

VOLUME 2

DRAFT CONTRACT AGREEMENT BETWEEN

Kerala Irrigation Infrastructure Development Corporation Ltd (KIIDC)

AND

.....

..... (THE DCO) FOR

**CONSTRUCTION, OPERATION & MAINTENANCE OF PDW
PLANT**

DATED.....

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CONTRACT AGREEMENT

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

BY AND BETWEEN:

Kerala Irrigation Infrastructure Development Corporation Ltd, a body corporate incorporated under the Companies Act, 1956 having its Headquarters at, acting through (hereinafter “KIIDC”, which expression shall, unless the context otherwise requires include its administrators, successors and assigns)) on the first Part;

AND

{..... **PRIVATE LIMITED**}, a special purpose company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Developer-cum-Operator (DCO)**” or “**Company**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the second Part.

KIIDC and the DCO shall collectively be known as Parties and individually as Party.

WHEREAS:

- A. As part of its efforts to expand the packaged drinking water (PDW) supply by KIIDC sold under its “Hill Aqua” brand, KIIDC has decided to undertake construction and operation of PDW Plant on DBFOOT basis at Aluva in Kerala under Public Private Partnership (PPP) mode.
- B. KIIDC had accordingly invited Request for Proposal (RFP) by its RFP Document No dated for Development, Operation and Maintenance of PDW Plant at Aluva and had shortlisted Proposers including the second party being the selected Proposer
- C. After evaluation of the Proposals received, KIIDC had accepted the Proposal of the selected proposer and issued its Letter of Intent No..... dated (hereinafter called the “LOI”) to the selected proposer requiring, inter alia, the execution of this Contract Agreement for the Project at (*location*).
- D. The selected proposer has since promoted and incorporated the (the DCO) as a limited company under the Companies Act 2013, and has requested KIIDC to accept the Developer-cum-Operator as the entity which shall undertake and perform the obligations and exercise the rights of the selected proposer under the LOI, including the obligation to enter into this Contract Agreement pursuant to the LOI for executing the Project. The DCO has further represented to the effect that it has been promoted by the selected proposer for the purposes hereof.
- E. Vide its letter dated, KIIDC has agreed to the said request of the selected proposer / DCO, and has accordingly agreed to enter into this Contract Agreement with the DCO for execution of the Project on DBFOOT basis, on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows.

PART I: PRELIMINARY

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

(a) On or before COD, the Adjusted Equity shall be a sum equal to the Equity of DCO in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of commencement Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) After the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.49% (zero point four nine per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the purpose of calculation of Adjusted Equity, the Equity shall be considered at lower of Actual Equity or 30% of Total Project Cost as per the audited financial statement of the DCO.

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

“Agreement” or “Contract Agreement” means (a) this Agreement including its Recitals, the Schedules, Annexures, any amendments thereto; (b) RFP Document dated.....and the amendments, if any, thereto; (c) the Proposal documents submitted by the DCO (Proposer) in response to the RFP Documents; , and (d) the LOI issued by KIIDC dated.....and any amendments thereto;

“Applicable Laws” means all laws, promulgated or brought into force and effect by Government Of India (GOI) or respective state Governments in which the Project is coming up including regulations, rules, directions, bye-laws, notifications, ordinances and

judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearance, permits, authorizations, consents, no-objections, licenses, approvals, registrations and exemptions required to be obtained or maintained under Applicable Laws and rules thereunder in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project and provision of Services during the subsistence of this Agreement;

“Bank” means any scheduled bank incorporated in India;

“Bank Base Rate” means the base rate per annum as fixed from time to time by the State Bank of India, and in the absence of such rate, any other arrangement that substitutes such base rate as mutually agreed between the Parties;

“Capacity” means the capacity of the plant as specified in Schedule B;

“COD” means the commercial operations date of the Project and shall be the date on which the KIIDC / Independent Engineer and Auditor has issued the final completion certificate certifying Project Completion in accordance with this Agreement;

“Company” means the Company acting as the Developer-cum-Operator under this Agreement and mentioned as the second party to this Agreement;

“Commencement Date” as defined in Clause 10.2.3

“Completion Certificate” means the Certificate issued by the Independent Engineer & Auditor pursuant to Clause 10.8;

“Contract” shall have the meaning ascribed thereto in Article 3;

“Contract period” means the period starting on the Date of issue of LOI and ending on the at the end of 30 months from the Date of LoI or 20 years from the date of COD or on Termination Date, if its earlier;

“Construction Period” means the period beginning from the date of LoI and ending on the COD;

“Construction Works or Works” means all works and things necessary to complete the Project thereof in accordance with this Agreement;

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

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

- (a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) Not in any way be extended by any period of Suspension under this Agreement; provided that if cure of any breach by the DCO required any reasonable action by the DCO that must be approved by KIIDC or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by KIIDC or the Independent Engineer to accord their approval;

“DCO Default” shall have the meaning set forth in Clause 16.1;

“Damages” shall have the meaning ascribed thereto in Clause 4.2;

“Designated Bank Account” means such account of the KIIDC in a Bank identified for the purpose of receipt of all the payment from DCO;

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

- (a) The principal amount of debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) All accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above till the Termination Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Agreements to the Lenders and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to KIIDC Default;

“Developer-cum-Operator” or **“DCO”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Dispute” shall have the meaning set forth in Clause 21.1.1;

“Dispute Resolution Mechanism” means the procedure for Dispute resolution set forth in Article 21;

“Document” or **“Documentation”** means documentation printed or in written form or in electronic storage devices like tapes, discs, drawings, computer programmes, written reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all the drawings, calculations and documents pertaining to the Project as per the set Standards and Specifications to be submitted by the DCO as per the Agreement and shall include “as built” drawings of the Project;

“DBFOOT” means „Design, Build, Finance, Own, Operate and Transfer basis of Public Private Partnership;

“EPC Contract” means contract or contracts entered into by the DCO with one or more contractors for the design, engineering, procurement of materials and equipment, construction and completion of the Project in accordance with the provisions of this Agreement;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets and the stock of materials or goods stored in the PDW Plant;

“Encumbrances” means, in relation to Project Assets, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, attachment, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

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

“Financial Close” means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Documents;

“Financing Documents” means the documents executed by the DCO in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the Financing (including refinancing) of the Project and includes amendments or modifications;

“Financial Year” means the year starting from 1 April of year and ending on 31st March of the succeeding year;

“Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence specified in Article 15;

“GOK” means the Government of Kerala;

“Good Industry Practice” means those practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the similar type of undertaking as envisaged under this Agreement and acting in accordance with the Applicable Laws and would mean good engineering practices in the design, engineering, construction and Project management and which would be expected to result in the

performance of its obligations by the DCO and in the operation and maintenance of the Project in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency;

“Government, Government Agency / Instrumentality” means GOK, Government of India or any ministry, department, commission, board, instrumentality or agency, under the control of GOK or Government of India having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the DCO under or pursuant to this Agreement;

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

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 20;

“Indirect Political Event” shall have the meaning ascribed thereto in Clause 15.3;

“KIIDC Default” shall have the meaning set forth in Clause 16.2 ;

“KIIDC Representative” means such person or persons as may be authorised in writing by KIIDC to act on its behalf under this Agreement and shall include any person or persons having KIIDC to exercise any rights or perform and fulfil any obligations of KIIDC under this Agreement;

“Letter of Intent” means the letter of award of project referred in Recital (C);

“Letter of Commencement” shall have the meaning prescribed to it in Clause 10.2.3 ;

“Manufacturing Services” means all manufacturing and bottling of packaged drinking water and such related services as listed in Clause 11.1;

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

“Material Breach” means a breach by either Party of any of its obligation in this Agreement which shall be deemed to have a Material Adverse Effect;

“Non Political Event” shall have the meaning ascribed thereto in Clause 15.2;

“Operation & Maintenance or O&M” means the operation and maintenance of the Project during the Operation Period as per stipulated standards and provision of Services and includes but is not limited to functions of maintenance and performance of other services incidental thereto in terms of this Agreement;

“Operation Period” means the period commencing from the date of issue of Completion Certificate and ending at end of Termination of the Contract;

“Packaged Drinking Water” or **“PDW”** means drinking water prepared through a purification process comprising of reverse osmosis or superior technology and packaged in 20 litre Jar or Can such as to meet at all times the quality requirement as per BIS specification IS 14543: 2004, as periodically revised or replaced by the Bureau of Indian Standards and Food Safety and Standards Rules as applicable and all other such quality requirements stipulated by relevant Government Agencies and as per other stipulation mentioned herein.

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

“PDW Plant” means and includes the facility to be constructed under the Project and in terms of this Agreement and is inclusive of the reverse osmosis plant, automatic jar rinsing, filling, capping and labelling plant, warehouse, administrative office and all assets as further elaborated in Schedule-B required to provide Service to KIIDC under this Agreement

“Performance Standards” means the standards for performance during the Operation Period as stipulated in the agreement which should be adhered to by the DCO;

“Performance Security” shall have the meaning ascribed in the Article 9;

“Political Event” shall have the meaning ascribed thereto in Clause 15.4;

“Project” means the development, design, construction, financing, procurement, engineering, operation and maintenance of PDW Plant in accordance with the provision of this Agreement and shall include all incidental and auxillary works and services relating to or in respect of the Project and also referred to as „PDW Plant“;

“Project Agreements” means this Agreement, the Engineering, Procurement and Construction (EPC) Contract, if any, the O&M Contract, if any, and any other agreements or contracts entered into by the DCO with KIIDC or others relating to the Project during the subsistence of this Agreement;

“Project Assets” means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Site in the form of license, lease, ownership, right of way or otherwise, (ii) tangible assets such as civil works including the foundation, sheet metal silo, conveyor system, drainage works, rail siding, lighting facilities, mechanical handling equipment, weighing equipment, electrical installations, DG sets, telephone and other communication systems and equipment for the Project, (iii) Project Facilities situated on the Site including office (iv) the rights of the DCO under the Project Agreements, (v) financial assets, such as security deposits for electricity supply, telephone etc. (vi) insurance proceeds and (vii) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion” shall imply the completion of Construction Works related to the Project;

“Project Facilities” means all the amenities and facilities situated on the Site, including as per capacity requirements specified in Schedule-B;

“Project Location” means the location as specified in the Letter of Intent referred to in the Recital (C);

“Proposal” means the documents in their entirety comprised in the Proposal submitted by the selected proposer in response to the Request for Proposal in accordance with the provisions thereof;

“RFP Security” means the security provided by the selected proposer to KIIDC along with the Proposal for the sum of Rs.....lakhs (Rupees..... Only) in accordance with the Request for Proposal and which is to remain in force until substituted by the Performance Security;

“Rs.” Or “Rupees” Or “INR” means the lawful currency of the Republic of India;

“Scheduled Commercial Operation Date” or “SCOD” shall mean the 27th day from the Commencement Date;

“Services” means those Manufacturing and marketing Services to be performed by the DCO under this Agreement;

“Site” means the parcel of land owned or Licensed by the KIIDC/GoK and provided under a License or Lease Agreement for the Project;

“Standards and Specifications” means the standards and specifications relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule B: Standards & Specifications” and any modifications thereof, or additions as included in the design and engineering for the Project submitted by the DCO to and expressly approved by KIIDC;

“Statutory Auditors” means firm of Chartered Accountants duly licensed to practice in India acting as independent statutory auditors of the DCO under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force and duly appointed by the DCO;

“Taxes” means any Indian statutory taxes and duties charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project, on the construction, operation and maintenance thereof and on the Project Assets, but excluding any taxes and duties on corporate income and any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

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

“Tender Document” shall have the meaning ascribed to it in the Recital „B“;

“**Termination**” means the expiry *by efflux of time* or termination of this Agreement and the Contract hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Authority to the Contractor upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement;

“**Tests**” mean the tests to be carried out to determine the Project Completion and its certification by the Independent Engineer and Auditor for commencement of commercial operation of the Project;

Any expression not defined above shall have the meaning as defined or described under the appropriate provisions of the Agreement;

1.2. Interpretation

- 1.2.1. In this Agreement, unless the context otherwise requires,
- 1.2.2. Any reference to any legislation or any provision thereof shall include amendment or re - enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- 1.2.3. References to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- 1.2.4. References to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.2.5. The words importing singular shall include plural and vice versa, and words denoting natural persons shall include consortiums, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- 1.2.6. The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- 1.2.7. Terms and words beginning with capital letters and defined in the Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;
- 1.2.8. The words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

- 1.2.9. References to “constructions” or “building” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental and auxiliary to the construction and „construct” shall be construed accordingly;
- 1.2.10. Any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.2.11. Any reference to day shall mean a reference to a calendar day;
- 1.2.12. Any reference to month shall mean a reference to a calendar month as per Gregorian calendar;
- 1.2.13. The Schedules and Annexures to this agreement from an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- 1.2.14. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of KIIDC hereunder or pursuant hereto in any manner whatsoever;
- 1.2.15. References to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and Schedules of or to this Agreement;
- 1.2.16. Any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer and Auditor shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Engineer and Auditor, as the case may be, in this behalf and not otherwise;
- 1.2.17. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- 1.2.18. The damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”);
- 1.2.19. Wherever KIIDC occurs, it includes, for the limited purpose of use of storage facility of the PDW Plant, its nominees being its licencees or agents (Nominee);and
- 1.2.20. “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000).

1.3. Measurement and arithmetic conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.4. Priority of Contract Document and errors/discrepancies

- 1.4.1. The several documents forming this agreement are taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:
- (a) This Agreement;
 - (b) All other documents forming part of this Agreement.
- 1.4.2. In case of ambiguities or discrepancies within this Agreement the following shall apply:
- (a) Between two or more Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) Between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in Clause 1.4.1;
 - (c) Between the written description on the Drawings and the Standards and Specifications, the latter shall prevail;
 - (d) Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
 - (e) Between any value written in numerals and that in words, the latter shall prevail.

PART II: THE CONTRACT

2. SCOPE OF PROJECT

2.1. Scope of the Project

- 2.1.1. The Project shall be executed on the Site, which is described in Schedule-A of this Agreement. The scope of the Project shall include:
- (a) Construction of a fully automatic packaged drinking water plant for production and supply of packaged drinking water (PDW) in 20 litre Jar/Can exclusively on behalf of KIIDC. For this purpose, land and old building is provided by KIIDC;
 - (b) Operation and Maintenance of the packaged drinking water plant as per BIS Standard and FSSAI Act for a period of 20 years.
 - (c) Provision of marketing Services for sale of packaged drinking water from PDW Plant I open market under the KIIDC Brand name “Hill Aqua” and
 - (d) Performance and fulfillment of all other obligation in accordance with the Contract Agreement to be entered into for the purpose.
 - (e) KIIDC has already made necessary arrangement with GoK for long term lease of the land identified in the campus of Periar Valley River Project Division Office at Aluva and thus the plant set up will be ultimately owned by KIIDC and all licenses/Clearances will be in the name of KIIDC. DCO will be setting up, operating & maintaining the plant to manufacture Hill Aqua and will be required to pay Lease Rent to as set forth in Article 13 hereto plus applicable taxes to KIIDC.

3. GRANT OF CONTRACT

3.1. The Contract

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Limits, KIIDC hereby grants to the Developer-cum-Operator (DCO) the contract set forth herein, including the exclusive right during the subsistence of this Agreement to implement the Project (the “Contract”) for a period of 246 (two hundred and forty six) months in which (06) six months will be construction period from the LoI Date and two hundred and forty months (twenty years) will be operation period starting from COD and the DCO hereby accepts the Contract and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. Period of operation will be 20 (twenty) years irrespective of construction period.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Contract hereby granted shall entitle or oblige the DCO to :
- (a) Right of Way and access to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

- (b) Construct the Project;
- (c) Manage, operate and maintain the Project;
- (d) Perform and fulfill all of the DCO's obligations under and in accordance with this Agreement;
- (e) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the DCO under this Agreement; and
- (f) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Contract hereby granted or on the whole or any part of the PDW Plant or Land nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

4. CONDITIONS PRECEDENT

4.1 Conditions Precedent (CP)

- 4.1.1. Save and except as expressly provided in the Agreement in Articles 4, 9, 13,15,21 or 22 unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").
- 4.1.2. KIIDC shall, upon receipt of the Performance Security from the DCO in accordance with Article 9, at any time within 30 (thirty) days from date of this Agreement shall fulfill the following conditions:
 - (a) Procured for the DCO rights to the Site in accordance with provisions of Clause 10.1;
 - (b) If applicable, procured from the GoK necessary NOC to carry out the activities of manufacturing, bottling and distribution of packaged drinking water from the Site.
- 4.1.3. The DCO shall within 30 (thirty) days from the date of this Agreement fulfill the following conditions:
 - (a) Provided Performance Security to KIIDC;
 - (b) Procured all Applicable Permits;
 - (c) Delivered to KIIDC a legal opinion from the legal counsel of the DCO with respect to the authority to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the DCO, KIIDC may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, KIIDC may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.
- 4.1.4. Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.2. Damages for Delay

- 4.2.1. In the event, a Party does not procure the fulfillment of any or all or the Conditions Precedent as applicable to the Party under Clause 4.1.2 or 4.1.3, and the delay has not occurred due to breach of Agreement by other Party or due to Force Majeure Event, the said Party shall be deemed to be in breach of this Agreement and required to pay as Damages to the other Party at the rate of 0.5% (zero point five percent) of equity component of the project cost as per financial closure per week and part thereof for delay, subject to a maximum of 10% (ten percent) of the said equity component.
- 4.2.2. In the event the procurement or the fulfillment of any or all the Condition Precedent is delayed by a Party beyond 100 (hundred) days beyond the stipulated time, and the delay has not occurred due to breach of Agreement by other Party or due to Force Majeure Event, the Affected Party may, at its discretion, and without prejudice to its other rights and remedies under this Agreement, terminate this Agreement.

5. OBLIGATIONS OF THE DCO

5.1. Obligations of the DCO

- 5.1.1. Subject to and on the terms and conditions of this Agreement, the DCO shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the PDW plant as per specified Standards and provide marketing Services to KIIDC, on an exclusive basis, as per the terms of the Agreement herein.
- 5.1.2. Subject to the provisions of Clause 5.1.1, the DCO shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.3. The DCO shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) At its own cost and expense, procure finance for and undertake the design, engineering, procurement of equipment and material, installation, construction, operation and maintenance of the packaged drinking water plant as per laid down technical specifications.
 - (b) Make, or cause to be made, necessary applications to the relevant Government Instrumentalities for Applicable Permits in favour of KIIDC and obtain and keep in force and affect such Applicable Permits, licenses. All statutory payments will be made by DCO.
 - (c) During Operation Period, for manufacturing, of PDW, at its cost:
 - i. Source all raw materials, consumables and labour as per technical specifications provided by KIIDC. Raw water will be drawn from the site at the cost of DCO. Similarly, any cess/taxes/charges levied by Govt./any other agency on ground water wherever applicable will be borne by the DCO.
 - ii. Production of PDW meeting the specified quality requirements on exclusive basis for KIIDC;

- iii. Packaging of PDW as per requirements specified by KIIDC;
 - iii. Market and sell the PDW under KIIDC brand Hill Aqua by undertaking appropriate marketing & selling strategies and measures and pricing mechanism as it deems prudent to DCO.
 - iv Stocking of PDW at Plant site for a minimum finished goods stock equivalent to one weeks demand, as per instructions of KIIDC in this regard; and
 - v. Comply with all the requirements under Applicable Laws and Applicable Permits.
- e) Maintain the PDW Plant in reasonable state and in confirmation with the stipulations;
 - f) Comply with all Applicable Laws and Applicable Permits;
 - g) Perform and fulfill its obligations under the Financial Arrangements;
 - h) Make reasonable efforts to maintain harmony and good industrial relations;
 - i) Support, cooperate with and facilitate KIIDC in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - j) Maintain proper records and books of accounts relating to expenditure towards the construction, operation & maintenance and sales and collection of receivables of the packaged drinking water plant and provide to KIIDC information as stipulated herein;
 - k) Maintain plant log sheets, performance reports, equipment history, power consumption register, inventory registers, laboratory test reports, dealers register, sales data and other necessary documentation for inspection by KIIDC;
 - l) Make available the facility for periodic inspection by designated quality control personnel of KIIDC, representatives of KIIDC or other authorized representatives;
 - m) At its cost, maintain insurance cover as required and prudent;
 - n) At its cost, pay all taxes, duties and levies incidental to provision of manufacturing Services and marketing and sales Services;
 - o) Transfer the PDW plant upon Termination of the Contract or expiry of the Contract in accordance with the provisions herein;
 - p) Neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Contract hereby granted or on the whole or part of asset nor transfer, lease or part possession thereof, save and except as expressly permitted under the terms herein; and
 - q) At the end of the Contract Period, transfer the plant and machinery and operations of the PDW plant to KIIDC.

5.2. Obligations relating to Project Agreements

- 5.2.1. It is expressly agreed that the DCO shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the DCO from its obligations or liability hereunder.
- 5.2.2. Upon demand from KIIDC at any time during the Contract Period to furnish the drafts

and/or copies of Project Agreements any amendments or replacements thereto. It is further agreed that no review and/or observation of KIIDC and/or its failure to review and/or convey its observations on any document shall relieve the DCO of its obligations and liabilities under this Agreement in any manner nor shall KIIDC be liable for the same in any manner whatsoever.

- 5.2.3. The DCO shall not make any addition, replacement or amendments to any of the Financing Documents without the prior written consent of KIIDC if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on KIIDC, and in the event that any replacement or amendment is made without such consent, the DCO shall not enforce such replacement or amendment nor permit enforcement thereof against KIIDC. For the avoidance of doubt, KIIDC acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the DCO.
- 5.2.4. In case KIIDC wishes to produce/source the Jar/Can or any other raw material at a future date, KIIDC reserves the right to supply the Jar/Can or any such raw material to the DCO at prevailing market rates.

5.3. Obligations relating to Change in Ownership

- 5.3.1. The DCO shall not undertake or permit any Change in Ownership, except with the prior approval of KIIDC.
- 5.3.2. Notwithstanding anything to the contrary contained in this Agreement, the DCO agrees and acknowledges that:
 - (a) All acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15 (fifteen per cent) of the total Equity of the DCO; or
 - (b) Acquisition of any control directly or indirectly of the Board of Directors of the DCO by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of KIIDC from national security and public interest perspective, the decision of KIIDC in this behalf being final, conclusive and binding on the DCO, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the DCO without such prior approval of KIIDC. For the avoidance of doubt, it is expressly agreed that approval of KIIDC hereunder shall be limited to national security and public interest perspective, and KIIDC shall endeavour to convey its decision thereon expeditiously. It is also agreed that KIIDC shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the DCO from any liability or obligation under this Agreement. For the purposes of this Clause 5.3.2:
 - I. The expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the DCO;

- II. The indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the DCO; and
- III. Power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the DCO, not less than half of the directors on the Board of Directors of the DCO or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the DCO shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the DCO.

5.4. Employment of trained personnel

The DCO shall ensure that the personnel engaged by it or its contractors or agents in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.5. Sole purpose of the DCO

- 5.5.1. Subject to the condition specified herein, the DCO having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the DCO shall not be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

However, the DCO is allowed to enter into one or more similar Agreements with KIIDC for any other project in future.

5.6. Liability for Personnel

5.6.1 Labour:

- (a) The DCO shall provide and employ on the Site in the installation of the Facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Contract Agreement.
- (b) The DCO shall at all times during the progress of the Agreement use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees & labour and labour of its Sub-Vendors / Contractors.
- (c) The DCO shall, in all dealings with its labour and the labour of its Sub-Vendors employed on or connected with the Agreement, pay due regard to the laws and regulations pertaining to the employment of labour.

5.6.2 Labour Rules:

- (a) In respect of all labour directly or indirectly employed on the works by the DCO, the DCO shall comply with and implement all the Provisions of the Contract Labour (Regulation and Abolition) Act 1970, or any amendment thereof, and all legislation and Rules of the State and / or Central Government or other local authority formed from time to time governing the protection of health, sanitary arrangements, wages, welfare and safety of labour employed on the works and the DCO shall be deemed to be the

Principal for this purpose. The rules and other statutory obligations with regard to fair wages, welfare and safety measures, maintenance of register, etc. will be deemed to be part of the Agreement. The DCO will get it registered with the concerned statutory authorities as provided in the Act and shall be directly responsible to the authorities there under for compliance with the provisions thereof.

- (b) Provision of Minimum Wages Act and Payment of Wages:
- (c) The DCO shall comply with the provisions and procedures of Central Govt. / State Government's minimum wages Act 1948 & Central Govt. / State Government's Minimum Wages Fixation Act. 1962 and rules made there under in respect of all employees employed by the DCO or its Sub-Vendor(s) directly or indirectly for the purpose of carrying out the works. The DCO shall pay employees wages not less than the minimum rates of wages, if any, fixed by Central Govt. or State Government, whichever is higher, from time to time.
- (d) In respect of labour employed by the DCO or its Sub-Vendor(s) on the works the DCO shall provide at its own cost reasonable amenities for securing proper working and living condition such as water supply, lavatories, bathing place, cleanliness, etc. Where woman labour is employed, the DCO will provide lavatories separately for female workers as well as crèches for the infant children of women labourers. The DCO free of charges shall provide labourers engaged on hazardous jobs and occupations, with necessary safety appliances.
- (e) The DCO's / Sub-Vendors establishment will be subject to inspection, investigation, etc., by the KIIDC or its representative for assuring proper and faithful compliance of the provisions of the Agreement by the DCO with regard to the implementations of labour laws & other matters anticipated herein. The DCO / Sub-Vendors shall abide by the decisions and orders of the KIIDC with regard to any such matter and furnish information if required, for necessary compliance.
- (f) In the event of retrenchment of workers by the DCO or Sub-Vendors employed by the DCO during or after the completion of facilities the DCO will pay the retrenchment compensation and other benefits to the workers as per the Industrial Dispute Act.
- (g) If any money shall, as a result of any claim of application made under the said acts, be directed to be paid by the KIIDC, such money shall be deemed to be money payable to the KIIDC by the DCO and / or failure by the DCO to repay the KIIDC, and money paid by the KIIDC as aforesaid, latest within 30 days after the same shall have been demanded from the DCO, the KIIDC shall be entitled to recover the same from any money due or accruing to the DCO under this or any other Agreement with the KIIDC, failing which such amount shall be considered as debt due from the DCO to the KIIDC.
- (h) The DCO shall comply with the provisions of by-partite and tripartite agreement entered into by the KIIDC from time to time with Labour Union and/ or the circulars issued by the KIIDC regarding payment of minimum wages and other benefits whichever applicable.
- (i) The DCO shall strictly comply the statutory rules and regulations in respect of working hours of female labourer's at site.

5.6.3. Reporting of Accidents:

The DCO shall be responsible for the safety of its own and its Vendors' workmen and employees. All accidents at site are to be immediately reported to the required authorities. The DCO shall be responsible for all such accidents.

5.6.4. Provision of Workmen's Compensation Act:

- (a) The DCO shall be liable in respect of any damages or compensation payable by law in respect of or in consequence of any accident or injury to any workmen or other person in the employment of the DCO or any of its Sub - Vendors and the DCO shall save harmless and shall indemnify and keep indemnified the KIIDC against all such damages and compensation and against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto. The DCO shall at all times indemnify and keep indemnified the KIIDC against all claims for compensation under the provisions of the Workmen's Compensation Act 1923 (VIII of 1923) or any other law for the time being in forces by or in respect of any workmen employed by the DCO or its Sub-DCOs/agencies in carrying out the Agreement and against all costs and expenses or penalties incurred by the KIIDC in connection therewith. In every case in which by virtue of the provisions of Section-12, Sub-Section (1) of the Workmen's Compensation Act 1923, the KIIDC is obliged to pay compensation to a workmen employed by the DCO or its Sub-DCOs/agencies, the amount of compensation so paid and without prejudice to the rights of the KIIDC under Section-12, Sub-Section (2) of the said Act, the KIIDC shall be at liberty to recover such amount or any part thereof from the security deposit or from the sums due or to become due to the DCO (whether under this Agreement or any other Agreement).
- (b) The KIIDC shall not be bound to contest any claim made against him under Section-12, Sub-Section (1) of the said Act, except on the written request of the same or his Sub-Vendors / agencies and upon their giving to the KIIDC full security for all costs for which the KIIDC might become liable in consequence of contesting such claims.

5.6.5 Provisions of Apprentices Act:

The DCO shall comply with the provisions of the Apprentices Act 1961, and the rules and orders issued there under from time to time. If DCO fails to do so, his failure may be treated as breach of the Agreement and the KIIDC may, in its discretion, terminate the Agreement. The DCO shall also be liable for any pecuniary liability arising on account of any violation by him of the provisions of the said Act.

5.6.6 Labour Returns:

The DCO shall, if required by the KIIDC, submit periodical statements of labour employed by the DCO in the Performa prescribed by the KIIDC from time to time.

5.6.7 Labour Camps:

The DCO shall, at its own expense, make adequate arrangements for housing, electricity, road, supply of drinking water and provision of lavatories and urinals for its staff and labour, disposal of sewerage and sludge and for temporary crèche where 50 or more women are employed at a time.

5.6.8 Preservation of Peace:

The DCO shall take requisite precautions and use its best endeavour to prevent riotous or unlawful behaviour by, or amongst his workmen and /or others employed on the works, by the DCO its Sub-Vendors and for the preservation of peace and protection of the inhabitants and security of the property in the neighbourhood of the works/site. In the event of the KIIDC requiring the maintenance of a special police force at or in the vicinity of the site during the tenure of the Agreement in consequence of the riotous or unlawful behaviour by, or amongst the DCO's or its Sub-Vendors workmen and /others employed by the DCO/Sub-Vendors, all expenses thereof and costs of all damages due to such riotous or unlawful behaviour shall be borne by the DCO and if paid by the KIIDC, shall be recoverable from the DCO from any money due or that may become due to the DCO by the KIIDC.

5.6.9 Payment of Wages:

- (a) The DCO shall make regular and prompt payment of wages to the labour engaged in the work and in no case should the payment be delayed more than seven days following the period for which the wages are due. The DCO shall send a certificate to the KIIDC to this effect every month. If it is found that workers are not paid regularly, the Agreement is liable to be terminated.
- (b) The KIIDC shall have the right to enquire into and decide against any complaint alleging that the wages paid by the DCO to any labour for the work done by such labour is less than the wages paid for similar work in the neighborhood.

5.6.10 Sanitary Arrangements:

The DCO shall comply with all sanitary rules in force and carry out all sanitary measures and permit inspection of all sanitary arrangements at all reasonable times by the KIIDC and or Statutory Authorities.

5.6.11 Infectious Diseases:

- (a) The DCO shall employ such persons as are found to be free of contagious diseases and shall produce if required by the KIIDC, certificate of fitness of all his employees working at site. The DCO shall, if required by the KIIDC, subject all its employees to regular medical check-up and produce satisfactory evidence of their being free from any contagious disease.
- (b) The DCO shall remove from its labour camp such labour and their families who refuse protective inoculations and vaccination when called upon to do so by any competent authority.

5.6.12 Medical Facilities at Site:

The DCO shall provide medical facilities at the site as per rules in force in relation to the strength of the DCO's staff and workmen deployed at site.

5.6.13 Use of Intoxicants:

The use or sale of ardent spirits or other intoxicating beverages, upon the works or in any of the building, boarding houses, encampments or other tenements owned, occupied by or within the control of the DCO or any of its employees or its Sub-Vendors is strictly forbidden and the DCO shall secure strict compliance.

5.6.14 Age Limits of Labour:

The DCO shall not employ for the purpose of the work, any person below the age as is statutorily forbidden. The KIIDC shall have the right to refuse to allow any labour, which the KIIDC considers to be under age to be employed by the DCO. The DCO shall submit periodical statements of labour employed by the DCO to the KIIDC.

5.6.15 Provident Fund:

- (a) The DCO shall be solely responsible for deduction and contributions under the Employees Provident Fund and Family Pension Act, 1952 and the scheme made there under as amended from time to time. The DCO shall be solely responsible for the maintenance of records for payment of contributions and submission of returns in accordance with the said act and scheme.
- (b) In case the DCO fails to make payments under the above Act and the scheme made there under and as amended from time to time, the KIIDC reserves the right to make such payment on behalf of the DCO on demand from the authorities under the Act and recover the same from the payments due to the DCO. Further, the DCO shall indemnify and keep indemnified the KIIDC against any loss or damage whatsoever that may be suffered by the KIIDC as a result of any claims, damages, penalties for any failure, non-compliance on his part with the provisions of the aforesaid Act and the scheme framed there under.

5.7. Modifications in Plant Operation

- 5.7.1. KIIDC may ask DCO for manufacturing of any other packaging size of packaged drinking water within existing facility with minor modification/change parts.
- 5.7.2. The Capital cost for major modification, expansion beyond present scope of work will be borne by KIIDC or DCO or jointly on mutually agreed terms and conditions.

6. OBLIGATIONS OF KIIDC

6.1. Obligations of KIIDC

- 6.1.1. KIIDC shall, at its own cost and expense undertakes, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. KIIDC agrees to provide support to the DCO and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
 - (a) Procure the Site, free of encumbrances, for the PDW Plant under license from GoK/any other agency and handover the same for design, engineering, procurement, construction, operation and maintenance of the PDW plant to the DCO for the period of the contract;
 - (b) Upon request from the DCO, provide reasonable support to the DCO in procuring Applicable Permits. However, non-rendering of any support by KIIDC shall not absolve the DCO of its obligation to obtain all Applicable Permits ;

- (c) Ensure that no unreasonable barrier is created at the site preventing the DCO in carrying out its tasks under the terms herein;
- (d) Support, cooperate with and facilitate to a reasonable extent the DCO in the implementation and operation of the PDW plant in accordance with the provisions of this Agreement; and
- (e) Support, cooperate with and facilitate to a reasonable extent for marketing Activities.

7. REPRESENTATIONS AND WARRANTIES

7.1. Representation and warranties of the DCO

7.1.1. The DCO represents and warrants to KIIDC that:

- (a) It is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) The information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which

- may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) It has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
 - (k) It shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that;
 - I. the selected proposer hold not less than 100% (hundred percent) of its issued and paid up Equity as on the date of this Agreement and for a period till 5 (years) from COD;
 - II. the selected proposer shall continue to hold not less than 51% (fifty one percent) during the balance Operation Period;
 - (l) the selected proposer has the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
 - (m) the selected proposer is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested KIIDC to enter into this Agreement with the DCO pursuant to the Letter of Intent, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (n) no representation or warranty by it contained herein or in any other document furnished by it to KIIDC or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - (o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of KIIDC in connection therewith; and.
 - (p) all information provided by the DCO being selected proposer in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2. Representations and warranties of KIIDC

7.2.1. KIIDC represents and warrants to the DCO that:

- (a) It has full power to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) It has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) It has the financial standing and capacity to perform its obligations under this Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on KIIDC's ability to perform its obligations under this Agreement; and
- (f) It has complied with Applicable Laws in all material respects.

7.3. Disclosure

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

8. DISCLAIMER

8.1. Disclaimer

- 8.1.1. The DCO acknowledges that prior to the execution of this Agreement, the DCO has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Terms of Reference, Standards and Specifications, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, accessibility of Site, feasibility of renovation of existing buildings for the use of Plant, water quality and availability and all information provided by KIIDC or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. KIIDC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the DCO confirms that it shall have no claim whatsoever against KIIDC in this regard.
- 8.1.2. The DCO acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that KIIDC shall not be liable for the same in any manner whatsoever to the DCO, or any person claiming through or under any of them.
- 8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of KIIDC to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of KIIDC contained in Clause 8.1.1 and shall not in any manner shift to KIIDC any risks assumed by the DCO pursuant to this Agreement.

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

PART III: PROJECT IMPLEMENTATION AND OPERATIONS

9. PERFORMANCE SECURITY

9.1. Performance Security

9.1.1. The DCO shall, for the performance of its obligations hereunder during the Contract Period, no later than 30 (Thirty) days from the date of this Agreement, provide to KIIDC an irrevocable and unconditional guarantee from Scheduled Bank (the "Performance Security"). Until such time the Performance Security is provided by the DCO pursuant hereto and the same comes into effect, the RFP Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, KIIDC shall release the RFP Security to the DCO. The bank guarantee towards Performance Security provided shall have a validity of not less than 36 (thirty six) months. On receipt of the Performance Security as stipulated herein, KIIDC shall forthwith return the RFP Security, if not returned, to the DCO. The amount of the Performance Security shall be as follows:

(a) During the Construction Phase, for a sum equivalent to Rs 35 Lakh (Rupees Thirty Five Lakhs) only; and

(b) During the Operation Period, for a sum equivalent to two years annual lease rent, as prevailing at the start of the financial year.

9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security for the Construction Period is not provided by the DCO within the stipulated period from the date of the Agreement, KIIDC may encash the RFP Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the DCO under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the DCO, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.3. On or before the COD, the DCO shall provide fresh bank guarantee towards Performance Security to meet the criteria specified under Clause 9.1.1.(b). Upon receipt of a fresh bank guarantee, under this clause, KIIDC shall within a period of 21 days return the first performance guarantee. The DCO shall, 45 (forty five) days prior to the expiry of validity of bank guarantee provided towards the Performance Security, replace the bank guarantee with a fresh bank Guarantee in similar form or extend the validity period of the bank guarantee for a period not less than 36 (Thirty Six) months. In the event the DCO fails to extend the validity or provide fresh Performance Security or maintain the Performance Security as per stipulations herein anytime during the Contract Period, the same shall constitute a DCO Default and without prejudice to its other rights under this Agreement, KIIDC may at its discretion invoke the bank guarantee submitted with KIIDC provided towards Performance Security.

9.2. Appropriation of Performance Security

9.2.1. Upon the occurrence of a DCO Default or failure to meet any Condition Precedent, KIIDC shall, without prejudice to its other rights and remedies hereunder is entitled to in cash and appropriate the relevant amounts from the Performance Security as Damages for such DCO Default or failure to meet any Condition Precedent. Upon such encashment and

appropriation of the Performance Security, KIIDC shall grant a period of 30 (thirty) days to the DCO to provide either a fresh Performance Security or replenish, through another guarantee, the part amount so encashed failing which KIIDC shall, notwithstanding anything contained in this Agreement relating to Termination, be entitled to Terminate this Agreement in accordance with Article 17.

9.3. Release of Performance Security

9.3.1. The Performance Security shall remain in force and effect from the date of the Agreement till 60 (sixty) days after the Termination Date except in the event of Termination of the Agreement due to DCO Default, wherein KIIDC shall forfeit the Performance Security. In the event of Termination upon KIIDC Default or Termination under Force Majeure, subject to deduction of dues payable to KIIDC including Damages and compensation, the Performance Security shall be returned within a period of 60 (sixty) days from the Termination Date.

10. PROJECT IMPLEMENTATION

10.1. Project Site

10.1.1. KIIDC shall arrange for the site for the Project for PDW Plant under long term lease of period not less than Contract Period from the GoK or any other agency.

10.1.2. KIIDC shall charge lease rent to operate and maintain charges from the DCO as per the contract agreement entered between the KIIDC and DCO for the Project Site. The obligation of the DCO to pay above rent shall start from the date of commercial operation of the plant.

10.1.3. KIIDC shall ensure that the Project Site is vacant and free from encumbrances and encroachment. The DCO shall arrange infrastructure facilities including approach road, power supply, bore well and/ or associated pipe line for raw water, sewerage facility etc

10.1.4. KIIDC shall arrange for permission from GoK only, if required. In case of change of site after tender opening and before commencement date, KIIDC will initiate compensatory mechanism towards additional expenditure of road and electricity line on mutually agreed terms & conditions.

10.1.5. On or after the date of this Agreement, KIIDC and DCO shall jointly carry out test of the ground water with respect to its availability and quality. The DCO shall review the results and provided it is satisfied, the DCO shall convey its satisfaction with the quality and availability of water. If the DCO is not satisfied, it shall convey, in writing the same to KIIDC in which case KIIDC can call for a second test at the cost of KIIDC. If in the opinion of the DCO the situation is a Water Force Majeure, it shall have the right to call for Termination under Clause 15.8.1.

10.1.6. After the issue of Letter of Intent, KIIDC shall, on written request of the DCO, allow temporary access to DCO to carry out surveys and tests on the Site for the purpose of the design and engineering of the PDW Plant.

10.2. Obligations prior to commencement of construction

10.2.1. Upon signing of this Agreement, KIIDC shall provide reasonable access to the DCO to carry

out surveys and such investigations as required, including those related to availability and quality of water at the Site.

- 10.2.2. Prior to the commencement of Construction Works, KIIDC and the DCO shall undertake and comply with all Condition Precedents as stipulated under Clause 4.1.3. Each Party shall satisfy that the Condition Precedent has been satisfactorily satisfied by the other Party.
- 10.2.3. Subject to Clause 4.2.2, upon satisfactory fulfillment of all Conditions Precedent by the DCO and itself, KIIDC shall issue a Letter of Commencement to the DCO to start the Construction Works on the Site. The date of the issue of Letter of Commencement shall be the Commencement Date.

10.3. Construction of Project

- 10.3.1. On receipt of the Letter of Commencement from KIIDC and on and after the Commencement Date, the DCO shall commence Construction Work for the PDW Plant as per the Construction Plan and in conformity with the Standards and Specifications and the Applicable Permits procured.
- 10.3.2. The DCO shall submit the Designs and Drawings along with the a construction plan specifying its construction methodology, procurement, engineering and construction plan, construction time schedule and quality assurance procedures (together “Construction Plan”) for the PDW Plant to the KIIDC complying with the laid down standards and all Applicable Permits procured by it. In the event the Engineer and/or KIIDC seeks clarifications and/or suggests modification, if any, to the Construction Plan, the DCO shall satisfy the Engineer and/or KIIDC on the issues raised, including making suitable modification in its Construction Plan as required.
- 10.3.3. The DCO shall complete the Construction Works within the period between the Commencement Date and the Scheduled Commercial Operation Date.
- 10.3.4. The design, procurement and construction of the PDW Plant undertaken by the DCO shall be in complete compliance with the laid down standards. The DCO shall be solely liable for compliance of all requirements related to the PDW Plant as per the Standards and Specifications.
- 10.3.5. The DCO shall undertake all necessary measures for the project implementation, including appointment of personnel, contractors, procurement of equipment and material and procurement of permits and arrangement of finances in timely manner for carrying out the construction Work of the PDW Plant.
- 10.3.6. The design, installation and construction of the PDW Plant shall be in compliance with the applicable regulations and Good Industry Practice, including but not limited to regulations applicable to seismic zones, environment, fire and safety. The DCO shall be solely liable for compliance of such requirements. The DCO shall seek permission and approvals, as required, from respective Government Instrumentalities in these aspects.
- 10.3.7. The DCO shall take all safety measures required under Applicable Laws and as expected as per Good Industry Practice. The DCO shall be solely responsible for maintaining safety at the Project site.
- 10.3.8. KIIDC and/or Engineer shall have the right, but not the obligation, to review the submissions related to Construction Plan and other aspects related to the Construction Work of the PDW Plant and provide comments, if any. KIIDC and the Engineer shall

endeavour to provide its observation and comments, if any, within a reasonable time so as not to adversely impact the project implementation schedule. The DCO, on its parts, should at least ensure that KIIDC and Engineer is provided a reasonable time, being not less than 14 working days, for review and response on its submissions. Such submissions shall not relieve or absolve the DCO of its obligations and liabilities hereunder in any manner whatsoever.

10.4. Appointment of Contractors

- 10.4.1. In order to fulfill the objectives of this Agreement, the DCO may appoint any person as Contractor, at its own cost and risk, for any works relating to the Construction Work and O&M of the Project; provided further such person(s) are capable of discharging the obligations under this Agreement for and on behalf of the DCO.
- 10.4.2. The DCO shall ensure that its obligations, which are relevant to the scope of work of a Contractor, pursuant to this Agreement are incorporated in the terms and conditions under which any Contractor is retained.
- 10.4.3. Prior to appointment of contractor for any substantial work, the DCO shall inform KIIDC of the appointment and the qualification of such contractors. KIIDC shall have the right, but not the obligation, to review the submissions related to the qualification of the contractors.
- 10.4.4. The appointment of Contractors shall not in any way relieve the DCO of its obligations as set out in this Agreement and KIIDC's consent to the appointment of such Contractors shall not impose any obligation or liability whatsoever on KIIDC in this respect.

10.5. Fortnightly progress reports

- 10.5.1. During the Construction Period, the DCO shall, no later than 3 (three) days after the close of each fortnight, furnish to KIIDC and the Engineer a fortnightly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Engineer.

10.6. Inspection

- 10.6.1. During the Construction Period, the Engineer shall inspect the Project at least once a month and make a report of such inspection (the "Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Standards and Specifications. It shall send a copy of the Inspection Report to KIIDC and the DCO within 7 (seven) days of such inspection and upon receipt thereof, the DCO shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Engineer shall not relieve or absolve the DCO of its obligations and liabilities hereunder in any manner whatsoever.

10.7. Tests

- 10.7.1. For determining that the Construction Works conform to the standards, the Independent Engineer shall require the DCO to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The DCO shall, with

due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Engineer.

10.7.2. In the event that results of any tests conducted under this Clause 10.7.1 establish any defects or deficiencies in the Construction Works, the DCO shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf.

10.8. Completion Certificate

10.8.1. At least 30 (thirty) days prior to the likely completion of the Project, the DCO shall notify the Engineer, with a copy to KIIDC for its information, of its intent to subject the PDW Plant to pre-commissioning tests. The date and time of each of the Tests shall be determined by the Engineering consultation with the DCO, and notified to KIIDC who may designate its representative to witness the Tests. The tests shall comprise test of quality of PDW, verification of capacities and confirmation with general standards.

10.8.2. Upon the DCO materially satisfactorily meeting the requirements of product quality, capacity and confirmation with standards, KIIDC shall issue to the DCO a certificate (“Completion Certificate”) for meeting the construction related requirements.

10.8.3. In the event, the DCO falls short on meeting certain requirements as per laid down standards which in the opinion of KIIDC / Engineer shall not affect the operations of the PDW plant, the Engineer / KIIDC shall not withhold the Completion Certificate provided the DCO assures to make good the shortfall within a reasonable time.

10.9. Entry into Commercial Service

10.9.1. The construction and development of the Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Clause 10.8.2, and accordingly the Commercial Operation Date (the “COD”) of the Project shall be the date on which such Completion Certificate is issued.

10.9.2. The obligations of the Parties relating to the Operation Period shall commence from the day of Commercial Operation Date.

10.10. Damages due to delay in Project Completion

10.10.1. Subject to any of the provisions of this Agreement providing excuse from performance, as the case may be, of any of the obligations of the DCO under this Agreement, including in case of occurrence of Force Majeure Event or due to material breach of the provisions of this Agreement by KIIDC, the DCO shall pay to KIIDC Damages at the rate of 0.5% (zero point five percent) of Capital Support (i.e. Rs. 4.8 crore) per week and part thereof for delay in completion of the Project beyond the SCOD, subject to a maximum of 10% (ten percent) of Capital Support. The Parties agree that the Damages as provided is a genuine pre-estimate of the damages KIIDC is likely to suffer and is not by way of a penalty. In case the delay exceeds 180 (one hundred and eighty) days KIIDC shall be entitled to terminate this Agreement and the consequences of Termination as laid down in Article 18 shall apply.

11. OPERATION AND MAINTENANCE

11.1. Provision of manufacturing Services

- 11.1.1. During the Operation Period, the DCO shall produce and bottle PDW at the PDW Plant exclusively for KIIDC or its assignees. The PDW shall be bottled in Jar/Can in such sizes and shapes as specified by KIIDC on an ongoing basis. Each bottle shall be labeled using automatic labeling machine and plastic shrink-wrapped, or similarly packaged, in bundles as specified by KIIDC.
- 11.1.2. During the Operation Period, shall provide all Manufacturing Services as per stipulated under Clause 5.1.3.(c) and other related obligations under this Agreement.
- 11.1.3. Within the PDW Plant, the DCO shall provide covered storage facility for maintaining stock of packaged PDW equivalent to one weeks demand, as per instructions of KIIDC in this regard.
- 11.1.4. The PDW produced by the PDW shall at all times meet the water quality requirement as per BIS specification IS 14543: 2004, as periodically revised or replaced by the Bureau of Indian Standards and Food Safety and Standards Rules as stipulated by the Government and applicable on PDW.
- 11.1.5. The DCO shall at all times have a fully-staffed house lab at the PDW Plant to test water quality during each of the stages of water treatment and ensure that the final product complies to quality norms given in BIS specification IS 14543: 2004. DCO shall allow authorized person(s) of KIIDC free entrance at all times during the Operation Period and to carry out such quality tests as reasonably required to ascertain the quality of water.

11.2. Maintenance requirements

- 11.2.1. The DCO shall procure that at all times during the Operation Period, the PDW Plant conforms to maintenance requirements set forth in the laid down Performance Standards, maintenance manual of machinery/equipment suppliers and in conformance with Good Industry Practice.

11.3. Property right on the “Hill Aqua” Brand

- 11.3.1. The ownership right of the “Hill Aqua” brand or any other brand of KIIDC shall at all times be with KIIDC and the DCO shall not commercially or otherwise exploit the brand.

12. MONITORING AND INSPECTION

12.1. Monitoring and Inspection

- 12.1.1. KIIDC’s representative or nominee and/or the Engineer shall periodically conduct quantity and quality test sat the PDW Plant and examine the records and visit the PDW Plant including the Quality Lab.
- 12.1.2. KIIDC may at its discretion deploy a team of its personnel or representatives or nominees at the PDW Plant including the Quality Lab on a permanent basis to carry out monitoring and inspection activities.
- 12.1.3. The DCO shall cooperate with KIIDC’s representative and provide reasonable facilities including work space to carry out such monitoring and inspection activities.
- 12.1.4. The DCO, at its own cost, shall to provide KIIDC such information and records

and copies thereof, including quantity and quality related records, as may reasonably be requested for by KIIDC during the course of such inspection.

12.2. Implementation of findings of KIIDC

Based on its inspection, KIIDC shall communicate to the DCO its findings. The DCO shall discuss with KIIDC its findings and corrective steps required. Based on agreement on the matter with KIIDC and the Engineer, the DCO shall take all such steps to correct the deficiencies. Such submissions shall not relieve or absolve the DCO of its obligations and liabilities under this Agreement in any manner whatsoever.

13. PAYMENT

13.1. Payment of Rent

13.1.1. DCO shall make payment of the Lease Rent for the land and buildings provided by KIIDC under lease as per the following schedule.

| Year | Amount of Annual Lease Rent | Monthly Lease Rent to be paid |
|------|-----------------------------|-------------------------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| 6 | | |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |

13.1.2. The Lease Rent shall be paid by DCO to KIIDC before 10th of every succeeding month. In case of late payment, an interest @12 % per annum will be charged.

13.1.3. The DCO shall pay the applicable GST/Taxes on the lease rent over and above the rent specified herein above.

13.2. Mode of Payment

13.2.1. The KIIDC hereby expressly authorizes DCO to pay all the dues under this Article 13,

including any taxes and any other payment which becomes payable by the DCO to the KIIDC under this Agreement directly by the credit to the Designated Bank Account as per written declarations of the KIIDC. The DCO shall to the extent of the payment so made be relieved and discharged of all its obligations in respect of such payments under this Agreement.

13.3. Security Creation by DCO

13.3.1. KIIDC shall allow creation of security creation by the DCO on the assets and its bank account under the Financing Documents, provided the same shall not increase the financial liabilities as contemplated by KIIDC under this Agreement.

14. INSURANCE

14.1. Insurance during Contract Period

The DCO shall effect and maintain at its own cost, during the Contract Period, such insurance as may be required under the Financing Documents, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The DCO shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on KIIDC as a consequence of any act or omission of the DCO during the Contract Period.

14.2. Evidence of Insurance Cover

The DCO shall furnish to KIIDC notarized copy of certificates of insurance policies procured by the DCO along with evidence of premia paid on such policies for the PDW Plant and the stock.

14.3. Remedy for failure to insure

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

14.4. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the DCO pursuant to this Article 14 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under against, inter alia, KIIDC, and its assigns, successors, undertakings and affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

14.5. DCO's waiver

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

PART IV: FORCE MAJEURE AND TERMINATION

15. FORCE MAJEURE

15.1. Force Majeure Event

As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 15.2, 15.3 and 15.4 respectively hereinafter which prevent the Party claiming Force Majeure (the “Affected Party”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) which are of incapacitating nature impairing the Affected Party’s ability to carry out its obligation under this Agreement, (iii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and following good Industry practice and (iv) has a Material Adverse Effect on the Affected Party.

15.2. Non Political Force Majeure Events

For purposes of Clause 15.1, Non-Political Events shall mean one or more of the following acts or events:

- (a) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire to the extent originating from a source external to the Site or beyond design specifications for the Construction Works) or landslide;
- (b) Radioactive contamination or ionizing radiation;
- (c) Strikes or boycotts (other than those involving the DCO, Contractors or their respective employees/representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a period exceeding a continuous period of 21 (twenty one) days in a Financial Year, and not being an Indirect Indian Political Event set forth in Clause 15.3 hereof;
- (d) Any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the DCO by or on behalf of such Contractor;
- (e) Any event or circumstance of a nature analogous to any of the foregoing;
- (f) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; and
- (g) Drop in availability of ground water or contamination of ground water such that the same cannot be used for production of PDW after treatment in line with specification of BIS (“Water Force Majeure Event”).

15.3. Indirect Political Force Majeure Events:

For Purposes of Clause 15.1, Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents the Affected party from performing any of its obligations for a continuous period of not less than 21 (twenty one) days from the date of its occurrence.
- (b) Industry wide or state wide or nationwide strikes or industrial action which prevent the Affected party from performing any of its obligations for a continuous period of not less than 21 (twenty one) days from the date of its occurrence; or
- (c) Any civil commotion, boycott or political agitation which prevents the Affected Party from performing any of its obligations for an aggregate period exceeding 15 (fifteen) days in a Financial Year;
- (d) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the DCO by or on behalf of such Contractor; or
- (e) Any Indirect Political Event that causes a Non-Political Event; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

15.4. Political Force Majeure Events

For purposes of Clause 15.1, Political Event shall mean one or more of the following acts or events by or on account Government Of India (GOI), Government of Kerala (GoK), KIIDC, or any other Governmental Agency:

- (a) Change of Law;
- (b) Expropriation or compulsory acquisition by any Government, any agency of Project Assets or rights of the DCO or of the Contractors; or
- (c) Unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the DCO or any of the Contractors to perform their respective obligations under the Project Agreement (other than a consent the obtaining of which is Condition Precedent) provided that such delay, modification, denial, refusal or revocation did not result from the DCO's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.
- (d) Any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the DCO by or on behalf of such Contractor;
- (e) Cancellation of License on Project Site by GoK or KIIDC; or
- (f) Any event or circumstance of a nature analogous to any of the foregoing.

15.5. Duty to Report:

15.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) The nature, extent and Material Adverse Impact of each Force Majeure Event which is the subject of any claim for relief under this Article 15 with evidence in support thereof;

- (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) The measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
- (d) Any other information relevant to the Affected Party's claim.

15.5.2. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party and Independent Engineer and Auditor in writing of the occurrence of the Force Majeure event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligation under this Agreement.

15.5.3. For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 15.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

15.6. Effect of Force Majeure Event on the Contract

15.6.1. Upon the occurrence of any Force Majeure Event prior to the Commencement date, the period set forth in Clause 4.1.2 for fulfilling Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Events.

15.6.2. At any time after the signing of this Agreement, if any Force Majeure Event occurs:

- (a) Before issue of Letter of Commencement as per Clause 10.2.3, on account for Water Force Majeure, Termination of this Agreement as the discretion of the DCO; or
- (b) Before COD, the Contract Period and the SCOD shall be extended by a period equal in length to the duration for which such Force Majeure Event other than Water Force Majeure Event subsists; or
- (c) After COD, whereupon the DCO is unable to provide Services under this Agreement, the DCO shall suspend the Services under this Agreement.

15.7. Allocation of costs arising out of Force Majeure

15.7.1. Upon occurrence of any Force Majeure Event prior to the Commencement Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof;

15.7.2. Upon occurrence of a Force Majeure Event after the Commencement Date, the costs incurred and attributable to such even and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows :

- (a) Upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to other Party any costs thereof;
- (b) Upon occurrence of an Indirect Political Event or Water Force Majeure Event, the Parties shall bear their respective Force Majeure Costs and KIIDC shall one-half of the Force Majeure Costs thereof;

- (c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by KIIDC to the DCO.

For avoidance of doubt, Force Majeure Costs shall not include any debt related obligations but shall include additional O&M Expenses and all other costs directly attributable to the Force Majeure Event over and above the expenses incurred in relation to normal operations and which cannot be avoided.

- 15.7.3. Save and except as expressly provided in this Article 15 , neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

15.8. Termination due to Force Majeure Event

- 15.8.1. In the event of Water Force Majeure Event, prior to issue of Letter of Commencement, the DCO may at its discretion terminate this Agreement with no liability of any Party to the other. KIIDC shall forthwith return to the DCO RFP Security or Performance Security submitted by the DCO under the terms of the Request of Proposal or this Agreement.
- 15.8.2. Post issue of Letter of Commencement, if the period of Force Majeure continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) days be entitled to terminate this Agreement subject to provisions of Clauses 15.9.

15.9. Termination Payment for Force Majeure Events:

- 15.9.1. Upon Termination of this Agreement pursuant to Clause 15.8.2, Termination Payment of the DCO shall be made in accordance with the following in addition to returning the RFP Security and /or Performance Security provided by the DCO if the same has not been returned by KIIDC:
- (a) If the Termination is on account of a Non-Political Event other than Water Force Majeure, KIIDC shall pay to the DCO 90 (ninety) percent of Debt Due less Insurance Cover;
 - (b) If the Termination is on account of Water Force Majeure, KIIDC shall pay to the DCO 50 (fifty) percent of Debt Due less insurance cover less realised value of the Project Asset;
 - (c) If the Termination is on account of an Indirect Political Event, KIIDC shall 100 (one hundred) percent of Debt Due and 110 (one hundred and ten) percent of Adjusted Equity less Insurance Cover;
 - (d) If the Termination is on account of a Political Event, KIIDC shall make a Termination Payment to the DCO in an amount equal that would be payable under the Clause 17.3.2 as if it were an KIIDC Default.
- 15.9.2. Provided KIIDC shall be entitled to deduct from the Termination Payment any amount

due and recoverable by KIIDC from the DCO as on the Termination Date.

15.9.3. Subject to Clause 15.10, the DCO hereby expressly agrees that the Termination Payment under this Clause 15.9 shall constitute full and final settlement of all claims of the DCO on account of Termination of this Agreement due to Force Majeure events and that the DCO or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

15.9.4. On payment of Termination Payment, the ownership of all the assets of the DCO relating to the PDW Plant shall be transferred to KIIDC with immediate effect. The DCO shall execute all such documents as required for the purpose.

15.10. Excuse from performance of obligations

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

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

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

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

16. EVENTS DEFAULT AND COMPENSATION FOR BREACH

16.1. DCO's event of Default (DCO Default)

16.1.1. Subject to Article 15, the DCO shall be deemed to be in material default or breach of this Agreement ("DCO Default") in the event of any of the following:

(a) Failure to meet Conditions Precedent set forth in Clause 4.1.3 within the stipulated time;

(b) Failure to meet project timelines as stipulated under this Agreement;

(c) The Project Site is abandoned for more than 90 (ninety) days during the Construction Period;

(d) The Performance Security is not maintained in terms of the provisions hereof;

(e) Material Breach with regard to Operation and Maintenance the PDW Plant as per Standards and Specifications ;

(f) Material and persistent Quality and Quantity shortfall in PDW ;

(g) Material and persistent failure in marketing and selling Services as per the terms of this Agreement;

- (h) Any representation made or warranties given by the DCO under this Agreement is found to be false or misleading;
- (i) Failure to maintain adequate insurance cover;
- (j) The DCO passing a resolution for voluntary winding up;
- (k) Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the DCO by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- (l) The DCO abandons or expresses its intention to revoke / terminate this Agreement without being entitled to do so as is expressly provided in the Agreement ;
- (m) Change in ownership other than as permitted under Clause 5.3;
- (n) The DCO has been, or is in the process of being liquidated, dissolved, wound- up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of KIIDC, a Material Adverse Effect;
- (o) A material default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on KIIDC;
- (p) Other such events as specified in the Agreement.

16.2. Default by KIIDC

- 16.2.1. Subject to Article 15, KIIDC shall be deemed to be in breach of this Agreement (“KIIDC Default”) in the event of any of the following:
- (a) Material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the DCO;
 - (b) Any representation made or warranties given by KIIDC under this Agreement is found to be false or misleading;
 - (c) KIIDC repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement;
 - (d) Other such events as specified in the Agreement.

16.3. Cure Period in case of Event of Default

- 16.3.1. In the event of default under this Agreement, a Cure Period, of upto a period of 30 (thirty) days extendable, at the discretion of Affected Party, by another 30 (thirty) days from the occurrence of an event of default, unless otherwise expressly specified for a breach under this Agreement, shall be provided by the Affected Party to the Party at default to cure the default.
- 16.3.2. In the event of default under this Agreement is not cured before the expiry of the Cure Period provided for the same under this Agreement and the default continues such that the operations cannot be carried out normally and the default has Material Adverse Effect on the Affected Party, in such a case the Affected Party may call for termination of the Agreement.

16.4. Compensation for default by the DCO

- 16.4.1. Subject to the provisions of Clause 16.6, in the event of the DCO being in material

default or breach of this Agreement, it shall pay to KIIDC by way of Damages, losses, all direct costs and compensation suffered or incurred by KIIDC as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by KIIDC. Without prejudice to whatever is stated herein above, KIIDC shall have the right to adjust the Damages etc., payable as stated herein from the payment, if any, due to DCO under this Agreement and/or Performance Security.

16.5. Compensation for default by KIIDC

16.5.1. Subject to the provisions of Clause 16.6, in the event of KIIDC being in material default or breach of this Agreement at any time after the Commencement Date, it shall pay to the DCO by way of Damages, losses and all direct costs suffered or incurred by the DCO as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable under this Clause for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

16.6. Mitigation of costs and damage

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

17. TERMINATION

17.1. Termination for DCO Default

17.1.1. Without prejudice to any other rights or remedies which KIIDC may have under this Agreement, upon occurrence of a DCO Default and failure of the DCO to cure the DCO Default within the Cure Period, KIIDC shall be entitled to terminate this Agreement by issuing a Termination Notice to the DCO. The Termination under this Article shall be effective 7 days from the issue of Termination Notice (“Termination Date”).

17.2. Termination for KIIDC Default

17.2.1. Without prejudice to any other right or remedy which the DCO may have under this Agreement, upon occurrence of an KIIDC Default and failure of KIIDC to cure KIIDC Default within the Cure Period, the DCO shall, be entitled to terminate this Agreement by issuing a Termination Notice to KIIDC. The Termination under this Article shall be effective 7 days from the issue of Termination Notice.

17.3. Termination Payment

- 17.3.1. In case of termination of this Agreement by the DCO for DCO Default pursuant to Clause 17.1.1 any time after the issue of Letter of Commencement, KIIDC shall pay the DCO 90% of Debt Due as on the date of Termination Notice. However, KIIDC shall invoke the Performance Security provided by the DCO under this Agreement.
- 17.3.2. In case of termination of this Agreement by the DCO for an KIIDC Default pursuant to Clause 17.2.1 any time after the issue of Letter of Commencement, KIIDC shall, after adjusting any amount due to KIIDC under Article 13, pay the DCO the sum of (a) the Debt Due and (b) the 150% of Adjusted Equity. KIIDC shall return the Performance Security and Additional Bank Guarantee to the DCO if it has not already been returned.
- 17.3.3. The DCO hereby expressly agrees that the Termination Payment, if any, under this Article 17 shall constitute full and final settlement of all claims of the DCO on account of Termination of this Agreement for any reason whatsoever and that the DCO or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

17.4. Other rights and obligations of KIIDC

- 17.4.1. Upon Termination for any reason whatsoever, KIIDC shall:
- (a) Be deemed to have taken possession and control of the PDW Plant forthwith
 - (b) Take possession and control of all materials, stores, implements, construction plants and equipment
 - (c) Be entitled to restrain the DCO and any person claiming through or under the DCO from entering upon the Site or any part of the PDW Plant
 - (d) Require the DCO to comply with the Divestment Requirements set forth in Clause 18.1; and
 - (e) succeed upon election by KIIDC, without the necessity of any further action by the DCO, to the interests of the DCO under such of the Project Agreements as KIIDC may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date KIIDC elects to succeed to the interests of the DCO. For the avoidance of doubt, the DCO acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the DCO and such Contractors, and KIIDC shall not in any manner be liable for such sums. It is further agreed that in the event KIIDC elects to cure any outstanding defaults under such Project Agreements, the amount expended by KIIDC for this purpose shall be deducted from the Termination Payment.

17.5. Survival of rights

- 17.5.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 17.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its

right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

18. DIVESTMENT OF RIGHTS AND INTERESTS

18.1. Divestment Requirements

18.1.1. Upon Termination, the DCO shall comply with and conform to the following Divestment Requirements:

- (a) Notify to KIIDC forthwith the location and particulars of all assets of PDW Plant, include PDW stock;
- (b) Deliver forthwith the actual or constructive possession of the PDW Plant, free and clear of all Encumbrances, and hand over all the PDW stock;
- (c) Cure all assets of the PDW Plant of all defects and deficiencies so that the PDW Plant is in reasonably good condition; provided that in the event of Termination prior the scheduled Termination Date, the PDW Plant shall be handed over on “as is where is” basis after bringing them to a safe condition;
- (d) Deliver and transfer relevant records, reports, Intellectual Property and other licenses and building permits pertaining to the PDW Plant and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete “as built” Drawings as on the Transfer Date. For the avoidance of doubt, the DCO represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the PDW Plant and shall be assigned to KIIDC free of any encumbrance;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) Execute such deeds of conveyance, documents and other writings as KIIDC may reasonably require for conveying, divesting and assigning all the rights, title and interest of the DCO in the PDW Plant, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to KIIDC, absolutely unto KIIDC or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the DCO in the PDW Plant, free from all Encumbrances, absolutely unto KIIDC or to its nominee.

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

18.2. Inspection and cure

18.2.1. Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, KIIDC the Independent Engineer shall verify, after giving due notice to the DCO of the time, date and venue of such verification, compliance by the DCO with the maintenance requirements, and if required, cause appropriate tests to be carried out at the DCO's cost for this purpose. Defaults, if any, in the maintenance requirements shall be cured by the DCO at its cost and the provisions of Article 5 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 19.

18.3. Cooperation and assistance on transfer of Project

18.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the PDW Plant in accordance with the provisions of this Agreement.

18.3.2. The Parties shall provide to each other, six (months) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the PDW Plant and the PDW Stock following the Transfer Date. The DCO shall further provide such reasonable advice and assistance as KIIDC, its DCO or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

18.4. Vesting Certificate

The divestment of all rights, title and interest in the PDW Plant shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and KIIDC shall, without unreasonable delay, thereupon issue a certificate which will have the effect of constituting evidence of divestment by the DCO of all of its rights, title and interest in the PDW Plant, and their vesting in KIIDC pursuant hereto at no additional cost beyond what has been paid under the terms of this Agreement. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by KIIDC or its nominee on, or in respect of, the PDW Plant on the footing that all Divestment Requirements have been complied with by the DCO.

18.5. Divestment costs etc.

18.5.1. The DCO shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the DCO in the PDW Plant in favour of KIIDC upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the DCO in connection with such divestment shall be borne by KIIDC.

18.5.2. In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure shall apply.

18.6. Liability for defects after Termination

The DCO shall be responsible for all defects and deficiencies, other than those caused by normal wear and tear, in the PDW Plant for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies in the PDW Plant during the aforesaid period.

Part IV: Miscellaneous

19. ASSIGNMENT AND CHARGES

19.1. Restrictions on assignment and charges

19.1.1. The DCO shall not assign this Agreement to any person, save and except with the prior consent in writing of KIIDC, which consent KIIDC shall be entitled to decline without assigning any reason.

19.1.2. Subject to the provision of Clause 19.2, the DCO shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the DCO is a party except with prior consent in writing of KIIDC, which consent KIIDC shall be entitled to decline without assigning any reason.

19.2. Permitted assignment and charges

19.2.1. The restraints set forth in Clause 19.1 shall not apply to:

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

(b) Mortgages/pledges/hypothecation of goods/assets including Project Assets and their related documents of title excluding that on the Site, a charge on the Designated Bank Account of DCO, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Lenders under the Financing Documents and/or for working capital arrangements for the Project; and

(c) Liens or encumbrances required by any Applicable Law.

19.3. Assignment by KIIDC

Notwithstanding anything to the contrary contained in this Agreement, KIIDC may, after giving 60 (sixty) days' notice to the DCO, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of KIIDC, capable of fulfilling all of KIIDC's then outstanding obligations under this Agreement.

20. LIABILITY AND INDEMNITY

20.1. General Indemnity

- 20.1.1. The DCO will indemnify, defend, save and hold harmless KIIDC and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “KIIDC Indemnified Persons”) against all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the DCO of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the DCO or from any negligence of the DCO under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of KIIDC Indemnified Persons.
- 20.1.2. KIIDC will indemnify, defend, save and hold harmless the DCO against defect in title and/or rights of KIIDC in the land comprised in the Site, any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by KIIDC of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the DCO of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the DCO, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the DCO.

20.2. Indemnity by the DCO

- 20.2.1. Without limiting the generality of Clause 20.1, the DCO shall fully indemnify, hold harmless and defend KIIDC and KIIDC Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) Failure of the DCO to comply with Applicable Laws and Applicable Permits;
 - (b) Payment of taxes, levies, fees and any other statutory dues required to be made by the DCO in respect of the income or other taxes of the DCO’s contractors, suppliers and representatives; or
 - (c) Non-payment of amounts due as a result of materials or services furnished to the DCO or any of its contractors which are payable by the DCO or any of its contractors.
- 20.2.2. Without limiting the generality of the provisions of this Article 20, the DCO shall fully indemnify, hold harmless and defend KIIDC Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which KIIDC Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the DCO or by the DCO’s Contractors in performing the DCO’s obligations or

in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the DCO shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the DCO shall promptly make every reasonable effort to secure for KIIDC a license, at no cost to KIIDC, authorising continued use of the infringing work. If the DCO is unable to secure such license within a reasonable time, the DCO shall, at its own expense, and without impairing the Standards and Specifications, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

20.2.3. The DCO shall indemnify KIIDC against all claims whatsoever arising out of any Statute/Law in force in respect of the personnel engaged by him directly or indirectly for the Project.

20.3. No consequential claims

Notwithstanding anything to the contrary contained in this Article 20, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

20.4. Survival on Termination

The provisions of this Article 20 shall survive Termination.

21. DISPUTE RESOLUTION (ARBITRATION CLAUSE)

21.1. Dispute Resolutions

21.1.1. Any dispute, difference or controversy of whatever nature regarding the validity, interpretation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Contract between the Parties, and so notified by either Party to the other Party (the "Dispute") shall be subject to the dispute resolution procedure set out hereinafter.

21.1.2. **Direct discussion between Parties:** The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the "Notice of Dispute") sent by one Party to the other Party shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute. In the direct discussion proceedings, both the Parties shall be represented by any of its officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form the starting point of discussions between the two Parties during the

discussion proceedings.

- 21.1.3. **Reconciliation:** In the event that the parties are unable to resolve the Dispute through Direct Discussion under the Article 21.2 of the draft contract agreement, any party may make a reference to the Managing Director KIIDC to reconcile the differences and determine the rights and obligations of both the parties. The MD may further appoint a committee of 2/3 members, one of whom will be nominee of the proposer.
- 21.1.4. **Arbitration or Adjudication:** In the event that the parties are unable to resolve the Dispute through the process of reconciliation under the Article 21.2 and 21.3 of the draft contract agreement, the Parties shall submit the Dispute for arbitration in accordance with the Arbitration and Conciliation Act, 1996.
- 21.1.5. The Arbitration shall be conducted by a three member Arbitration tribunal. One member each shall be appointed by both the Parties. Such arbitrators shall be either serving Government Officers or a retired judicial officer or an officer on the panel of Indian Council of Arbitrator or KIIDC. They shall, within 30 days of their appointment, mutually decide on the name of the third arbitrator. Arbitrator proceedings shall be deemed to commence only on the first date of meeting of all the three arbitrators. The place of Arbitration shall be Thiruvananthapuram.
- 21.1.6. Any decision or award resulting from Arbitration shall be final and binding upon the Parties. The fees and expenses of the Arbitration tribunal and all other expenses of the Arbitration shall be initially borne and jointly paid by the Parties in equal proportion subject to determination by the Arbitration tribunal.
- 21.1.7. Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is made; the parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

21.2. Performance during Dispute:

Save in such cases where the dispute has arisen due to premature termination, performance of this Contract shall continue during the settlement of any Dispute under this Article 21 of the draft contract agreement. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the parties. In case of premature termination, the Project Premises shall revert back to the KIIDC.

22. MISCELLANEOUS

22.1. Governing Law and jurisdiction

This Agreement shall be construed and interpreted in accordance with the laws of India and the court at Thiruvananthapuram shall have jurisdiction over all matters arising out of or relating to this Agreement.

22.2. Waiver of immunity

22.2.1. Party unconditionally and irrevocably:

- (a) Agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) Agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) Waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) Consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

22.3. Waiver

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

- I. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- II. shall not be effective unless it is in writing and executed by a duly authorized representative of the party; and
- III. shall not affect the validity or enforceability of this Agreement in any manner.

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

22.4. Liability for review of documents and drawings

22.4.1. Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by KIIDC or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the DCO nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the DCO from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) KIIDC shall not be liable to the DCO by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

22.5. Exclusion of implied warranties etc

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

22.6. Survival

22.6.1. Termination of this Agreement

(a) Shall not relieve the DCO or KIIDC of any obligations hereunder which expressly or by implication survives Termination hereof, and

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

22.6.2. All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

22.7. Entire Agreement:

22.7.1. The Agreement and the Schedules constitutes a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valued and effective unless expressly previously approved in writing by KIIDC and executed by the person expressly authorized by a resolution of KIIDC in this behalf.

22.7.2. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the DCO arising from the Request for Proposals shall be deemed to form part of this Agreement and treated as such.

22.8. Severability

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

22.9. No Partnership

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

22.10. Third Parties

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

22.11. Successors and assigns

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

22.12. Notices

22.12.1. Any notice or other communication to be given by Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) In the case of the DCO, be given by letter delivered by hand or by registered acknowledgement due pre-paid post or speed post to the address given and marked for the attention of the person set out below or to such other person as the DCO may from time to time designate by notice to KIIDC;

(b) in the case of KIIDC, be given by letter delivered by hand or by registered acknowledgement due pre-paid post or speed post to the address given and marked for the attention of the person set out below or to such other person as KIIDC may from time to time designate by notice to the DCO.

22.13. Language

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

22.14. Counterparts

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

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

SIGNED, SEALED AND DELIVERED For
and on behalf of BY KIIDC

SIGNED, SEALED AND
DELIVERED For and on behalf of by
DCO

(Signature)

(Signature) (Name)

(Name)

(Designation)

(Designation)

In the presence of:

In the presence of:

1.

1.

2.

2.

Schedules

Schedule A: Site

The Site of the Project shall include the land, building, structures and related facilities of the PDW Plant.

The details of the land for the Site are as follows:

| | |
|---|--|
| Project Location { refer LoI } | |
| Name of the village/town / city where the land (site) is located | |
| Survey numbers of the land (site) | |
| Extent of land | |
| Details of Buildings therein including Identification numbers, extent and brief description | |
| Nearest National / State Highway and distance of the site from the same | |

Schedule B: Scope of Work & Technical Specifications:

**Schedule C: Technical Specifications covering Civil, Electrical,
PEB, Allied Works & Machines (Chapter 13-21)**