New Facilities and extension/modification of the Facilities; and
  - (b) for repairs in the distribution networks or in the event of accidents requiring an immediate interruption in which case, the Operator shall be authorized to take any measures as may be considered desirable;
- (iv) The Operator shall sufficiently in advance notify NESL of any interruptions of water supply in the Service Area to the extent reasonably practicable.



### **11.3 Bulk Water Supply to communities located out of the Service Area**

- (i) The Operator shall, upon a request made by NESL in this regard, supply water for any Communities listed in Schedule 2 which are located outside of the jurisdiction of the Government Parties and whose development is integrated in the urban development plan of Nagpur City. For this purpose, the Government Parties shall enter into an agreement for supply of water with the relevant authorities for such Communities. Pursuant to the execution of such agreement, the Operator shall install, operate and maintain bulk water supply connection facilities to the said Communities listed in Schedule 2, on behalf of NESL, and such bulk water supply connection shall be provided and metered at the service reservoir nearest to any such Communities.
- (ii) Upon the execution of the agreement for supply of water as aforesaid, NESL shall notify the same to the Operator and upon the Operator being so notified, it shall assess the costs of connection and notify the same to the relevant Community through NESL. The capital cost required to be incurred to make the connection to the Community shall be billed and collected by the Operator to and from the Community on the basis of applicable schedule of rates set forth in Schedule 21 hereof, and the supply of water shall be billed to the Community on the basis of the applicable Water Rates as set forth in the Bye-Laws or in the absence of any such stipulation, as may be mutually agreed between the Government Parties and such community. The Operator shall deposit all monies collected pursuant to this Clause 11.3(ii) in the Sewage and Water Fund.
- (iii) Notwithstanding anything to the contrary contained in this Contract,
  - (a) the Operator shall not be required to supply bulk water for such Communities pursuant to this Clause 11.3 on a 24x7 basis;
  - (b) the Operator shall not be required to supply water pursuant to this Clause 11.3 if the same would prejudice its obligations under the Contract relating to supply of water within the Service Perimeter;
  - (c) the Operator shall not be required to supply water pursuant to this Clause 11.3 which on an overall basis exceeds the total stipulated volume based on the forecast level in respect of the Communities as set forth in Schedule 2 hereof; and
  - (d) the Operator shall be entitled to determine the time, frequency and pressure at which water shall be made available for Communities pursuant to this Clause 11.3.

## **12. Other Obligations of the Operator**

### **12.1 Insurance**

#### **12.1.1 Responsibility of the Operator**

- (i) The Operator shall be responsible for the operation of the Services which it shall manage and exploit at its risk and perils. Save, as otherwise provided in the Contract, any liability of the Operator resulting from the operation of the Services or being incurred for its exploitation, after the Commencement Date, shall not be borne by NESL. Notwithstanding the foregoing, the Operator shall not be liable for, and NESL shall indemnify and hold the Operator harmless from, any liability arising in connection with:
  - (a) the quality of raw water or bulk water (bulk raw water supply or treated bulk water ready for distribution) provided by NESL to the Operator, which fails to meet water quality standards prescribed under Applicable Law or this Contract, or any breach of the terms and conditions of the bulk water supply set forth in Schedule 13 hereof;
  - (b) the technical characteristics and conditions of the Existing Facilities, which may not make it possible for the Operator to meet the prescribed standards of quality of water, until the Renewal Works or Rehabilitation Works are carried out, provided that where the Operator is aware of such limitation of the technical characteristics and conditions of the Existing Facilities; the Operator shall have notified the same to NESL, to the extent practicable and reasonable.
- (ii) In the event that the quality of raw water is adversely different from historical information & exceeds the reasonable limit of acceptable parameters for raw water quality to meet the standard set forth in the Business Planning Assumptions, the Operator shall submit to NESL, as soon as reasonably possible, a report on the nonconformity of the quality of water and the proposed improvement measures, if any. Such failure of raw water to meet the standards assumed in the Business Planning Assumptions shall be deemed to be a ground for Extraordinary Service Rates Adjustment.

#### **12.1.2 Insurance requirement**

- (i) From the Commencement Date and during the term of this Contract, the Operator shall effect and maintain or require to be effected and maintained, the insurance coverage in accordance with Schedule 4. For the avoidance

of doubt, it is clarified that the cost of all insurances obtained by the Operator shall be considered as Expenditure for the purposes hereof. Insured values of the assets shall incorporate values of existing pre-JnNURM and post-JnNURM projects. The values of the assets are to be assessed by the operator.

- (ii) The Operator shall, within twelve (12) months calculated from the Commencement Date, submit to NESL copies of the insurance policies as required under Schedule 4.
- (iii) The Operator shall also provide to NESL, at least once in every Accounting Year, as part of the annual reporting pursuant to Clause 19.5 hereof, a summary table of the insurance policies in force.
- (iv) The Operator shall comply with the conditions stipulated in each of the insurance policies and ensure that insurance is maintained in accordance with this Clause 12.1.2.
- (v) If the Operator fails to effect and keep in force any of the insurances it is required to effect and maintain under this Contract, then NESL may effect insurance for the relevant risk and pay the premiums due. The Operator shall be liable to pay such amounts to NESL.

## **12.2 Obligations with Third Parties**

### **12.2.1 General obligations**

- (i) In performing its obligations under this Contract, the Operator may enter into any contract with any Third Party in order to ensure the provision of the Services or for the purpose of execution of any works as required hereunder.
- (ii) In the event that the Expansion Projects are undertaken by a Third Party, the works contract to be executed between NESL and the Third Party, shall be in the form set forth in Schedule 15 hereof or such other form as may be mutually agreed between NESL and such Third Party.
- (iii) Any expenditure incurred by the Operator on contracts entered into with a Third Party shall be reported to NESL as part of the audited financial statements required to be submitted by the Operator in accordance with Clause 19.5(i) hereof.
- (iv) NESL and the Operator expressly agree that in the event that the Operator procures the execution of tasks/works or the performance of its obligations pursuant the provisions of this Contract through Third Parties, it shall

remain solely responsible with regard to such Third Parties. NESL and the Operator further agree that in the event that NESL procures the execution of any tasks/works or the performance of its obligations pursuant the provisions of this Contract through Third Parties, NESL shall remain solely responsible with regard to such Third Parties.

- (v) All contracts entered into by the Operator with Third Parties during the term of this Contract, and which relate expressly to the performance of the Services, shall include provisions by which NESL would remain fully empowered to substitute the Operator by a Third Party if the Contract is terminated, or if NESL takes over temporarily the provision of Services, for the period for which the Services are taken over.

### **12.2.2 NA**

## **12.3 Facilities management obligations**

### **12.3.1 General**

The rights and obligations of the Operator in respect of the operation and management of the Facilities are set forth below:

- (i) during the term of this Contract, the Operator shall, as agent of NESL, operate, maintain and renew the Facilities in a manner which would enable the Operator to meet its obligations under this Contract; and
- (ii) any works to be undertaken by the Operator under an Investment Program Agreement pursuant to an agreement in this respect between the Operator and NESL shall be carried out in accordance with the terms hereof and thereof.

### **12.3.2 Audit**

NESL shall have the right to commission an independent technical audit, at its cost and expense and upon providing thirty (30) Days prior written notice to the Operator, to assess the accuracy and completeness of any Return Assets Condition Report and/or the OTB Asset Condition Report and/or the Operator's compliance with its obligations under Clause 12.3.1 above. The Operator shall cooperate during any such audit.

### **12.3.3 Remedial works**

After the expiry of the Transition Period, if, based on an audit report commissioned pursuant to Clause 12.3.2 above, NESL reasonably concludes that the Operator is not meeting its obligations under Clause 12.3.1 above, then NESL shall give the Operator written notice of such determination and the Operator shall

have thirty (30) Days (or such longer period as may be reasonably required under the circumstances) thereafter to take appropriate action to correct the problem to the satisfaction of NESL. The costs of such remedial works shall be borne by the Operator but shall not constitute an Expenditure or qualify as a Ground for an Extraordinary Service Rates Adjustment.

#### **12.4 Disconnections**

In the event that the relevant conditions in the Bye laws are satisfied upon the occurrence of which water supply connection of the Consumer or the Community, as the case may be, may be disconnected in accordance with the Bye-laws, the Operator shall be entitled to request the Delegates to disconnect any Consumer's or Community's, as applicable, water supply connection. The Operator shall state the ground for seeking such disconnection in its request. The Delegates shall, if any of the ground mentioned in the Bye laws for exercising the power of disconnection is made out, be required to take action in accordance with the Bye laws. The Government Parties shall ensure that the Delegates provide all assistance required by the Operator to disconnect such defaulting Consumer or Community, as the case may be. Upon such disconnection the Operator shall notify the Consumer or the Community, as the case may be, in writing, of any such disconnection, and the amount due from such Consumer. A report of any disconnections shall be provided to NESL on a quarterly basis. Such Consumer shall be eligible to apply for a reconnection only upon curing in full the default due to which the connection of such Consumer or Community, as the case may be, was disconnected and payment in full of all outstanding due amounts including all previously billed amounts which are outstanding and late payment charges as prescribed in the Bye-Laws and/or the agreement for supply water entered into with such Consumer or the Community, as the case may be.

#### **12.5 NA**

#### **12.6 Performance Bond (Performance Security)**

- (i) On or prior to the Commencement Date and subsequently for each Rate Rebasing Period, the Operator shall furnish a bond in form of bank guarantee or other security acceptable to NESL ("Performance Bond") in favour of NESL to secure the Operator's performance of its obligations under Clause 11.1 and Clause 22.6 during the Rate Rebasing Period commencing on that date. The aggregate amount drawable in one or more instalments under such Performance Bond required to be furnished for the first Rate Rebasing Period shall be equal to 2.5% of the average of the forecast turnover of the Operator for each year during the first Rate Rebasing Period, calculated with reference to the Business Plan of the Operator as on the Commencement Date. Upon the Operator furnishing any new Performance Bond, NESL shall promptly return any previous Performance Bond to the extent it remains unapplied.

- (ii) Upon providing not less than twenty (20) Days' written notice to the Operator, NESL may make one or more drawings under Performance Bond relating to the first Rate Rebasing Period which relate to any outstanding liquidated damages due and payable due to a default by the Operator of any of its material obligations hereunder.

Provided that no such drawing shall be made in respect of any claim that has been submitted to the arbitrator for adjudication until the arbitrator has handed down his decision in the matter, subject to any interim orders issued by the arbitrator.

- (iii) The Performance Bond, to the extent not applied by NMC, shall be returned to the Operator on the Expiry Date.

## **12.7 Procurement**

During the course of the Contract, other than with respect to Existing Projects, to Contract Projects, and to the works which have been assigned to the Operator on the basis of the schedule 11 the Operator shall either realize them on the basis of the unit prices attached in the Schedule 16. adjusted from time to time in accordance with the WPIs, or proceed in compliance with Indian Law and with applicable regulation in Maharashtra State for the procurement of public goods; public tenders shall be required for any Eligible Expenditure identified as a component of the Investment Program Agreement involving a value exceeding one (1) million Indian Rupees, which amount shall automatically be adjusted on the first of April of each Accounting Year by the percentage change in the **Consumer Price Index** for the preceding twelve-month period. The Operator, at its own discretion, shall determine the specifications upon which contractors will bid and the criteria, including price and quality, by which the winning bid is selected.

## **12.8 Equity Capital**

- (i) Until the first Rate Rebasing Date, the Bidder/ constituents of the Bidder which have been evaluated for the purpose of the Bid, shall collectively own at least 51% of the issued share capital of the Operator. After 1<sup>st</sup> rate rebasing date, save and except with the prior written consent of NESL, the collective ownership of the said constituents of the Bidder in the Operator shall not fall below 25% of the issued share capital of the Operator.
- (ii) The shareholders of the Operator shall invest/ infuse Equity not less than fifty percent (50%) of the total Equity proposed in the Bidder's proposal on the Commencement Date, and the balance Equity up to the total proposed Equity amount shall be invested/ infused as and when it may be required to implement the Project in accordance with the Contract.
- (iii) Notwithstanding anything contained in Clauses 12.8 (i) and 12.8 (ii), the

Operator shall be entitled to, at its sole discretion, make a public offering of its equity shares or equity linked convertible instruments.

## 12.9 Operator's debt

The Operator shall not, without the prior consent and written approval of NESL, incur any debt or liability that would mature after the twenty fifth (25<sup>th</sup>) anniversary of the Commencement Date, **other than debts raised by the Operator in the ordinary course of business or to comply with its obligations hereunder or under any Investment Program Agreement.**

## 12.10 Business Plan

"Business plan" means the Financial Model submitted along with the financial proposal supporting the Bid Price and Technical Proposal (Submitted as part of the Bidding Documents). NESL may treat this information as relevant in carrying out its obligations hereunder.

## 13. Employees

- (i) NESL shall provide to the Operator on the date hereof an updated list of [NMC's / NESL's] employees ("**Employees**") working in or deputed to the water works department as on the date hereof along with their designations and conditions of service.
- (ii) The procedure for transfer of Employees to the Operator shall be divided into three (3) phases as described below:
  - (a) The first phase ("**Mobilization Period**") shall commence on the Commencement Date and continue for a period of **one hundred and twenty (120)** days from (and including) the Commencement Date. NESL shall ensure that all Employees (as reduced for retirements, resignations and deaths) are deputed to the Operator for the entire Mobilization Period. The Commissioner may at his discretion, further extend this period if so requested by the Operator supported by cogent reasons.  
NMC / NESL personnel on deputation to the operator shall be eligible to receive deputation allowance (Minimum 10% of the basic salary + DA) apart from existing salary and other allowances as per Maharashtra Civil Service Rules (MCSR) and as per the recommendations of 6<sup>th</sup> Pay Commission of Govt. of India. The service conditions of NMC employees thus deputed shall remain unchanged.
  - (b) The second phase ("**Personnel Integration Period**") shall

commence on the Day immediately following the expiry of the Mobilization Period and continue for a period of ninety days (90) Days from (and including) the date of commencement of the Personnel Integration Period. NESL shall ensure that all Employees are deputed to the Operator for the Personnel Integration Period. During the Personnel Integration Period, the Operator shall be entitled to make offers of employment to such Employees as the Operator may decide (“**Initial List**”). The Operator shall provide to the Employees mentioned in the Initial List and to any other Employees it may deem fit, a clear vision of the requirements of the Operator with a view to enable such Employees to exercise the option of joining the Operator at the expiry of the Personnel Integration Period. It is agreed that the monetary terms of the offer to be made by the Operator such as salary and other emoluments shall be no less attractive than the monetary terms enjoyed by the Employees with NMC. No later than the expiry of the Personnel Integration Period, each Employee on the Initial List shall be required to choose between continuing in the employment of [NMC/ NESL] or joining the employment of the Operator on such terms and conditions as may be mutually agreed between the Operator and such Employee. The employment with the Operator shall commence from the expiry of the Change Consolidation Period.

- (c) The third phase (“**Change Consolidation Period**”) shall commence on the Day immediately following the expiry of the Personnel Integration Period and continue for a period of one hundred and eighty (180) Days from (and including) the date of commencement of the Change Consolidation Period. NESL shall ensure that all Employees (as reduced for retirements, resignations and deaths) are deputed to the Operator for the entire Change Consolidation Period. This period may be extended in any specific case for a further period of 12 months subject to agreement between the NMC, NESL and the operator. After 180 days of “**Change Consolidation Period**” NESL shall continue some of his staff on deputation for 60 days if requested by the operator. The employees opted to go in the employment of operator and selected by operator shall have to submit their final consent to continue in the service of operator or want to go back to NMC. In case the employee finally opts to be in the service of operator then his services in NMC shall end by way of voluntary retirement or resignation as the case may be. The operator shall also make arrangement for the replacement of employees on deputation during this period.
- (d) The cost of salaries and other benefits paid by NMC if any, to the Employees during the Mobilization Period and the Personnel Integration Period shall be reimbursed by Operator to NESL and further the same shall be reimbursed by NESL to NMC.



- (e) The forth phase (Revocation Period) shall commence on the day immediately following the expiry of “**Change Consolidation Period**” and continue for a period of sixty (60) days from and including the date of commencement of Revocation Period. During this period the operator shall arrange for the replacement of such NMC employees who were selected by operator but who at the expiry of “**Change Consolidation Period**” opted to go back to NMC. All such employees shall continue to be on deputation till the end of Revocation Period or till the operator has arranged replacement, whichever is earlier.
- (iii) For the avoidance of doubt, it is hereby clarified that nothing contained in this Clause 13 shall preclude or prevent the Operator from hiring or engaging such number of employees and/or contract labour (other than the Employees) as it may consider necessary or desirable.
- (iv) During the period of such deputation, [NESL/ NMC] shall ensure that the Employees work properly and perform the functions assigned to them by the Operator; and upon a failure of the Employees to do so, [NESL/ NMC] shall take appropriate action against such employees, including initiating any disciplinary action.
- (v) The Employees while they are on deputation with the Operator shall continue to be employees of [NESL / NMC] on the same terms and conditions as they enjoyed prior to the commencement of such deputation, including without limitation, with respect to compensation and any other benefits such as welfare liabilities and retirement benefits. For the avoidance of doubt, the Employees shall be eligible for any additional benefits which would have accrued to them in the ordinary course even in the absence of such deputation.
- (vi) Employees who are not made offers by the Operator or who decide not to join the employment of the Operator shall continue to be employed by NMC; and at the end of the Personnel Integration Period, such Employees shall be deployed elsewhere by [NMC/ NESL].
- (vii) NESL shall indemnify the Operator, its officers, agents and shareholders against any and all suits, proceedings, actions, demands, claims and liabilities for any loss, damage, cost and expenses (including reasonable attorney’s fees), made by any Employee against the Operator for any unpaid salaries, termination payment, gratuity and other compensation benefits payable by [NMC/ NESL] to such Employee for any period prior to the employment of such Employee by the Operator.

## **14. Capital Works**

### **14.1 Existing Projects**

- (i) The Existing Projects include a series of works and services described in Schedule 14. Except the facilities relating to the transmission of raw water from Pench River reservoirs to the corresponding treatment facilities, all facilities upgraded or developed as a component of the Existing Projects shall be made available by NESL to the Operator in accordance with

- Clause 12.2.2 (i).
- (ii) Subject to the provisions contained in Clause 12.2.2, NMC shall retain the role of contracting entity for the execution of the Existing Projects as set forth in Schedule 14, for which NMC has already awarded contracts to Third Parties through public tenders prior to the Commencement Date. NESL shall provide for supervisory services for the management of the implementation, with due consultation with the operator if necessary, of all Existing Projects until commissioning of the corresponding works. The Operator may assist and support NESL to expedite the completion of the Existing Projects.
  - (iii) Any material delay in the completion of the Existing Projects beyond their scheduled date of completion set forth in Schedule 14 shall be deemed to be a ground for deferment of Service obligations of the Operator listed in Clause 11.1 hereof and in respect to the contractual commercial and technical efficiency levels indicated in Schedules 3 and the performance parameters indicated in Schedule 10 hereof, and the Operator shall be entitled to request NESL to accordingly consider the impact of such delay in accordance with the provisions contained in Clause 17.

#### **14.2 Initial Performance Improvement Project**

- (i) The Operator acknowledges that NMC has provided to the Bidders a DPR as part of the RFP which contains the description of the works to be executed by the Operator during the first Rebasing Period hereof as part of the Initial Performance Improvement Project. NESL represents and warrants that the DPR has been sanctioned by JNNURM on 13/02/2009 as shown in JNNURM's 68th Minutes of Meeting.
- (ii) Within one hundred and eighty (180) Days following the Commencement Date, the Operator shall review the DPR prepared by NMC to provide for funding the "Initial Performance Improvement Project" under the JNNURM Finance Agreement, and shall submit its recommendations and any proposed adjustments to this program to NESL, with a view to include any additional works as may be deemed necessary by the Operator to achieve 24x7 water supply within the Service Perimeter. NESL shall then make their best efforts to procure any additional funding that may be required and the adjustments proposed by the Operator to the scope of the Initial Performance Improvement Project are eligible for funding under the JNNURM Finance Agreement. The eligible adjustments shall then be incorporated by way of amendment to the DPR.
- (iii) NESL represents and warrants that it has arranged financing to pay upto seventy (70) per cent of the cost of the Initial Performance Improvement Project as estimated on the date hereof. Accordingly, NESL shall pay to the Operator an amount equal to seventy (70) percent of the estimated cost of the Initial Performance Improvement Project, which are represented by the quantities and / or unit prices stipulated in Schedule 16. The payment by NESL of the remaining thirty (30) per cent cost of the works is to be

recovered by the Operator from the Operator's Remuneration over the entire original term of the Contract.

- (iv) In the event of an escalation of the cost of the Initial Performance Improvement Project as estimated on the date hereof, due to Clause 14.2(ix), Clause 14.2(x) and/or Clause 16.9, NESL shall make best efforts to procure equivalent additional funding. In the event NESL despite making best efforts fails to achieve such additional funding or any part thereof required as a result of the escalation; NESL shall be entitled to defer the payment of such escalation amounts to the Operator to the extent of such shortfall. The unpaid balance of such deferred escalation amounts shall attract a deferment charge at the rate of 200 basis points above State Bank of India's base lending rate, compounded monthly. In such case, the Operator shall be entitled to recover any costs incurred by it for the performance of IPIP over and above the cost of IPIP estimated on the date hereof, which is deferred in accordance with this Clause 14.2(iii) along with the deferment charge payable thereon by way of equated monthly instalments ("IPIP Escalation Instalment(s)"). Such IPIP Escalation Instalments shall be paid over a period of one hundred and twenty (120) months by way of equated monthly instalments commencing from the fifth anniversary of the Commencement Date.
- (v) NA
- (vi) On or before each 31<sup>st</sup> of December following the Commencement Date until completion of the Initial Performance Improvement Project, the Operator shall submit to NESL an updated action plan and works execution program in compliance with the requirements of the JNNURM Finance Agreement.
- (vii) The actual costs of the works, goods and services related to the Initial Performance Improvement Project shall be calculated on the basis of the quantities and unit prices set forth in Schedule 16 hereof, as adjusted from time to time. The Operator will submit its invoices for executed works on a monthly basis to NESL. . Of the amount of the invoice that NESL is required to pay which is not deferred in accordance with sub-clause (iii) above, NESL shall pay seventy five percent (75%) of such amount within thirty (30) Days of the date of the issuance of the invoice and the remaining twenty five percent (25%) of such amount within ninety (90) Days of the date of the issuance of the invoice. Any late payment by NESL shall attract late payment charges at the rate of 200 basis points above State Bank of India's prime lending rate, compounded on a monthly basis.
- (viii) All goods procured and works commissioned under the Initial Performance Improvement Project shall constitute Return Assets. On commissioning of the executed works and procured goods and services under the implementation of the Initial Performance Improvement Project, the Operator shall submit to NESL an updated Return Assets Condition Report.

- (ix) The unit prices set forth in Schedule 16 shall be adjusted on a yearly basis until the first Rate Rebasing Date on the basis of the Consumer Price Index and the Wholesale Price Index and as per Works Contract.
- (x) The Parties acknowledge that the quantities set forth in Schedule 16 for the purposes of the Initial Performance Improvement Project are as estimated by NESL on the date hereof shall be adjusted from time to time as may be mutually agreed.
- (xi) NESL shall disburse an amount equal to 10% of the cost of IPIP as estimated on the date hereof. Such disbursement shall be made on the Commencement Date against the provision of a bank guarantee (“Advance Guarantee”) by the Operator of an equivalent amount. Such advance shall be adjusted proportionately against the amounts to be paid by NESL under the first ten invoices raised by the Operator under Clause 14.2(iii). Upon the outstanding balance of such advance provided by NESL being reduced to zero, NESL shall promptly return the Advance Guarantee to the Operator.
- (xii) Expenditure for billing system and establishment of office shall be allocated in JnNURM funding.

## **15. Accounting Systems**

### **15.1 General Provisions**

The Operator shall establish and maintain general book-keeping in conformity with the legislative and regulatory provisions applicable in India. In addition the Operator shall comply with specific book keeping regulation for this Contract, which shall prevail for all the operations related to the calculation of the costs of any nature, to financial evaluation of the investments and to financial evaluation of the rights and obligations of each party under the Contract.

The rules of accounting and presentation of the operations carried out shall result from nature of the rights and obligations of the Parties under the Contract. The Operator shall respect the principles of accounting applicable to the mode of delegation of management of public utilities, in particular

- (1) The Return Assets granted to the Operator by NESL shall be registered as assets in the active balance sheet of the Operator, while at the same time the ownership of NESL is registered as a liability of the Operator to return for free the assets to NESL at the Expiry Date. The investments required to maintain the Facilities in reasonable operating conditions have as counterpart depreciation, and/or, eventually, the adequate provisions.
- (2) The Operator shall establish not later than the first of April of the Accounting Year following the first Anniversary of the Commencement Date an analytic book-keeping system to record the financial transactions arising from its operations. Such analytic book-keeping is intended, on the one hand, to permit effective management of the Facilities by the Operator and, on the other, to facilitate the control of NESL.

Computerised systems shall be developed and implemented by the Operator within 12 months after the Commencement Date.

- (3) The analytic book-keeping of Facilities shall comprise the following minimum level of detail:
  - (a) Object of the accountings: Operating expenditure, investment
  - (b) Disaggregating by Functions: production, transport, distribution, commercial activities, works, and administration
  - (c) Expenditure related to Services rendered in Geographic Units as the NESL may request. .
- (4) The analytic book-keeping shall be integrated with the general book-keeping or be connected to it through an automatic interface, in particular for operations relating to fixed assets and to consumable. Any consumable consumption must be registered in the accounting system in accordance with applicable Standards in India and with international best practice .The results of the general book-keeping and of the analytic book-keeping are, if needed, reconciled periodically.
- (5) The management tool of the fixed assets shall be computerized and allow summing each level, in particular by unit and subset, by accounting code and by management Centre. The Operator shall submit the results to NESL in an electronic format and with a form and substance acceptable by NESL not later than within 90 Days after closing the Accounting Year

## **15.2 Depreciation and provisions applicable to Operators Assets**

- (1) Provisions for depreciation, in accordance with the applicable legal regulation, apply to the value of acquisition of a good and are distributed over its countable lifespan. Only Optional Take-Back Assets and Own Assets are subject to amortization.
- (2) The provisions for renewal concern any Renewable Return Assets. The purpose of such provision is to provide for funding the replacement of such Renewable Return Assets by the Operator under the Contract requirements.
- (3) The annual accrual for these provisions shall be equal to the actual purchase cost of the assets divided by the number of year remaining at the acquisition date of the assets until the Expiry Date.
- (4) When the assets shall be replaced by the Operator under this Contract, the actual cost of the replacement work shall be recorded as an asset in the balance sheet, and the liabilities, which shall have been constituted by the cumulated provisions for renewal constituted over time for the replacement of this asset, shall be transferred, after adjustments, to the liabilities account of the balance sheet of the Operator, which shall consist in the “NESL’s Rights”, which designates the ownership retained by NESL on the fixed Return Assets.
- (5) The adjustments shall be operated either by increasing the accrual allocation to the provision for replacement, if this provision is not sufficient, with a charge accounted for in the profit and loss account, or by discounting the accruals of the provision for renewal, if the provision exceeds the replacement costs the operator will have to invest the excess amount within next two years. If the excess amount is not invested in the stipulated time the operator will have to pay the said excess amount to NESL after the expiry of stipulated time.

- (6) The Provision for Renewal shall be deemed to be sufficient when:
- (A) For the Return Assets provided by NESL or funded by Third Parties, the total cumulated provision for renewal recorded in liabilities of the balance sheet of the Operator in respect to the replaced assets at the date of the replacement of this assets is exceeds the actual replacement costs incurred by the Operator under the Contract obligations;
- (7) The estimated replacement cost of the Return Assets to be replaced by the Operator under this Agreement is calculated on the basis of the Whole Sale Price Index. Before the first Anniversary of the Commencement Date, the Operator shall submit an adequate method to estimate the replacement costs of the granted Renewable Return Assets by submitting a technical report in a form and substance acceptable to NESL.. Within 30 Days after receiving the Operator's technical report, if necessary, the parties shall execute an agreement by way of addendum to this Contract and therein make appropriate provisions for renewal in the balance sheet of the Operator.
- .The Technical Lifespan is such as set forth in Schedule 20.

### **15.3 Eligible Operating Costs**

The costs of any nature borne by the Operator which shall be recorded as Expenditure provided that they contribute directly and normally to the provision of the Facilities and to capital costs related to the obligations of the Operator under this Agreement.

- (1) The following costs shall not be eligible as Expenditure acceptable by NESL :
- (a) Sponsoring and advertising costs incurred to promote the name of the Operator;
- (b) Overheads when the accrual corresponding amount exceed 10% of the turnover of the Operator as recorded in the previous Accounting Year,
- (c) Costs of mobilization and special compensations paid by the Operator to international staff, other than the usual expenses related to specific medical insurance, retirement packages accommodation costs;
- (d) Notwithstanding their recording in the accounting system of the Operator and/or their tax deductibility, the non-eligible costs will not be taken into account in the calculation of the expenditure and incomes which shall be considered in the determination of the remuneration of the Operator or in the adjustment and or the rebasing of this remuneration.

### **15.4 Accounting Procedure applicable to Return Assets**

#### **15.4.1 Non-renewable Return Assets**

- (1) The non-renewable Return Assets granted by NESL are accounted for as Fixed Assets in the Balance Sheet Assets, and as Liabilities in the « NESL's Rights » account of the Balance Sheet or, if the assets are financed by operator or third parties, as Fixed Assets in the Balance Sheet Assets and to register the ownership of NESL as Liabilities in the « NESL's Rights », simultaneously the amount funded by the operator or third party will be accounted as Receivable from NESL on account of Asset Creation

- (2) Those assets are subject to provisions for depreciation on the basis of Technical Lifespan, deducted from the « NESL's Rights» liability account without charges to the profit and loss accounts.

#### **15.4.2 Renewable Return Assets**

The Renewable Return Assets granted by NESL are accounted for as Fixed Assets in the Balance Sheet Assets and as liability to « NESL's Rights »account in the Balance Sheet Liabilities or, if the assets are financed by operator or third parties, as Fixed Assets in the Balance Sheet Assets and to register the ownership of NESL as Liabilities in the « NESL's Rights », simultaneously the amount funded by the operator or third party will be accounted as Receivable from NESL on account of Asset Creation.

Those assets are subject to:

- (1) an amortization for depreciation on the basis of Technical Lifespan, deducted from the « NESL's Rights» liability account without charges to the profit and loss accounts.
- (2) a provision for renewal pursuant to Clause 15.2(3) recorded in the Balance Sheet and recorded as an expense in the Profit and Loss Account..

#### **15.4.3 NA**

#### **15.4.4 NA**

#### **15.4.5 Return Assets by Accession**

The accounting procedure applicable to the Return Assets financed by the Operator, according to Clause 15.4.3 or 15.4.4 above, applies as well to The Return Assets by Accession.

The Return Assets by Accession are those Return Assets which have been created and financed by the Operator for the purpose of the object of the Contract, provided that NESL recognizes the eligibility of this capital expenditure.

#### **15.4.6 Return Assets financed by third parties**

The accounting procedure for Return Assets financed by third parties, as defined above, is the same as for assets granted by NESL, according to the Clause 15.4.1 or 15.4.2 above.

#### **15.5 Own Assets**

The accounting procedure for recording the Optional Take-Back Assets and Own Assets is the one provided in the tax and accounting laws applicable to commercial companies

### **16. Remuneration of the Parties**

#### **16.1 Billing (Water Rates)**

- (i) The Operator shall bill the Consumers for water supplied to them according to Water Rates specified under the applicable Bye-Laws on the basis of the applicable tariff codes and for all applicable taxes in connection therewith. The volume of water supplied shall be determined as per the meter installed

at the connection point.

- (ii) The Operator may also bill the Consumers and the Communities for other services in addition, or incidental or ancillary to the Services, including but not limited to the provision of connection works and for all applicable taxes in connection therewith. The charges for such works and services shall be in accordance with the price schedule contained in Schedule 21.
- (iii) The Operator shall submit to NESL no later than 31<sup>st</sup> March of each Accounting Year, its estimated raw water requirement for each month of the immediately subsequent Accounting Year.

For the avoidance of doubt, any such estimates provided by the Operator shall not be binding on the Operator but shall be without prejudice to the obligation of NESL under Clause 6.5 (i).

- (iv) The Operator shall bill Communities, for water supplied to such Communities in accordance with Clause 11.3 and for all applicable taxes in connection therewith. The volume of water supplied shall be determined as per the meter installed at the connection point.

## **16.2 NA**

## **16.3 Remuneration of the Operator**

- (i) The Operator shall be paid its remuneration in accordance with Schedule 5. NESL shall be entitled to the Net NESL Amount determined in accordance with Schedule 5.
- (ii) The remuneration of the Operator shall be calculated on the basis of the Operator's Rate expressed in Indian Rupees per cubic meter of water as set forth in Schedule 5.
- (iii) Notwithstanding anything to the contrary contained in this Contract, NESL shall not be entitled to the Net NESL Amount, to the extent the balance of the NESL Escrow Account is insufficient to pay the amounts due to the Operator pursuant to the provisions contained in Schedule 5.
- (iv) On and from the fifth anniversary of the Commencement Date or such earlier date as may be determined in accordance with Schedule 5, the amount of the Operator's Remuneration in an Accounting Year shall be calculated on the basis of audited billing records within two hundred and forty (240) Days following the closing of the Accounting Year in accordance with Schedule 5, provided however that, the Operator shall be entitled to an advance monthly payment which shall be adjusted against the Operator's Remuneration to be paid to it.
- (v) Three months probable payment to the operator will always be kept as



reserve fund in the ESCROW Account of NESL. The NMC will accordingly transfer the funds to NESL ESCROW Account from the Sewage and Water fund.

#### **16.4 Operator's Remuneration**

On and from the fifth anniversary of the Commencement Date or such earlier date as may be determined in accordance with Schedule 5, the Operator's Remuneration shall be related to the contractual technical and commercial efficiency levels to be met by the Operator as set forth in Schedule 3.

#### **16.5 Mode of payment of the Operator's Remuneration**

**16.5.1** The Parties expressly agree that all amounts collected by the Government Parties and/or NESL or by the Operator or any other person acting on behalf of the Government Parties and/or NESL, as the case may be, relating to water supply in the City of Nagpur shall be deposited into the Sewage and Water Fund, which amounts shall include without limitation, the following amounts:

- (a) all amounts collected from the Consumers and Communities, or deposited by Consumers and Communities towards:
  - (i) payment for the water supply Services (to the extent they relate to payments towards Water Rates),
  - (ii) payment towards meter rent,
  - (iii) any late payment charges relating to any of heads mentioned in (i) and (ii); and
  - (iv) any fines and penalties paid under the provisions of the Act relating to water supply or the Bye-Laws.
- (b) all amounts collected from the applicants/ Consumers and / or Communities or deposited by the Consumers and / or Communities towards any meter security deposit or water consumption security deposit.
- (c) all amounts collected from the applicants/ Consumers and / or Communities or deposited by the Consumers and / or Communities, other than the amounts set forth in sub-clauses (a) and (b) above, including without limitation, the amounts relating to the charges specified in Schedule 20 of this Contract;
- (d) all funds disbursed under the JNNURM Finance Agreement to NMC for the purposes of IPIP; and

- (e) any additional funding, if any, procured by NESL for the purposes of IPIP.

**16.5.2** NESL shall set up the NESL Escrow Account with the Escrow Agent; and such number of sub-accounts of the NESL Escrow Account as shall be required pursuant to the provisions of Schedule 5. The NESL Escrow Account and the sub-accounts shall be settled in trust with the Escrow Agent for the benefit of NESL and the Operator, to be operated strictly in accordance with Schedule 5.

**16.5.3** NMC shall procure that all monies lying in the Sewage and Water Fund shall at the end of the business day be transferred to the NESL Escrow Account no later than the end of the next business day, which monies shall then be dealt with in accordance with the provisions contained in Schedule 5.

**16.5.4** NESL shall ensure that the funds disbursed under the JNNURM Finance Agreement for the purposes of IPIP are transferred to the NESL Escrow Account.

## **16.6 Sponsor Support**

NMC hereby agrees that it shall, from time to time, provide such funding to NESL, in the form of equity, debt or any other form, as may be required to maintain the solvency of NESL and enable NESL to comply with its obligations under this Agreement and the escrow agreement executed/ to be executed by it pursuant to Clause 3.1(ii). Without prejudice to the foregoing, in case NESL is unable to discharge any of its obligations under this Agreement due to lack of monies, the Parties expressly agree that NESL shall be entitled to request NMC for a financial grant to enable it comply with its obligations, and NMC agrees to provide such financial grant within seven (7) days of a request for such grant being made to NMC by NESL.

## **16.7 Standard Operator's Rate Adjustment**

(i) The Operator's Rate shall be subject to automatic and immediate adjustment by the Operator upon any variation in electricity rates or raw water rates which are applicable to the Operator, in accordance with the rates adjustment principles and procedures set forth in Schedule 6 hereof ("Standard Operator's Rate Adjustment"). The aforesaid adjustment of the Operator's Rate shall not be dependent on a corresponding adjustment to the water tariff stipulated in the Bye-Laws.

(ii) The Operator shall be entitled to request NESL for a revision of the adjustment method for calculation of Standard Operator's Rate Adjustment at any time, and also at the end of each Rebasing Period. Upon exercise of such right by the Operator, the Operator and NESL shall discuss in good faith and mutually agree on a revision to such adjustment method. Such mutually agreed revision to the adjustment method shall be binding on all

Parties.

## **16.8 Index Adjustments**

In the event that the Operator or NESL determine that the CPI and/or WPI for any period, is not an accurate reflection of the rate of inflation in the city of Nagpur, as it relates to this Contract, the Operator and NESL shall discuss in good faith and mutually agree to select an appropriate alternative index or indices, as the case may be, for the purposes of the Contract.

## **16.9 Adjustments to Bill of Quantities and Unit Prices**

This shall be governed by works contract as stipulated in Schedule 15 and 16

## **17. Extraordinary Service Rate Adjustment**

Upon the occurrence of one or more acts or events listed in this Clause 17 (“**Extraordinary Service Rates Adjustment**”), the Operator’s Rate shall be adjusted, in accordance with this Clause 17.

### **17.1 Grounds for Extraordinary Service Rates Adjustment (GEA)**

In addition to any event which is or is deemed to be a ground for Extraordinary Service Rates Adjustment under any other Clause of this Contract, grounds for Extraordinary Service Rates Adjustment shall also exist upon the occurrence of any of the following circumstances:

- (i) NESL and the Operator mutually agree that an amendment should be made to any obligations of the Operator in respect of Services to be provided pursuant to this Contract;
- (ii) Occurrence of a Change in Law that affects or is likely to affect the Cash Flows of the Operator.
- (iii) NESL has been or will be in receipt of a grant or below-market financing from any source that is used to finance or offset any Expenditures, where such grant or below-market financing was not known or anticipated at the Commencement Date, or at the last Rate Rebasing Date, whichever is more recent; and the benefit of such below-market grant or financing is made available to and availed of by the Operator. The benefits of lower cost / grant shall be passed on to NESL.
- (iv) Any change in circumstances leading to a variation in the Business

Planning Assumptions beyond the levels specified in Schedule 21.

- (v) An increase has occurred in the Operator's costs as a result of cost overruns or delay caused in the commencement of operations.
- (vi) On failure of NESL to supply water to the Operator as stated in Schedule 12;
- (vii) The Operator has incurred additional costs as a result of an event of Force Majeure which are not reimbursed by insurance; and
- (viii) In the event that any new distribution pipelines and related accessories are required to be laid by the Operator at its own cost, within or outside the Service Perimeter.

For the avoidance of doubt, each of the aforesaid grounds for Extraordinary Service Rates Adjustment and any event which is deemed to be a ground for Extraordinary Service Rates Adjustment under any other provision of this Contract shall be an independent ground for Extraordinary Service Rates Adjustment.

#### **17.1A Procedure for determination of an Extraordinary Service Rates Adjustment**

- (i) If the Operator or NESL is of the reasonable opinion that a ground for Extraordinary Service Rates Adjustment has occurred, then the Operator or NESL, as the case may be, shall notify the other Party that a ground for Extraordinary Service Rates Adjustment has occurred (“**GEA Notice**”), whereupon the senior representatives of the Operator and NESL shall attempt to reach a settlement through mutual consultation with respect to whether a ground for Extraordinary Service Rates Adjustment has occurred within thirty (30) Days of the GEA Notice.
- (ii) Not later than forty-five (45) Days following the agreement of the Operator and NESL, the Operator and NESL shall attempt to reach a settlement through mutual consultation with respect to the quantum of Extraordinary Service Rates Adjustment that is required to be made.
- (iii) Upon determination by the Operator and NESL or failing mutual agreement, upon determination in accordance with Clause 24, as the case may be, the Extraordinary Service Rates Adjustment determined pursuant to this Clause 17.1A shall for the purposes of calculation of the Operator’s Remuneration, be effective from such date as may be mutually agreed. Such date shall be agreed at the time of determining the quantum of Extraordinary Service Rates Adjustment.
- (iv) In the event the Operator and NESL agree on the factum of occurrence of a ground for Extraordinary Service Rates Adjustment, pending determination

of the quantum of adjustment required where such the ground for Extraordinary Service Rates Adjustment has already impacted the Cash Flows of the Operator or is likely to impact the Cash Flows of the Operator prior to determination of such quantum of adjustment, the Operator shall be entitled to such interim adjustment to the Operator's Rate which would enable the Operator to continue performing its obligations hereunder without any interruption as a consequence of the occurrence of such ground for Extraordinary Service Rates Adjustment.  
In the event of disagreement the parties shall seek recourse under clause 24.

## **17.2 Determination of Extraordinary Service Rates Adjustment**

- (i) The Operator shall develop and submit to NESL, a Business Plan which shall in addition to the Business Planning Assumptions constitute a reference frame for decision making and the means for measuring and controlling the financial consequences of the execution and of the evolution of the Contract. This model shall be based on the Financial Model which shall have been submitted by the Operator in its Bid.
- (ii) Within twelve (12) months following the Commencement Date, the Operator shall submit to NESL the aforesaid Business Plan which shall thereafter be updated and submitted on a yearly basis, not later than ninety (90) Days after the commencement of any Accounting Year.
- (iii) Upon determination by the Operator and NESL that one or more of grounds for Extraordinary Service Rates Adjustment have occurred, the Operator and NESL shall, by taking into account all information available at the time, and by making reasonable projections of all factors relevant to the future Cash Flows of the Operator based on the Business Plan, calculate:
  - (a) the change in Cash Flows which would be caused by any ground for Extraordinary Service Rates Adjustment;
  - (b) the net present value of those Cash Flows as of September 30 of the following Accounting Year or as at any other date which may present a more accurate net present value of the Cash Flows; and
  - (c) the quantum of Extraordinary Rate Adjustment, positive or negative, which if made to the Operator Rate for the following Accounting Year would cause the net present value as of September 30 of the Accounting Year of the expected Cash Flows of the Operator for the period beginning April 1 of the Accounting Year until the Expiry Date to change by an amount

equal to the net present value of Cash Flows but opposite in sign referred to in (b) above.

### **17.3 Interim decision by Arbitrator**

For the avoidance of doubt, an arbitrator appointed pursuant to Clause 24 hereof shall be entitled to render an interim award pending a final determination on whether one or more grounds for Extraordinary Service Rates Adjustment have occurred and, if so, the appropriate level of Extraordinary Service Rates Adjustment within forty five (45) Days of the referral being made.

### **17.4 General policies regarding Rate Rebasing**

- (i) The Operator's Rate under this Contract shall be subject to general adjustment on each Rate Rebasing Date, commencing with the first Rate Rebasing Date (“**Rate Rebasing**”). Accordingly, on the first Rate Rebasing Date, the Operator's Rates quoted in the Bidding Documents for water supply Services provided by the Operator under this Contract shall be adjusted.
- (ii) Such adjustment will be made to ensure that the Operator’s Rate is at a level that will permit the Operator to recover, over the Term of this Contract (net of any grants from Third Party and any Expiry Payment) all Expenditure, including, operating, capital and investment expenditures incurred by the Operator in pursuance of its obligations under this Contract; applicable Taxes and payments corresponding to debt service on any of the Operator's loans; and to earn the rate of return from the Project as set forth in its Business Plan. . It is expressly agreed that the determination of the rate of return shall be made separately for each Rate Rebasing Date commencing with the first Rate Rebasing Date.

### **17.5 Operator's information**

For the purposes of Rate Rebasing in accordance with the foregoing Clause 17.4:

- (i) not later than the 30<sup>th</sup> of June preceding each Rate Rebasing Date, the Operator shall provide NESL with information on its Expenditures, Receipts, Cash Flows, future Cash Flows, and expected investments as required to meet the obligations of the Operator under this Contract, including without limitation, the Operator’s obligations to provide the Services.
- (ii) the Operator shall also provide such other information as NESL may reasonably request or as the Operator may wish to provide.
- (iii) in particular, the Operator and NESL shall discuss in good faith the

efficiency of applicable tariff setting and adjustment mechanism. The Operator shall also provide to NESL not later than 30<sup>th</sup> of September of the second Accounting Year and then not later than 30<sup>th</sup> of June preceding each Rate Rebasing Date, the non-binding forecast estimates of the annual amounts, which are expected to be appropriated by NESL, pursuant to the provisions contained in Schedule 5. The Operator shall also provide to NESL not later than 30<sup>th</sup> of September of the sixth Accounting Year and then not later than 30<sup>th</sup> of June preceding each Rate Rebasing Date, the non-binding forecast estimates of the annual amounts, which are expected to be paid to the Operator and appropriated by NESL, pursuant to the provisions contained in Schedule 5.

## **17.6 Adjustments for Changes in Law**

- (i) If, as a direct or indirect result of a Change in Law, the Operator's Cash Flows suffer or is likely to suffer or the Operator incurs additional costs or the Operator is likely to incur loss in revenue or as a result of any Change in Law, the Operator's rate of return from the Project (as set forth in its Business Plan) is likely to reduce, the Operator's Rate shall be adjusted so as to put the Operator in the same financial and economic position as it would be in if the Change in Law had not occurred. Upon the occurrence of a Change in Law, the Operator shall be entitled to issue a notice to NESL notifying NESL of the same. Upon receipt of such notice by NESL, NESL and the Operator shall proceed to determine the impact, including, the financial impact of such Change in Law in accordance with the principles for determination of Extraordinary Service Rates Adjustment set forth in Clause 17 hereof.
- (ii) If in the opinion of the Operator, any Expansion Projects are required to be undertaken as a direct or indirect result of a Change in Law, the Operator shall, as soon as possible, submit to NESL, the Operator's assessment in respect of any Expansion Projects that may be required to comply with such Change in Law, including without limitation, any change in the prescribed standards for quality of water. NESL shall have the right to approve any such Expansion Projects. In the event NESL approves any such Expansion Projects, it shall cause the same to be executed and commissioned in an expeditious manner. Where in the absence of such Expansion Project, the Operator shall not be entitled to provide the Services in the manner contemplated in the Agreement, upon the Change in Law becoming effective without being in breach of the same, NESL shall ensure such Expansion Project is commissioned before the Change in Law becomes effective.
- (iii) If the Operator and NESL cannot agree on the required adjustment to the Operator's Rate or any NESL does not approve any Expansion Projects, as the case may be, required pursuant to Clause 17.6(i) or Clause 17.6(ii), as

applicable, either the Operator or NESL may refer the issue for determination under Clause 24.

**18. NA**

**19. Information and Reporting Requirements**

**19.1 NA**

**19.2 General requirement to provide information**

The Operator shall provide NESL, all information that NESL may reasonably require. Such information shall include and not be limited to:

**19.2.1 NA**

**19.2.2 Financial information**

The Operator shall provide to NESL, not later than two hundred and forty (240) Days following the end of each Accounting Year, a report of the financial performance of the Operator. Such report shall include

- (i) analysis of the revenue by source and revenue from other sources;
- (ii) analysis of operating costs;
- (iii) analysis of capital expenditure and investments which shall distinguish between water supply Services and other services provided; and
- (iv) any other information as may be reasonably requested by NESL.

**19.2.3 Assets information**

- (i) NESL shall be entitled to, once a year but not later than ninety (90) Days after the commencement of any Accounting Year, at its own cost and with prior notice to the Operator, conduct a review of the Return Assets in a manner which not cause a disruption of business of the Operator. Such review shall be conducted on a business day and during the normal business hours of the Operator.
- (ii) In addition to this, and upon written request of NESL, the Operator shall be required to appoint, at its own costs and not more than every five (5) Years, an external expert for a technical audit and assessment of maintenance of the Facilities granted to the Operator by NESL.



### **19.3 Revised Master Plans**

- (i) Subject to the provisions of this Contract, within twenty four (24) months after the Commencement Date and within six (6) months prior to each subsequent Rate Rebasing Date, the Operator and NESL agree to assess and forecast the demand of water. The Operator and NESL shall accordingly revise or review the technical and operational performance of Services to identify relevant measures and the investment program to be implemented within the term of the next Rate Rebasing Period in order to improve the operational efficiency of the Operator and to meet the forecasted demand of the Services pursuant to the obligations of the Parties under this Contract and to increase the capacity of the Facilities in accordance with the provision hereof.
- (ii) Within twenty four (24) months following the Commencement Date, the Operator shall submit to NESL a proposed revised water supply Master Plan (“**Revised Master Plan**”) prepared in accordance with the provisions of Schedule 10.

### **19.4 3-Year Investment Program Agreements**

An Investment Program Agreement (“**IPA**”) is to be mutually agreed for each Accounting Year by NESL and the Operator, on the basis of a slipping 3-year investment program prepared in accordance with Schedule 10.

### **19.5 Annual Reporting**

The Operator shall submit to NESL, not later than two hundred and forty (240) Days after the end of each Accounting Year, the following documents:

1. Audited financial statements by an external audit firm acceptable by the NESL
2. The Annual Report of Operations related to Water Service Delivery, in particular as regards the connection of Consumers and Consumer management.
3. Copy of tax declaration
4. Management Report
5. Water Quality report
6. Inventory Reports
7. Assets inventory and management report
8. Programme of renewal works
9. Planning of maintenance activities
10. Programme of staff training and report on training activities of the year
11. Monthly Data of volumes of water received from NMC, Water treated by the Operator , volumes of water supplied and billed to the Consumers

12. Monthly Data of revenue collection in the form and substance as required by the NESL.

13. Updated 3-year Investment Program

## **19.6 Audits**

In addition to any audit requirement set forth hereunder, NESL may once a year, at its cost and expense, appoint an auditor to assess the accuracy and the fairness of the Annual Report furnished by the Operator pursuant to Schedule 10. To enable such audit, NESL may upon giving not less than thirty (30) Days prior written notice to the Operator, require the Operator to furnish its books and records relating to its operations to the auditor appointed under this Clause 19.6, and the Operator shall provide reasonable assistance for any such audit.

## **20. Environmental Liabilities**

- (i) All environmental liabilities relating to the Facilities arising or relating to a period prior to or attributable to events in existence prior to the Commencement Date shall be borne by [Government Parties and / or NESL] who shall retain and discharge all obligations in respect of such environmental liabilities and shall indemnify, defend, save and hold harmless the Operator and its employees, officers, agents and shareholders against any and all suits, proceedings, actions, demands, claims and liabilities for any loss, damage, cost and expenses (including reasonable attorney's fees), arising in this regard.
- (ii) Subject to Clause 20(i), the Operator shall, with effect from the Commencement Date, discharge all the obligations of an operator of the Existing Facilities in relation to environmental compliance, under Applicable Laws which arise after the Commencement Date, to the extent related to the performance of this Contract by the Operator, provided however that:
  - (a) the Operator shall not be obliged to perform any obligation first falling due for performance or which should have been performed prior to the Commencement Date;
  - (b) the Operator shall not be liable for any environmental liability which arises out of any breach of Applicable Laws, breach of contractual obligations, or failure to act by any person other than the Operator, prior to the Commencement Date, and the Operator shall not be liable for any claim, expense, loss or damage arising from any failure to obtain the consent or agreement of any Third Party or Governmental Authority for the entry into of this Contract or its performance, where the compliance of Applicable Laws is the responsibility of the owner of the Facilities; and

- (c) the Operator shall not be liable for such Existing Facilities which are not in the exclusive possession of the Operator) and NESL shall continue to be liable for the same.

[Government Parties / NESL] shall indemnify, defend, save and hold harmless the Operator and its employees, officers, agents and shareholders against any and all suits, proceedings, actions, demands, claims and liabilities for any loss, damage, cost and expenses (including reasonable attorney's fees), arising in respect of provisos (a), (b) and (c) to Clause 20 (ii) above.

## **21. Expiry Date**

The obligation of the Operator to transfer possession and/or ownership of any assets in terms of this Contract on (or as soon as reasonably practicable after) the Expiry Date is irrespective of payment in full of all amounts due to the Operator under the Contract, including any amount due under Clause 22.5.2.

### **21A. Expiry Payments and Return of Assets**

#### **21A.1 Expiry Payments**

In the event that NESL or the Operator determine, at any time on and after the first Rebasing Date, that the Operator shall incur capital expenditures and connected financial / funding costs in carrying out the Operator's obligations under this Contract, which in the reasonable opinion of NESL and the Operator cannot reasonably be recovered through immediate Operator's Rate Adjustments, NESL and/or the Operator, as the case may be, shall propose an appropriate amendment to this Contract to provide for the payment to the Operator, on the Expiry Date, of a lump-sum amount to reimburse the Operator for all such capital expenditure (the "**Expiry Payment**"), which shall be subject to the mutual agreement of NESL and the Operator. Any Expiry Payment which is mutually agreed between the Operator and /NESL in accordance with the foregoing shall be treated by NESL as an anticipated Receipt for the purposes of calculating the Extraordinary Service Rates Adjustment under Clause 17.2.

#### **21A.2 Deficit Investments**

If on the Expiry Date, the Operator has failed to perform any Replacement Works required to be performed till such date (except on account for failure due to Force Majeure affecting the Operator), the Operator shall be required to pay NESL, an amount representing such deficit of the contractual investments relating to Replacement Works.

NESL shall be entitled to draw on the Performance Bond, if available, in accordance with Clause 12.6 to the extent of any such unpaid amounts which are due and payable by the Operator.

## **22. Early Termination**

### **22.1 Mutual Agreement**

NESL and the Operator may terminate this Contract by mutual agreement at anytime prior to its scheduled expiry.

### **22.2 NESL Events of Early Termination**

Each of the following events shall constitute a "**NESL Event of Termination**"

- (i) If either of NMC or NESL becomes bankrupt or insolvent, dissolved, goes into liquidation, has a receiving or administration order made against it pursuant to any involuntary winding up proceedings, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events, or if either of NMC or NESL is unable to pay its debts as they fall due or is insolvent, or admits inability to pay its debts as they fall due.
- (ii) If any liquidator, (including a provisional liquidator), judicial custodian, receiver, or similar officer is appointed in respect of NMC or NESL provided however where a provisional liquidator is appointed following an application by any person other than NMC or NESL, as applicable, provided such appointment is not vacated or stayed within a period of one hundred and twenty (120) Days of the date of such appointment of such provisional liquidator.
- (iii) Any material breach of the representations and warranties under Clauses 25.1, 25.2 and 25.3 by either of the Government Parties or NESL, as the case may be.
- (iv) If the Operator, without any just cause, does not receive any amounts representing the Operator's Remuneration, IPIP Escalation Instalment and/or the Service Tax Indemnity Amount within One Hundred Eighty (180) Days of such amounts falling due and payable to the Operator under the provisions contained in Schedule 5.
- (v) If either of the Government Parties or NESL fails to pay any amounts (other than amounts representing Operator's Remuneration, IPIP Escalation Instalment and/or the Service Tax Indemnity Amount) due to the Operator within two hundred and seventy (270) Days of any such amounts falling

due and payable.

- (vi) A failure to perform or a breach by either of the Government Parties or NESL of their material obligations under the Contract and where such failure continues for a period of not less than ninety (90) Days after written notice from the Operator.
- (vii) The resumption or acquisition of any material or substantial part of the assets constituting a part of the Facilities by the State Government or any Governmental Authority under the Act or any other Applicable Laws.
- (viii) A Change in Law, the effect of which cannot be adequately addressed under Clause 17.6.
- (ix) The occurrence of any event, breach or termination event under the Relationship Agreement by any party thereto, which prejudices the ability of NESL or the Operator to perform its obligations hereunder, which if capable of being cured, is not cured within one hundred and eighty (180) Days of a notice to NESL from the Operator.
- (x) The exercise by any Government Party (or any delegate) of its rights/ power/ authorities under the Relationship Agreement or Act or any rules, regulations or bye-laws made thereunder in a manner which prejudices the Operator or has an adverse effect on the Project.
- (xi) Any invalidity or other defect in this Contract or the Relationship Agreement which makes its material terms unenforceable & renders the operation not feasible.

NMC fails to perform, without just cause, any obligation or make any payment under the Shareholder Guarantee in accordance with the terms thereof.

### **22.3 Operator Event of Early Termination**

Each of the following to the extent that it is not caused by a default or breach of this Contract by either of Government Parties or NESL or due to a Force Majeure shall constitute an "**Operator Event of Termination**":

- (i) the Operator becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it pursuant to any involuntary winding up proceedings which is not stayed on appeal within a period of one hundred twenty (120) Days, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events.

- (ii) the Operator fails to perform an obligation under this Contract of a kind or to a degree that:
  - (a) such failure amounts to an effective abandonment of the Contract because it jeopardizes the provision of essential water supply services in all or any significant part in the Service Area; and
  - (b) such failure continues for a period of not less than thirty (30) Days after written notice in this regard from NESL to the Operator.
- (iii) The Operator fails to perform any of its material obligations set out in this Contract (other than an obligation described in (ii) above) for which NESL shall have determined that liquidated damages pursuant to Clause 22.6 would be inappropriate or ineffective and if such failure of the Operator shall continue for a period of not less than one hundred eighty (180) Days after written notice from NESL to the Operator.

### **22.3A Force Majeure Event of Termination**

Where any event of Force Majeure continues for a period greater than ninety (90) consecutive Days or one hundred and twenty (120) accumulated Days in a single Accounting Year, the Operator / NESL shall be entitled to terminate the Contract (“**Force Majeure Event of Termination**”)

### **22.4 Continuity of Services**

On and after the Expiry Date, NESL shall have the right to take all measures to ensure the continuation of the water supply services, including the appointment of a new operator to provide the Services. Irrespective of the Operator receiving all amounts due to it, including without limitation, the Early Termination Amount and Expiry Payments, the Operator shall, to the extent possible and reasonable, fully cooperate with NESL in this transition and shall not create any obstacles of any kind in the process.

### **22.5 Early Termination Procedures**

#### **22.5.1 Notice**

- (i) If an Operator Event of Termination occurs, then during the continuance of the Operator Event of Termination, NESL may issue written notice of the early termination of the Contract to the Operator and subject to the provisions of this Clause 22.5.1, this Contract shall terminate on the date set out in such notice (which date shall not be less than One Hundred and Eighty (180) Days after the date of such notice). Upon NESL issuing such notice, the Operator shall be entitled to challenge such action of the NESL by making a reference to arbitration in accordance with Clause 24. In the

event that the Operator Event of Early Termination is not cured within a period of sixty (60) Days from the date of receipt of such notice, the Contract shall terminate unless such termination is stayed in arbitration proceedings or any other appropriate forum, as the case may be.

- (ii) Upon the occurrence of a NESL Event of Early Termination, the Operator may issue a written notice of the early termination of the Contract to NESL and this Contract shall terminate on the date (which date shall not be less than 180 days after the date of such notice) set out in such notice unless such termination is stayed in arbitration proceedings or any other appropriate forum, as the case may be.
- (iii) Upon the occurrence of a Force Majeure Event of Termination, the Operator may issue a written notice of the early termination of the Contract to NESL and this Contract shall terminate on the date set out in such notice.
- (iv) The Operator shall be bound to continue to render services during this notice period,
- (v) The date of early termination specified in any notice delivered pursuant to Clause 22.5.1, is referred to in this Clause 22 as the “**Early Termination Date**”. Such Early Termination Date shall also constitute the Expiry Date. For the avoidance of doubt, the Operator shall be entitled to Operator’s Remuneration and any other amounts payable which would have been payable to it in accordance with Schedule 5 in the absence of issuance of such termination notice, till such period that it continues to provide Services.

### **22.5.2 Determination of the Early Termination Amount**

No later than One Hundred and Eighty (180) Days after the termination of the Contract pursuant to Clause 22.5.1, NESL shall pay to the Operator the amounts calculated in accordance with Clauses 22.5.3, 22.5.4 or 23.5, as applicable.

### **22.5.3 Early Termination Amount following a NESL Event of Termination or Force Majeure Event of Termination**

- (i) Upon termination of this Contract following the occurrence of a NESL Event of Termination or Force Majeure Event of Termination in accordance with this Clause 22.5, NESL shall pay to the Operator, in addition to any other amounts due and payable under the Contract, an early termination amount equal to the aggregate of the following to the Operator:
  - (a) The then-outstanding amount of all Operator's Loans (including pre-payment charges as certified by the Operator);

- (b) An amount equal and opposite in sign to the net present value as at the Early Termination Date of the Cash Flows occurring between the Commencement Date and the Early Termination Date less the then outstanding amount of the Operator Loans (in the event that such Early Termination Amount is a negative number, NESL shall not make any payment to the Operator);
- (ii) NESL shall return to the Operator the Performance Bond and if existing, the Advance Guarantee no later than the Early Termination Date.

#### **22.5.4 Early Termination Amount following an Operator Event of Termination**

- (i) Upon termination following the occurrence of an Operator Event of Termination, NESL shall pay to the Operator, in addition to any other amounts payable to the Operator, an amount corresponding to the following:
  - (a) ninety (90) percent of the depreciated value of assets as shown on the latest audited balance sheet of the Operator, less any third party liabilities against interest or charge over the assets installed by the Operator in the Service Area after the Commencement Date;
  - (b) all improvements to such assets existing in the Service Area or elsewhere on the Commencement Date;
  - (c) all amounts invoiced by the Operator for works undertaken as part of IPIP works (other than amounts covered in (d) below) and which have not been paid to the Operator; or recovered by the Operator from Operator's Remuneration as per the Business Plan submitted by the Operator;
  - (d) all IPIP Escalation Instalments which would have been due to the Operator over the remaining term of the Contract, if the Operator Event of Termination had not occurred, for the IPIP works undertaken until the Early Termination Date; and
  - (e) all amounts spent by the Operator for undertaking the Rehabilitation Works and Replacement Works.
- (ii) Within One Hundred and Eighty (180) Days of a notice of early termination pursuant to Operator Event of Termination, NESL shall pay to the Operator the Early Termination Amounts. NESL may draw upon the Performance Bond, if available, to recover from the Operator an amount equal to the out-of-pocket costs and expenses incurred by NESL as a result of such Operator Event of Termination. NESL shall return to the Operator,



the Performance Bond and if existing, the Advance Guarantee, to the extent remaining applied no later than the Early Termination Date.

**22.5.5** Any termination payment to the Operator in accordance with this Clause 22 of the Contract shall be without prejudice to any other amounts due and payable under any other provision of the Contract. In the event NESL fails to pay to the Operator on the Expiry Date any amounts due under the Contract, the Operator shall be entitled to be paid out of the NESL Escrow Account in accordance with Schedule 5.

## **22.6 Liquidated Damages for Failure to meet Service Obligations**

- (i) A material breach by the Operator of any material obligation in relation to performance parameters specified in Schedule 10 which continues for more than sixty (60) Days (or thirty (30) Days in cases where the failure could adversely affect public health) after written notice thereof from NESL to the Operator shall constitute a basis for NESL to assess liquidated damages against the Operator in accordance with Schedule 10. The aggregate amount of any such liquidated damages shall be (i) upto a maximum of One Hundred and Ten (110) per cent of the costs that, in the reasonable opinion of NESL, the Operator will incur in order to meet the relevant obligation, and (ii) subject to the overall limitation on liabilities specified under Clause 24.7.1.
- (ii) The Operator shall pay any liquidated damages assessed in connection with this Clause 22.6 to NESL within One Hundred and Eighty (180) Days after receipt of a demand thereof. Such liquidated damages shall not be regarded as Expenditure. In the event the Operator fails to make timely payment of an assessment pursuant to this Clause 22.6, NESL may draw the equivalent value of such unpaid amount under the Performance Bond, if available, in accordance with Clause 12.6 or may treat such non-payment as a ground for Extraordinary Service Rates Adjustment in accordance with Clause 17.
- (iii) All liquidated damages shall be paid by the Operator to the NESL Escrow Account.
- (iv) It is hereby agreed that the liquidated damages payable under this Clause 22.6 by the Operator shall be the sole remedy of NESL for a breach of the performance parameters set forth in Schedule 10.

## **23. Force Majeure**

### **23.1 Definition of Force Majeure**

- (i) **“Force Majeure”** means an event or circumstance:
  - (a) which is beyond the affected Party’s control and could not have prevented despite due diligence and reasonable efforts; and
  - (b) which is not in any way attributable to any of the other Parties.
- (ii) Force Majeure shall include, but shall not be limited to, events or circumstances of the kind listed below, so long as conditions (a) and (b) of Clause 23.1 (i) above are satisfied:
  - (a) war, hostilities (whether any such war or hostilities have been declared or not), invasion, act of foreign enemies,
  - (b) rebellion, terrorism, revolution, insurrection, military action, usurpation of power, civil war, or sabotage,
  - (c) riot, commotion, disorder, public disorder and violent demonstrations.
  - (d) strike, go-slow, lockout or other industrial action other than the reasons pertaining to operator.
  - (e) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Operator’s use of such munitions, explosives, radiation or radioactivity,
  - (f) natural catastrophes including earthquake, hurricane, typhoon, floods, epidemics or volcanic activity;
  - (g) Change in Law, but only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 17.6 hereof;
  - (h) nationalisation/ compulsory acquisition of assets by any Governmental Authority of any material assets of the Project or the Operator.
  - (i) any action of a Governmental Authority, judgment or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than a breach of Applicable Law by the Operator;
  - (j) any civil commotion, boycott or political agitation which prevents collection of charges from Consumers or Communities by the

Operator for an aggregate period exceeding Ninety (90) Days in an Accounting Year;

- (k) any failure or delay of the Operator to the extent caused by a force majeure event affecting the counter party of any material contract executed by the Operator;
- (l) unlawful or unauthorised or unjustified revocation of, or refusal to renew or grant without valid cause, any Government Authorisation required by the Operator or any counter-party of a material contract entered into by the Operator, provided that such delay, modifications, denial, refusal or revocation did not result from the Operator's failure to comply with any terms of such Government Authorisation; and
- (m) any event or circumstances of a nature analogous to any of the foregoing.
- (n) Failure to make available required quantity of raw water to the operator.

Provided that, any one or more of the aforesaid events result in making the performance of the respective obligation of the parties impossible.

### **23.2 Notice of Force Majeure**

If any Party is or may be prevented from performing its obligations under the Contract due to Force Majeure, then it shall issue notice to the other Parties stating the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or may be prevented. The notice shall be issued as early as possible and in no case after fourteen (14) Days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

### **23.3 Duty to Minimize Delay**

- (i) Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of its obligations under the Contract as a result of Force Majeure.
- (ii) The affected Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **23.4 Consequences of Force Majeure**

- (i) Upon the occurrence of Force Majeure prior to the Commencement Date,

the period set forth in Clause 3.5 (iii) for completion of conditions precedent shall be extended by a period equal in length to the duration of the Force Majeure event.

- (ii) Upon the occurrence of Force Majeure after the Commencement Date, the affected Party, shall be excused from performance of any or all obligations hereunder (except in respect of any accrued payment obligations) where the failure to perform such obligations is due to Force Majeure. The Operator shall not be liable for any financial consequences of Force Majeure except to the extent that the Operator is in receipt of any monies from policies of insurance taken out by the Operator pursuant to the provisions contained hereunder. In the event of any Force Majeure preventing the Operator from performing its substantial obligations under the Contract, the Operator shall be entitled to:
  - (a) a day for day extension of time for the performance of its obligations under the Contract, and a corresponding day for day extension of the Term of the Contract, for any such delay, and
  - (b) if the event or circumstance is of the kind described in (a), (b), (c), (d), (e), (g), (h), (i), (j), (k) and (l) of Clause 23.1 (ii), receive from NESL, the costs incurred by the Operator in connection with such Force Majeure.

## **23.5 Hardship**

- (i) During the term of the Contract, in the event that any change of circumstances occurs which is beyond the control of the affected Party and which does not constitute either a Change in Law or Force Majeure, and which would over the term of the Contract materially alter the economic and financial balance of the Contract, the Parties shall, upon prior written notice to all other Parties, enter into discussions to agree on the measures necessary to restore the economic and financial balance of the Contract.
- (ii) If NESL and the Operator fail to mutually agree as aforesaid within One Hundred and Eighty (180) Days of the commencement of such discussions, any Party shall seek recourse under the clause 24

## **24. Dispute and Resolution**

### **24.1 Amicable Settlement**

- (i) In case any dispute or differences or claim arising out of or in connection with or relating to this Contract or in the interpretation of any provisions of this Contract, or the breach, termination or invalidity hereof (the

"Dispute"), the disputing Party may give notice ("Dispute Notice") to the other Parties of the same, whereupon the senior representatives of the Parties shall meet promptly and in good faith attempt to reach an amicable settlement through mutual consultation and negotiation. For the avoidance of doubt, whether or not the relevant provision of the Contract specifically provides that the Operator may take recourse to the provisions of the dispute resolution mechanism in Clause 24, the Operator shall have the right to deliver the Dispute Notice to NESL in order to take recourse to the dispute resolution process provided under this Clause 24.

- (ii) In the event that the Parties do not resolve the Dispute in accordance with this Clause 24.1 within Ninety (90) Days of the Dispute Notice, then either Party may refer the dispute for determination in accordance with the provisions contained in Clause 24.2.

## **24.2 Arbitration**

In the case of any Dispute, (whether or not the relevant provision of the Contract specifically provides that the Operator may take recourse to the provisions of the dispute resolution mechanism in Clause 24), which is not resolved amicably, as provided in Clause 24.1, shall be finally decided by reference to arbitration. The arbitration shall be conducted in accordance with the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Nagpur only.

## **24.3 Appointment of arbitrator**

Any disputing Party may request for the commencement of arbitration by issuing a notice to the other relevant Party describing the details of the Dispute. The arbitration shall be conducted by a an arbitration panel consisting of three members. The members of the panel shall be of the rank of Retd. Supreme Court Judge, for which Bombay High court will be moved at the appropriate time for the selection of Retd. Supreme Court Judges for the Arbitration panel under section 11 of the Arbitration and Conciliation Act 1996.

Sole arbitrator if mutually agreed will also be a Retd. Supreme Court Judge for which Bombay High Court will be moved at the appropriate time for the selection of Retd. Supreme Court Judge for the arbitration under section 11 of the Arbitration and Conciliation Act 1996. It is hereby clarified that the Government Parties and NESL shall at all times be considered to be one Party for the purposes of this Clause 24, including, the appointment of the sole arbitrator.

## **24.4 Procedures**

- (i) The arbitrator may retain the services of financial and technical consultants, if he so deems appropriate.

- (ii) The proceedings of arbitration shall be in English and the seat of arbitration will be Nagpur.
- (iii) The arbitrator shall make an endeavour to make an award on any dispute referred to it within a period of ninety (90) Days from the date of its first meeting. However such period may be extended by mutual agreement of the parties to the dispute or as the arbitrator deems fit.
- (iv) The arbitrator shall have the powers to pass such interim orders to the extent permissible under the Arbitration and Conciliation Act, 1996.

#### **24.5 Waiver of right**

- (i) Subject to the provisions of the Arbitration and Conciliation Act, 1996, any decision of the arbitrator shall be final and binding upon the parties hereto. Each Party agrees that the decision of the arbitrator may be enforced against it or its assets wherever they may be found.
- (ii) Each of the Government Parties and NESL agrees that if the Operator brings legal proceedings against it or its assets in relation to this Contract, none of the Parties shall claim any immunity from such legal proceedings (which will be deemed to include without limitation, suit, attachment prior to judgment, other attachment, the obtaining of judgment, execution or other enforcement), whether on the grounds of sovereignty or otherwise, on behalf of them or with respect to their assets;
- (iii) Each of Government Parties and NESL waives any such right of immunity which it or its assets have now or may acquire in the future; and
- (iv) Each of Government Parties and NESL consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment which may be made or given in such proceedings.

#### **24.6 Costs of Arbitrator**

The costs and expenses of the sole arbitrator shall be equally shared between the arbitrating Parties; provided however that the arbitrator shall be entitled to decide on the costs of the arbitration procedure.

#### **24.7 Damages and Limitation on Liabilities**

### **24.7.1 Limitation of Liability**

Notwithstanding anything to the contrary contained in this Contract,

i) The Government Parties and NESL hereby agree that neither of them shall make or claim any indemnity, monies or damages arising from the same liabilities, losses and expenses for which the Operator has paid/ indemnified/ compensated NESL or any of the Government Parties, as the case may be. Neither the Government Parties nor NESL shall submit or make any claim, nor shall the Operator be obligated to compensate either of them in a manner or in amounts, that would result in the Operator making payment of duplicate compensation for the same claim or in respect of more than one claim arising from the same liability, loss or expense.

ii) save in respect of liability for fraud or wilful misconduct, the aggregate liability of the Operator in any Accounting Year, collectively to NESL and Government Parties, under this Contract shall not exceed a sum equal to five (5) percent of annual revenue for that Accounting Year as per the Business Plan.

### **24.7.2 Indirect or Consequential Loss**

Unless otherwise provided in this Contract, no Party shall be liable to any other Party, by way of indemnity or by reason of any breach of this Contract or of any Applicable Laws, for any indirect, incidental, or consequential damages or any consequential loss, including without limitation, any loss of profit, opportunity or other indirect or consequential loss that may be suffered by such other Party.

## **25. Representations and Warranties**

### **25.1 Representation and Warranties of NMC**

NMC represents and warrants that:

#### **25.1.1 Corporate Organisation**

NMC is a statutory body duly constituted under the Act and it is a body corporate having perpetual succession.

#### **25.1.2 Authorisation**

NMC has full power and authority to execute this Contract and to consummate the transactions contemplated hereby. NMC has obtained all requisite permissions/clearances necessary for enabling it to enter into this Contract and to perform the obligations undertaken by NMC hereunder. NMC does not require any other consents or approvals for enabling it to enter into this Contract.

### **25.1.3 No violations: No consents or Approvals required**

The execution of this Contract and the various transactions contemplated herein do not conflict, violate and/or infringe any Applicable Laws, executive instructions or any other legal obligation, statutory or contractual, binding on NMC or its assets. This Contract shall constitute valid and binding obligations of NMC enforceable in accordance with its terms.

### **25.1.4 Financial Statements**

The financial statements of NMC for the Accounting Year ending on 31<sup>st</sup> March, 2010 provided to the Operator fairly presents financial position of NMC in a true and fair manner as on such date and since then, there has been no material change in financial position of NMC.

### **25.1.5 NA**

### **25.1.6 Facilities**

Subject to the right to use granted in favour of NESL under the Relationship Agreement, NMC has full right, title and interest in the Facilities, whether movable or immovable, free of all Encumbrances and NMC is in possession of all title deeds and other documents evidencing title. In relation to the Facilities, NMC has an interest (i) which has been duly and validly acquired, obtained or is owned in compliance with all Applicable Laws (including stamp duty and registration laws); (ii) where capable of possession, is in the possession or under the control of NMC; (iii) there are no deficiencies in relation to the title of NMC to its properties and assets and NMC has clear, valid and marketable title, free and clear of all Encumbrances to all such assets (movable and immovable); (iv) no breach of any covenant affecting the title to any asset of NMC has occurred and there does not exist any easements over the immovable assets, which would materially affect the Operator's use and enjoyment of immovable or movable assets; and (v) there does not exist any actual or, threatened or contemplated proceedings that affect any Facilities, and NMC has not received any notice, oral or written, of the intention of any Governmental Authority or other person to take or use all or any part thereof.

### **25.1.7 Relationship Agreement**

The Relationship Agreement is in full force and effect and creates legally binding obligations on NMC. NMC had full power and authority to execute the Relationship Agreement when it was executed and to consummate the transactions



contemplated thereby.

### **25.1.8 No other representations or warranties**

Except for the representations and warranties contained in this Clause 25.1, neither NMC nor any person acting for NMC makes any other representation or gives any other warranty, express or implied. NMC disowns any such representations, if any, made by anybody acting without its authorisation.

## **25.2 Representation and Warranties of NESL**

NESL represents and warrants that:

### **25.2.1 Corporate Organisation**

NESL is a body duly constituted under the Companies Act, 1956 by NMC by virtue of powers under the Act. NESL is fully authorized and empowered by its Memorandum and Articles of Association to perform the tasks assigned to it under this Contract. It has obtained the certificate of commencement of business required under the Companies Act, 1956.

### **25.2.2 Authorisation**

NESL has full power and authority to execute this Contract and to consummate the transactions contemplated hereby including, without limitation, the power and authority to grant the Operator the right to undertake the transactions contemplated hereunder. NESL has obtained all requisite permissions/clearances necessary for enabling it to enter into this Contract and to perform the tasks undertaken by NESL hereunder. NESL does not require any other consents or approvals for enabling it to enter into this Contract with the Operator.

### **25.2.3 No violations: No consents or Approvals required**

The execution of this Contract and the various transactions contemplated herein do not conflict, violate and/or infringe any Applicable Law executive instructions or any other binding legal obligation, statutory or contractual. This Contract shall constitute valid and binding obligations of NESL enforceable in accordance with its terms.

### **25.2.4 Financial Statements**

The financial statements of NESL which are provided to the Operator fairly present the financial position of NESL in a true and fair manner as on such date and since then there has been no material change in the financial position of NESL.

#### **25.2.5 Assets**

NESL is lawfully possessed, on the date hereof and at all times thereafter, of the right to use and other interests or rights with respect to the assets which it purports to grant to the Operator, free of all Encumbrance and NESL is not in contravention of the Relationship Agreement entered into with NMC with respect to the grant of rights as contemplated herein.

#### **25.2.6 Relationship Agreement**

The Relationship Agreement is in full force and effect and creates legally binding obligations on NESL. NESL had full power and authority to execute the Relationship Agreement when it was executed and to consummate the transactions contemplated thereby.

#### **25.2.7 No other representations or warranties**

Except for the representations and warranties contained in this Clause 25.2, Clause 14.2(i) and Clause 14.2(iii), neither NESL nor any person acting for NESL makes any other representation or gives any other warranty, express or implied. NESL disowns any such representations, if any, made by anybody acting without its authorisation.

### **25.3 Representation and Warranties of the Commissioner**

**25.3.1 The Commissioner has full** power and authority to execute this Contract and to consummate the transactions contemplated hereby including, without limitation, the power and authority to grant the Operator the right to undertake the transactions contemplated hereunder. The Commissioner has obtained all requisite permissions/clearances necessary for enabling it to enter into this Contract and to perform the tasks undertaken by it hereunder. The Commissioner does not require any other consents or approvals for enabling it to enter into this Contract with the Operator.

### **25.3.2 No violations: No consents or Approvals required**

The execution of this Contract and the various transactions contemplated herein do not conflict, violate and/or infringe any Applicable Law executive instructions or any other binding legal obligation, statutory or contractual. This Contract shall constitute valid and binding obligations of the Commissioner enforceable in accordance with its terms.

### **25.3.3 Relationship Agreement**

The Relationship Agreement is in full force and effect and creates legally binding obligations of the Commissioner. The Commissioner had full power and authority to execute the Relationship Agreement when it was executed and to consummate the transactions contemplated thereby.

### **25.3.4 No other representations or warranties**

Except for the representations and warranties contained in this Clause 25.3, neither the Commissioner nor any person acting for the Commissioner makes any other representation or gives any other warranty, express or implied. The Commissioner disowns any such representations, if any, made by anybody acting without his authorisation.

## **25.4 Representations and Warranties of the Operator**

The Operator represents and warrants that:

### **25.4.1 Corporate Organisation**

The Operator is a company duly registered under the Companies Act, 1956. The Operator is fully authorized and empowered by its Memorandum and Articles of Association to perform the tasks assigned to it under this Contract.

### **25.4.2 Authorization:**

The Operator has full power and authority to execute this Contract and to consummate the transactions contemplated hereby. The Operator has obtained all requisite permissions/clearances necessary for enabling it to enter into this Contract.

### **25.4.3 No violations: No consents or Approvals required:**

Except for the representations and warranties contained in this Clause 25.4, neither the Operator nor any person acting on behalf of the Operator makes any other representation or gives any other warranty, express or implied. The Operator disowns any such representations, if any, made by anybody acting without its authorisation.

## **26. Miscellaneous**

### **26.1 Taxes**

The Operator shall be responsible for (i) all income taxes arising from payments by Consumers for the Services rendered on and after the Commencement Date and from any other income associated with the Contract on and after the Commencement Date; and (ii) for all customs, import duties, other taxes and assessments relating to the importation, into India, of plants and equipment in connection with the Contract.

#### **26.1A Tax Indemnity**

- (i) Subject to clause 26.1 above, NESL shall pay and indemnify the Operator on demand against all other Taxes for which the Operator may be liable or which may be levied or imposed against or upon the Operator, with reference to provision of Services or undertaking of any works by the Operator under or pursuant to this Contract (including without limitation any works relating to maintenance, Renewal, Rehabilitation Works, Replacement Works but excluding any works undertaken in connection with the Initial Performance Improvement Project), in accordance with the provisions of this Clause 26.1A.
- (ii) The Operator shall be entitled to deliver a notice to NESL (“Indemnification Notice”) to make a claim under this Clause 26.1A or under any other provision of the Contract under which it is entitled to be indemnified. The Operator shall annex to the Indemnification, where available, copies of the relevant documents received from Governmental Authorities, supporting its claim for indemnification. NESL shall within ninety (90) Days of receipt of an Indemnification Notice, pay to the Operator, the amounts mentioned in the said Indemnification Notice. In the event of a dispute, NESL shall pending resolution of the dispute in accordance with the procedure set forth in Clause 24 hereinabove, pay the undisputed portion of the amounts set forth in the Indemnification Notice within the time period stipulated in this Clause 26.1A(ii).
- (iii) If and to the extent that any sums payable to the Operator under this Clause 26.1A or any other provision of this Contract by way of indemnity are or will be insufficient, by reason of any Taxes payable in respect of those sums, for the

Operator to discharge the corresponding liability, or to fully reimburse the Operator for the cost incurred by it to a Third Party (including any Governmental Authority), NESL (or such other Government Party which is the indemnifying party) shall pay to the Operator such sum as will, after the tax liability has been fully satisfied or provided for, as the case may be, leave the Operator with the same amount as it would have been entitled to receive in the absence of that liability, together with interest on the amount of the deficit at the rate of 200 basis points above State Bank of India's base lending rate, compounded on a monthly basis in respect of the period commencing on the date on which the payment of taxation is finally due until payment by NESL to the Operator.

- (iv) For the purposes of payment of any service tax applicable to the activities of the Operator, the foregoing Clauses 26.1A (ii) and (iii) shall apply in respect of any service tax liability of the Operator to the extent such service tax liability is not discharged in accordance with the provisions contained in Schedule 5.

### **26.1B Reimbursement**

The Operator shall pay to NESL a fixed sum of Rs One (1) crore no later than fifteen (15) Days after the Commencement Date and thereafter on each anniversary of the Commencement Date, as reimbursement of the costs and expenses incurred/ to be incurred by NESL in exercising its supervisory rights under this Contract. For the avoidance of doubt, the Operator shall not be liable to pay additional amounts to NESL, in the event the actual costs and expenses incurred by NESL are greater than Rs One (1) Crore.

### **26.2 Intellectual Property**

- (i) NESL hereby licenses to the Operator to use free of charge all Intellectual Property owned by NESL or licensed to it by the Government Parties which is required or desirable in connection with the performance of the Operator's obligations under this Contract (the "**NESL Intellectual Property** "). Such licence by NESL shall be irrevocable, royalty free and for the duration of the Contract.
- (ii) NESL shall indemnify the Operator in full in respect of all claims, loss, damage and expense of whatever kind and nature arising out of the use by the Operator of the NESL Intellectual Property which infringes the rights of any Third Party.
- (iii) If any Intellectual Property (other than NESL Intellectual Property) is used by the Operator for the provision of Services under this Contract, (the "**Operator Intellectual Property**"), such Operator Intellectual Property shall belong to the Operator and shall be deemed to constitute an Own Asset.

- (iv) The Operator shall indemnify NESL in full in respect of all losses, damages and expenses of whatever kind and nature arising out of the use of Operator Intellectual Property.

## **26.3 Confidentiality**

### **26.3.1 Scope of Confidentiality**

Subject to the provisions of the Right to Information Act, the Parties hereby acknowledge and agree that each of them possesses and will continue to possess confidential and proprietary information of the other Parties that has been created, discovered, developed, or otherwise known and owned by them and/or their associates, which information has commercial value in the business in which they and their associates, are or may become engaged (the aforementioned information together with the terms of this Contract, the Bidding Documents and all documents and other information whether written or oral and whether technical or commercial relating to the Facilities and/or the Services hereinafter referred to as "**Confidential Information**"). Each of the Parties shall treat as confidential the Confidential Information supplied to it by or on behalf of any other Party to this Contract during the Term of this Contract and for a period of three (3) years after the Expiry Date, and shall not, without the prior written consent of the supplying Party or as required under Applicable Laws, the regulations of any stock exchange and except in the case of information given/ to be given to the lenders or potential lenders or investors or potential investors or any direct or indirect or direct parent company or any shareholder of the Operator, use any Confidential Information or disclose any Confidential Information to any Third Party or otherwise communicate the same without consent of the other Parties unless used, disclosed or communicated for the purposes of complying with the terms of this Contract.

### **26.3.2 Permitted Disclosure**

Notwithstanding Clause 26.3.1, the Operator, and its contractors shall be entitled to disclose to any of their employees, agents, advisors, contractors and/or any expert panel any Confidential Information provided by NESL and/or Government Parties, which may be necessary for the performance of their respective obligations, but they shall not cause or permit any of such persons to disclose any Confidential Information made available to them except as may be necessary for such performance.

## **26.4 Communications**

### **26.4.1 Wherever provisions** hereof provide for the giving or issuing of approvals,

certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- (i) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using facsimile or any other agreed systems of electronic transmission at the following addresses, and marked to the attention of the following persons:

To NESL  
Address:  
Fax:  
Attention:

To NMC:  
Address:  
Fax:  
Attention:

To Commissioner:  
Address:  
Fax:  
Attention:

To the Operator:  
Address:  
Fax:  
Attention:

- (ii) deemed to have been duly given (i) in the case of personal delivery by hand (against receipt) or delivery by mail or courier, at the time of delivery, or (ii) in case sent by facsimile, on receipt of a transmission report confirming dispatch.

- (iii) If a Party has not stated otherwise when requesting an approval or consent from any other Party, it may be sent to the address from which the request was received.

**26.4.2 Any approvals, certificates,** consents and determinations required to be given or made by a Party under the Contract shall not be unreasonably withheld or delayed.

**26.4.3 Notices from Consumers**

The Government Parties and NESL shall promptly forward to the Operator a copy of any notice or other communication received from any Consumer or Community.

**26.5 Law and Language**

- (i) The Contract shall be governed by the laws of India.
- (ii) The ruling language of the Contract shall be the English language.
- (iii) The language for communications shall be the English language.

**26.6 Redressal of Public Grievances & Penalty for failure**

The Operator shall maintain Public Relations Offices in 10 zones of the city for consumer grievances redressal and keep it open for public access at all times. At each such office, the Operator shall make arrangements for recording of complaints (either through website or register) from consumers /citizens at any time.

Operator shall ensure & provide at least the following Grievance Redressal Mechanisms including transparency in providing services to the citizens as mentioned below:

**A) 24 HOURS CONSUMER GRIEVANCES REDRESSAL CELL :**

- 1) Complaints relating to water supply services including billing shall be received at such office i.e. Consumer Grievances Redressal Cell on 24 x 7 basis and communicated immediately to the concerned staff of the Operator for appropriate redressal.
- 2) Computer terminals shall be provided in such cell wherein each complaint shall be immediately registered and complaint number shall be given forthwith to the complainant for the purpose to follow up.



3) Minimum three Telephone Nos. (3 lines) shall be provided in such Cell to facilitate the receipt of the consumers grievances / complaints.

4) Complaints shall be registered, numbered and immediately passed on to the concerned staff of the Operator for redressal through tailor made software to be installed by the Operator.

5) Redressal of complaints shall be closely monitored by senior officers of the Operator.

**B) COMPLAINTS AGAINST OPERATOR'S STAFF :**

The Operator shall nominate adequate number of its superior officers to suitably deal with consumer's complaints pertaining to staff of the Operator.

**C) INTRODUCTION OF ONLINE COMPLAINT MONITORING SYSTEM THROUGH TAILOR MADE SOFTWARE :**

1) For speedy redressal of complaints / grievances / petitions, a latest Software Technology or tailor made software shall be introduced & managed by the Operator.

2) Operator shall open a separate website to facilitate the consumers / citizens to lodge their complaints at any time via internet.

3) The complainant shall get OLC No. (Online Complaint No.) as receipt as soon as a complaint is registered in the website.

4) The complaint lodged shall be communicated to concerned through e-mail / SMS and their redressal monitored.

5) Online complaints shall be attended immediately by the Officers concerned and replied to the complainant through e-mail with a copy to Consumer Grievance Redressal Cell.

6) Within one week following the close of each calendar month, the Operator shall communicate to NESL / NMC a summary of complaints received / redressed during such month. NMC / NESL may direct the Operator to take such further reasonable action as NMC / NESL may deem appropriate.

**D) INFORMATION & FACILITATION COUNTERS :**

The Operator shall provide adequate no. of Information and Facilitation Counters at each Public Relations Office for the following services:-

1) Issue of Application forms for New Water Connections.

- 2) Changes pertaining to name, address and size of connection etc.
- 3) Generally to guide the consumers on matters pertaining to water supply services.

#### **26.6.1 Penalties**

- a) On breach by the Operator, any of its obligation towards consumer services, NESL may propose appropriate penalties depending upon the type of the breach and duration of its continuance. NESL shall prepare the Schedule of such penalties which may be modified time to time as per CSR of Maharashtra Jeevan Pradhikaran (MJP) / Public Works Department (PWD) of Maharashtra State. A penalty shall not be less than 110% of cost of a service and shall not exceed 300% of cost of the service which was affected due to breach of its obligation by the operator. The cost of a service shall be determined by NESL and operator jointly within 12 months from the date of commencement & such cost shall be revised proportionate with Operator's rate or cost index, whichever is higher.
- b) Whenever NESL is required to make alternate arrangements for the redressal of consumers grievances related to water supply services, NESL shall be entitled to recover the actual cost of such measures along with the penalties, assessed, if any, from monthly payments to the Operator as per Schedule 5.

#### **26.7 Relationship**

None of the Parties shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Parties except as provided by this Contract. Nothing in this Contract shall be interpreted or construed to create an association or partnership between the Parties or to impose any liability attributable to such relationship upon any of the Parties.

#### **26.8 Default Interest**

Late payment by NESL and/or the Government Parties of any amounts due and payable to the Operator, including any amounts under Clause 22, shall attract late payment charges at the rate of 200 basis points above State Bank of India's base lending rate, compounded on a monthly basis.

#### **26.9 Severability**

If for any reason whatever, any provision of this Contract is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or

illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision.

#### **26.10 Survival**

Clauses [1, 3.6, 3.7.2, 3.7.3, 4.4, 6.5(iii), 7.2(i), 8.1.1(iii), 8.1.3(iii), 8.2.3, 8.2.4, 8.5(ii), 9.1(vi), 11.2.5(i), 12.1.1, 12.2.2(iii), 12.2.2(iv), 12.6(iii), 13(vii), 14.2(iii), 14.2(iv), 16.3(iii), 16.6, 20, 21, 21A.1, 22.4, 22.5.2, 22.5.3, 22.5.4, 23.1, 23.5(ii), 24, 25, 26.1, 26.1A, 26.2(ii), 26.2 (iv), 26.3, 26.4, 26.5, 26.7, 26.8, 26.9, 26.10, Schedules 5, 18 and 20] and the provisions of the Contract which are intended to survive the expiry or termination of this Contract or customarily survive expiry or termination of a contract, shall survive any expiry or termination of this Contract.

#### **26.11 Stamp duty & registration charges**

The liability of the operator in this respect if any, will be borne by NMC / NESL..

[Signature Page Follows].

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

Executed for and on behalf of NESL by

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

Name:

Date:

Place:

Affix Common Seal of NESL

Executed for and on behalf of  
The Nagpur Municipal Corporation by:

Name:

Date:

Place:

Affix Common Seal of Nagpur Municipal Corporation

Executed for and on behalf of  
The Commissioner of Nagpur Municipal Corporation by:

Name:

Date:

Place:

Executed for and on behalf of [Operator]  
by:

Name:

Date:

Place:

Affix Common Seal of Operator