

# REQUEST FOR PROPOSAL (RFP)

## PART 2- PRINCIPLES OF MANAGEMENT CONTRACT



December 2006

## MAHARASHTRA JEEVAN PRADHIKARAN

Management Contract for operation, maintenance and repairs of Latur Water Supply Scheme including metering, billing and collection of water charges from the consumers, with water supply scheme from Dhanegaon dam, Nagzari weir, Sai weir with all pumping stations, electrical installations, WTPs, water reservoirs, connecting pipelines and distribution system including cost of all materials, energy and labour

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This agreement made on this \_\_\_\_\_ day of \_\_\_\_\_ 2007 between

MAHARASHTRA JEEVAN PRADHIKARAN, a statutory body constituted under the provisions of the The Maharashtra Jeevan Authority Act, 1976, having its head office at Express Towers, 4<sup>th</sup> Floor, Nariman Point Mumbai 400 032 through its Executive Engineer (hereinafter referred to as “MJP” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as party of One Part,

And

M/s \_\_\_\_\_ Ltd. having its registered office at \_\_\_\_\_, a company registered under the Companies Act’1956 (hereinafter referred to as “Contractor” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns) as party of the Other Part..

**WHEREAS:**

- A. The Latur Municipal Council (LMC) had vide its resolution no. 1 dated 12/11/2005 decided to handover the water supply and distribution system of Latur city to MJP for operating and maintaining it.
- B. The MJP vide its board resolution no. 4 dated 25/1/2006 agreed to take over the said water supply and distribution system of Latur city from LMC and decided to operate and maintain it through a private sector contractor.
- C. Accordingly MJP entered into an agreement with LMC on 22/2/2006 which interalia provided MJP with the authority for supplying water to Latur city as well as operate and maintain the water supply and distribution system of Latur city for a period of 30 years and charge water tariffs and collect the said revenues from the consumers.
- D. Pursuant to the agreement MJP invited Tenders from bidders vide its Tender Notice No. 5 of 2005–2006 and prescribed the commercial terms and conditions for prequalification of the bidder for the Management contract for operation, maintenance and repairs of Latur Water Supply Scheme including metering, billing and collection of water charges from the consumers, with water supply scheme from Dhanegaon dam, Nagzari weir, Sai weir with all pumping stations, electrical installations, WTPs, water reservoirs, connecting pipelines and distribution system including cost of all materials, energy and labour (hereinafter referred to as the “Project”).

- E. MJP had, pursuant thereto had qualified bidders for the Project which included the consortium comprising of ....., ....., ..... and ..... (collectively the “Consortium”) with .....as its Lead Member for undertaking, inter alia, the Project referred to in Recital ‘D’ as a Contractor.
- F. The qualified bidders were thereafter invited to bid for the Project subject to and on the terms and conditions contained in the Request for Proposal documents and the Consortium was Successful Bidder according to the evaluation criteria specified in the Request for Proposal documents selected to implement the Project.
- G. MJP accepted the Consortium’s Bid and issued its Letter of Intent No..... dated ..... (“LOI”) to the Consortium requiring, inter alia, the execution of this Agreement and submission of Performance Security for the performance of its obligations under this Agreement.
- H. The Consortium has promoted and incorporated the Contractor as a limited liability company and provided its Performance Security to enter into this Agreement pursuant to the LOI for undertaking, inter alia, the Project, as referred to in Recital D and to fulfill other obligations of the Contractor pursuant to the LOI and has requested MJP to accept the Contractor as the entity which shall undertake and fulfill and perform the obligations and exercise the rights of the Consortium under the LOI, including the obligation to enter into this Agreement for the Project.
- I. MJP has agreed to the said request of the Consortium and has accordingly agreed to enter into this Agreement with the Contractor pursuant to the LOI for, inter alia, the Project.
- J. It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.

**NOW, THEREFORE, IN VIEW OF THE FOREGOING PREMISES AND IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN SET-FORTH, BOTH PARTIES AGREE AS FOLLOWS:**

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

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

- a. "Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.
- b. "Act" means the Maharashtra Jeevan Authority Act, 1976.
- c. "Byelaws" means the Maharashtra Water Supply and Sewerage Board bye-laws, 1989.
- d. "Agreement" or "Management Contract" means this Agreement, the Schedules 'A' through 'T' hereto, the Request for Qualification (RFQ) document, Request for Proposal (RFP) document issued by MJP and any amendments thereto made in accordance with the provisions contained in this Agreement.
- e. "Applicable Laws" means all laws, promulgated or brought into force and effect by Government Of India or Government of Maharashtra including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.
- f. "Bid" means the documents in their entirety comprised in the bid submitted by the Bidder in response to the Tender Notice No. 5 of 2005-2006 in accordance with the provisions thereof.
- g. "Bid Security" means the security provided by the Bidder to MJP along with the Bid in the sum of Rs 25,63,000/- (Rupees Twenty Five Lakhs Sixty Three Thousand Only) in accordance with the Request for Proposal documents and which is to remain in force until substituted by the Performance Security.
- h. "Bidder" means the single entity/Consortium referred to in Recital 'E' above.
- i. "Company" means the Company acting as the Contractor under this Agreement.
- j. "Commencement Date" means the date 6 months from signing of the Agreement, provided always that the Commencement Date shall:

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- i. Where the Agreement is signed on the 1<sup>st</sup> day of the month, occur on the date on which the Agreement is signed.
    - ii. Where the Agreement is signed after the 1<sup>st</sup> day of the month, occur on the first day of the calendar month following the month in which the Agreement is signed.
  - k. “Consortium” shall have the meaning set forth in Recital ‘E’ above.
  - l. “Consumer” means any person getting the benefit of any water supply from the Latur Municipal Council or MJP as the case may be.
  - m. “Consortium Members” means as per the Bid in response to the Tender Notice No. 5 of 2005-2006 (i).....having its registered office at .....and having \_\_\_\_% share in the Consortium, (ii) .....having its registered office at .....and having \_\_\_\_% share in the Consortium, (iii) .....having its registered office at .....and having \_\_\_\_% share in the Consortium, and (iv) .....having its registered office at .....and having \_\_\_\_% share in the Consortium. ....is the Lead Member of the Consortium.
  - n. “Contract Period” means the period beginning from the Commencement Date and ending on the Termination Date.
  - o. “Dispute” shall have the meaning set forth in Clause 27.
  - p. “Dispute Resolution Procedure” means the procedure for Dispute resolution set forth in Clause 27.
  - q. “Document” or “Documentation” means documentation printed or in written form, tapes, discs, drawings, computer programmes, writings, reports, photographs, cassettes, or expressed in any other written, audio or visual form.
  - r. “Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Water Supply and Distribution Assets including Consumers thereof or which poses an immediate threat of material damage to any of the Water Supply and Distribution Assets.
  - s. “Encumbrances” means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such

obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Water Supply and Distribution Assets.

- t. “Executive Engineer” means such person or persons as may be authorised in writing by MJP to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of MJP under this Agreement. The Executive Engineer may delegate his powers under this Agreement for any specific job/ tasks to any other officer of MJP.
- u. “ESR” means elevated service reservoir.
- v. “Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence specified in Clause 21.
- w. “GOI” means the Government of India.
- x. “GOM” means the Government of the State of Maharashtra.
- y. “GSR” means ground level service reservoir.
- z. “Prudent Utility Practices” means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted nationally from a skilled and experienced water supply operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the Maharashtra Jeevan Authority Act, 1976 and would mean good engineering practices as prescribed by CPHEEO manual of O&M of water supply scheme which would be expected to result in the performance of its obligations by the Contractor in accordance with this Agreement, Applicable Laws, reliability, safety, environment protection, economy and efficiency.
- aa. “Governmental Agency” means Government of India, Government of Maharashtra or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Government of India or Government of Maharashtra having jurisdiction over all or any part of the Project Area or the performance of all or any of the services or obligations of the Contractor under or pursuant to this Agreement.

- bb. "Insurance Proceeds" means the proceeds of the insurance policies taken by the Concessionaire in terms of Clause 20 or otherwise.
- cc. "Latur Municipal Council" means the statutory body established under Maharashtra Municipalities Act 1965 which includes its successors and permitted assigns.
- dd. "MBR" means master balancing reservoir.
- ee. "Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.
- ff. "Project" means the Management contract for operation, maintenance and repairs of Latur Water Supply Scheme including metering, billing and collection of water charges from the consumers, with water supply scheme from Dhanegaon dam, Nagzari weir, Sai weir with all pumping stations, electrical installations, WTPs, water reservoirs, connecting pipelines and distribution system including cost of all materials, energy and labour.
- gg. "Gross Yearly Annual Demand of Raw Water" means the gross yearly annual demand for raw water in Project Area assessed based on the number of consumers, operating performance and requirements to factor in growth in consumption.
- hh. "Performance Security" shall have the meaning ascribed to it in Clause 13.
- ii. "Contractor Assets" means all physical and other assets employed by the Contractor in the Project Area as per Clause 6.2 for distribution of water.
- jj. "Discharge Certificate" shall have the meaning ascribed to it in Clause 23.
- kk. "Rs." Or "Rupees" means the lawful currency of the Republic of India.
- ll. "Specifications and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Water Supply and Distribution Assets as set forth in Schedule 'D', Schedule



O and any modifications thereof, or additions as by the Contractor and expressly approved by MJP.

- mm. “Taxes” means any Indian taxes on corporate income, Sales tax, excise duties, customs duties, Value Added Tax, Service Tax, Works contract Tax and local taxes and any impost of like nature (whether Central, State or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Water Supply and Distribution Assets, on the operation and maintenance thereof and on the Water Supply and Distribution Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.
- nn. “Termination” means the expiry or termination of this Agreement and the Contract hereunder.
- oo. “Termination Date” means the date on which this Agreement and the Contract hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.
- pp. “Termination Notice” means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement.
- qq. “WTP” means water treatment plant.
- rr. “Water Metering and Connections Regularization Plan” means the plan placed in Schedule K to regularise illegal water connections in the Project Area and install water meters, inter alia containing strategy for providing amnesty for regularising illegal water connections and installing meters within a period of 3 (three) months from its notification; strategy for penalising non compliant illegal water connections beyond the amnesty period; strategy for installing meters for existing LMC consumers; strategy for penalising non compliant consumers of LMC; strategy for jointly implementing the plan; any other strategy mutually agreed by the Contractor and MJP for increasing coverage of metered connections in the Project Area.
- ss. “Water Supply and Distribution Assets” means all physical and other assets relating to and forming a part of the Latur Water Supply and Distribution Scheme comprising of water supply scheme from Dhanegaon dam, Nagzari weir, Sai weir with all pumping stations, electrical installations, WTPs, water reservoirs, connecting pipelines and distribution system.

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

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. 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;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- d. the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- e. terms and words beginning with capital letters and defined in this 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;
- f. the words “include” and “including” are to be construed without limitation;
- g. references to “Operations and Maintenance” or “Operate and Maintain” or “O&M” include, unless the context otherwise requires, routine maintenance, periodic maintenance, breakdown maintenance, preventive maintenance, staffing and providing labour for operating the Water Supply and Distribution Assets, investigation, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the operations and maintenance;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to day shall mean a reference to a calendar day;

- j. any reference to month shall mean a reference to a calendar month;
- k. the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- l. 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 MJP hereunder or pursuant hereto in any manner whatsoever;
- m. 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;
- n. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- o. 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;
- p. the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”); and
- q. unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Contractor to MJP shall be provided free of cost and in three copies and if MJP are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

### 1.3. Measurements 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 documents and errors/discrepancies

1.4.1. The several documents forming this Agreement are to be 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:

- i. this Agreement
  - ii. all other documents forming part of this Agreement
- i.e. document at (i) above shall prevail over the documents at (ii) above.

1.4.2. In case of ambiguities or discrepancies within this Agreement the following shall apply:

- i. between two Clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other Clauses;
- ii. Between the Clauses and the Schedules, the Clauses shall prevail save as otherwise expressly set forth in Clause 1.4.1;
- iii. Between Project Information Document issued alongwith RFP and the Schedules, the latter shall prevail;
- iv. Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- v. Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- vi. Between any value written in numerals and that in words, the latter shall prevail.

## 2. CONDITIONS PRECEDENT

### 2.1. Conditions Precedent

Save and except as provided in Clauses 2, 13 and 18, the rights and obligations of the Contractor under this Agreement are subject to the satisfaction in full of the following conditions precedent to be fulfilled on or before completion of 6 (six) months unless any such condition has been waived as provided in Clause 2.2, Clause 2.5;

2.1.1. MJP shall have obtained all such Applicable Permits as listed in Schedule 'G' unconditionally on or before the completion of 1 (one) month or

if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;

2.1.2. MJP and the Contractor have jointly prepared on or before the completion of 1 (one) month an Inventory of assets comprised in the Water Supply and Distribution Assets in the form of Opening Asset Register and Opening Level of Inventory.

2.1.3. MJP shall have taken over the Water Supply and Distribution Assets from Latur Municipal Council, notified the Water Metering and Connections Drive in accordance with Schedule K on or before the completion of 1 (one) month and granted the permission to the Contractor to enter upon the Water Supply and Distribution Assets and operate and maintain it in accordance with this Agreement.

2.1.4. Contractor and MJP have satisfactorily operated and maintained the Water Supply and Distribution Assets upto the Commencement Date in accordance with Schedule K.

2.1.5. MJP shall have identified and the Contractor shall have installed water meters for atleast 25,000 Customers in the Project Area.

2.1.6. All of the representations and warranties of the Contractor set forth in Clause 17.1 are true and correct as on date of this Agreement and as on the Commencement Date;

2.1.7. The Contractor shall have submitted to MJP copies (certified as true copies by an authorised officer of the Contractor) of the constitutional documents of the Contractor;

2.1.8. The Contractor shall have submitted to MJP copies (certified as true copies by a Director of the Contractor) of all resolutions adopted by the Board of Directors of the Contractor authorising the execution, delivery and performance by the Contractor of this Agreement;

2.1.9. MJP shall have received from the Indian legal counsel of the Contractor a legal opinion with respect to the authority of the Contractor to enter into this Agreement and the enforceability of the provisions thereof;

2.1.10. The Joint Team of MJP and the Contractor shall have prepared a complete list of arrears and credit balance from Consumers that is due to MJP in accordance with Schedule K

2.1.11. The Contractor shall have submitted to MJP a security for the Payment committed in the form of irrevocable letter of credit from any nationalised bank for an amount equivalent to two months estimated amount payable to MJP by the Contractor in accordance with clause 14.1.

2.2. Any of the conditions precedent set forth in Clause 2.1, save and except condition of Sub-clause 2.1.5 thereof, may be waived fully or partially by MJP at anytime in its sole discretion.

2.3. Obligation to Satisfy the Conditions Precedent.

The Contractor and MJP shall make all reasonable endeavors to procure the satisfaction in full of the Conditions Precedent set out in Clause 2.1 above. Each Party shall bear its respective cost and expense of satisfying such Condition Precedent unless otherwise expressly provided.

2.4. If the Conditions Precedent set forth in Clause 2.1 have not been satisfied on or before the close of 6 (six) months from the date of signing the agreement and the MJP has not waived, fully or partially, such conditions under Clause 2.1, MJP may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement forthwith by issuing a Termination Notice to the Contractor and upon the issue of such Termination Notice by MJP this Agreement shall stand terminated forthwith without being liable in any manner whatsoever to the Contractor and forfeit the Bid Security and/or the Performance Security by way of Damages.

Provided that where MJP does not fulfill its obligations under Clause 2.1.1, 2.1.2 and 2.1.3 and terminates this Agreement under this Clause 2.4, it shall refund the Performance Security.

2.5. If the Condition Precedent set forth in Clause 2.1.5 have not been satisfied on or before the close of 6 (six) months from the date of signing the agreement then the Contractor and MJP shall mutually agree to extend the said Condition Precedent period by another 3 (three) months.

Notwithstanding anything to the contrary contained in the Agreement, if the Condition Precedent set forth in Clause 2.1.5 have not been satisfied on or before the close of 9 (nine) months from the date of signing the agreement and the Contractor has not waived, fully or partially, such condition under Clause 2.1.5 then MJP shall Terminate this Agreement under this Clause 2.5

and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

Upon Termination of this Agreement under this Clause 2.5, MJP shall refund the Performance Security and the Contractor will be entitled to a fixed payment of Rs. 15,00,000/- (Rupees Fifteen Lakhs only). In addition MJP shall pay the Contractor a sum calculated as per the following formula in 48 (forty eight) equal monthly instalments the cost of meters installed in the Project Area (Amount payable by MJP).

$$\text{Amount payable by MJP} = 0.75 [(d_1 \times n_1) + (d_2 \times n_2) + (d_3 \times n_3) + (d_4 \times n_4) + (d_5 \times n_5)] - [\text{CR}]$$

Where:

d = cost of meter installed in accordance with Schedule F in terms of diameter of connection.

n = number of meters installed for the said connection type

1, 2, 3, 4, 5 = 15 mm, 20 mm, 25 mm, 40 mm, 50 mm diameter of connections

CR = Cost of installed meters recovered from Consumers

### 3. TERM OF AGREEMENT

#### 3.1. Term of Agreement

The term of this Agreement, and all rights, privileges, obligations, and restrictions pertaining thereto, shall be for a period of Five (5) years from the Commencement Date.

#### 3.2. Extension of term of agreement

MJP may extend the Term of Agreement at its discretion for such period or periods subject to a maximum of 1 (one) year. MJP shall communicate the decision to extend the term of Agreement to the Contractor atleast three months prior to the expiry of the Agreement.

#### 3.3. Early Termination

Either party to this agreement shall be entitled to terminate this agreement any time before the expiration of the Term of Agreement on the occurrence of an Event of Default as set out therein in Clause 22 and elsewhere in this Agreement.

#### 3.4. Event of Abandonment

If the Contractor ceases to operate all and/or any substantial part of the Water Supply and Distribution Assets for a period of forty-eight (48) consecutive

hours without the prior written consent of MJP, then MJP or its designates shall be entitled, immediately enter any and/or all of the Water Supply and Distribution Assets and operate the System, provided however that;

An Event of Abandonment shall not have been set to occur, if the cessation of operation has resulted from -

- i. an event of Force Majeure;
- ii. a Scheduled Shutdown; or
- iii. to the extent that the Contractor is proceeding with diligence and good faith to overcome or remedy such event and such event is overcome or remedied within forty-eight (48) hours.

Without prejudice to the terms and conditions of this Agreement, all third party liabilities arising out of the Event of Abandonment shall be borne by the Contractor.

### 3.5. Survival

The expiry or termination of this Agreement shall not affect accrued rights and obligations of the parties under this Agreement, nor shall it affect any continuing obligations for which this Agreement provides, either expressly or by necessary implication, the survival of, post its expiry or termination.

## 4. GRANT OF RIGHT

4.1. Subject to the terms and conditions of this Agreement and the Act, the Contractor hereby agrees that it shall accept all the liabilities and perform all the obligations of MJP in the Project Area as stipulated in the Act, corresponding Regulations, as if they were to apply to the Contractor and other activities as stipulated in this Agreement. For providing water supply to the consumers within the Project Area, this Agreement shall give the Contractor a "Right of Use" of such assets to perform its obligation under this agreement as mentioned in the Contractor scope of work and elsewhere in this Agreement. LMC shall be the sole owner of existing Water Supply and Distribution Assets and assets procured, created and brought under Investment Plan committed by MJP during the term in Project Area and MJP is the custodian of the Water Supply and Distribution Assets.

### 4.2. Legal status of Contractor

The Contractor shall act as an agent of the Maharashtra Jeevan Pradikaran (MJP).

### 4.3. Project Area

4.3.1. The Project Area shall be the area falling within the jurisdiction of Latur Municipal Council and as identified by MJP.



4.3.2. The Project Area, in all, contains 10 ESRs, 1 GSR, 476 kms of distribution system within the jurisdiction of Latur Municipal Council.

4.3.3. The Project Area in addition contains water supply schemes from Nagzari weir, Sai weir, Dhanegaon dam, 6 pumping stations, 6 electrical installations, 3 WTPs, 2 MBR's, about 95 kms of transmission mains outside the jurisdiction of Latur Municipal Council.

#### 4.4. Effect of Acceptance

By accepting the Right and executing this Agreement, the Contractor accepts and agrees to comply with each applicable provision of this Agreement and, to the relevant provisions of the Act.

#### 4.5. Directions

Contractor shall comply with directives issued by MJP and Executive Engineer for compliance of the Applicable Laws, Regulations, Orders and Directives of Government of Maharashtra.

The Contractor shall also act, at all times, in accordance with the terms and conditions of this Agreement.

#### 4.6. Intent

It is the intent of both the parties that each party shall enjoy all rights and be subject to all obligations of this Agreement for the entire term of the Agreement and to the extent any provisions have continuing effect, after its expiration.

### **5. RIGHTS OF USE OF ASSETS**

#### 5.1. Rights of Use of Water Supply and Distribution Assets

5.1.1. MJP is the custodian of the existing Water Supply and Distribution Assets and assets procured, created and brought under Investment Plan of MJP committed under Schedule I by the MJP in Project Area.

5.1.2. MJP shall give the Contractor "Right of Use" of Water Supply and Distribution Assets to perform its obligation under this agreement. Notwithstanding to the contrary containing in this clause the ownership of the Water Supply and Distribution Assets shall always vest with the Latur Municipal Council.

5.1.3. Contractor shall use and maintain such assets at its own cost to keep them in good working condition as per Prudent Utility Practices.

5.1.4. Contractor shall not dispose off or alienate or in any way encumber such assets without prior written approval by MJP.

5.1.5. If any asset is scrapped, the same shall be given to the MJP by Contractor and shall be deposited at the Divisional Store of the MJP at Latur at the cost of the Contractor. The cost of inspection shall be borne by the Contractor.

5.1.6. The Asset Register of the Project Area jointly prepared by MJP and the Contractor shall be verified and signed by both the parties in compliance to the provisions of Clause 2.1.2.

5.1.7. On termination/ expiry of this agreement, the Contractor shall without demur hand over physical possession/ custody of such Water Supply and Distribution Assets in good working condition, subject to normal wear and tear and as per clause 5.1.5.

5.1.8. Any shortfall in the quantity of Water Supply and Distribution Assets shall be recovered from the Contractor at the cost of replacement of such asset.

5.1.9. The Contractor shall pay to MJP at mutually agreed rates for use of any services or facilities or technical assistance of MJP.

## **6. NEW CAPITAL EXPENDITURE**

### **6.1. Investment by MJP**

MJP will invest in the Project Area as per its Investment Plan by MJP specified in Schedule I for five years from the Commencement Date, in consultation with the Contractor.

### **6.2. Capital Expenditure by Contractor**

6.2.1. The Contractor shall implement capital expenditure as per the Minimum Capital Expenditure Plan by Contractor specified in Schedule J.

6.2.2. In addition the Contractor shall plan and implement capital expenditure to improve efficiencies, upgrade infrastructure etc. as is deemed necessary by him.

6.2.3. The cost of all such capital investment made under this clause 6.2 shall be borne by the Contractor.

6.2.4. The Contractor shall maintain a separate record of the Contractor Assets purchased by the Contractor with all details and particulars. It shall also make entries of these assets in the Asset Register under the category of Contractor Assets.

6.2.5. Upon termination/ expiry of this agreement the Contractor shall hand over all the Contractor Assets in Project Area to MJP in working condition subject to normal wear and tear. The Contractor shall not have a right to take back these assets. Notwithstanding anything to the contrary contained in this Agreement, MJP reserves the right to reject any or all Contractor Assets in such event the Contractor shall at the Contractor's cost and expense dismantle and take back the assets or part thereof rejected by MJP.

6.2.6. The Contractor's Assets shall be handed over to MJP free of cost and encumbrances. Prior to the transfer of Contractor's Assets MJP shall verify the following and upon satisfaction of MJP take over the Contractor's Assets.

- i. Such Assets have been physically verified by the Joint Audit Team of MJP and the Contractor and have been found to be in working order
- ii. The Contractor has furnished a Certificate of Non-encumbrance in respect of such Assets.
- iii. The title and possession of such assets has been transferred to MJP and signatures to this effect have been taken on the Asset Register.

## **7. CURRENT ASSETS**

7.1. Upon termination/ expiration of this Agreement, Contractor shall transfer a minimum level of current assets and operating spares specified in Schedule M free of cost to MJP.

## **8. CAPACITY AUGMENTATION**

Notwithstanding anything contained any where in this Agreement contrary to the provisions here below, the following are prescribed.

- 8.1. The MJP may at its sole discretion, following a detailed technical study conducted by it or due to increase in jurisdiction of Latur Municipal Council or due to rapid urbanisation and subsequent increase in population of the city, at any time after the Commencement date decide to augment/ increase the capacity of the Water Supply and Distribution Assets with a view to provide the desired level of service to the consumers.
- 8.2. The MJP shall implement capacity augmentation scheme with least disturbance to the existing Water Supply and Distribution Assets and after commissioning may call for Bids for operations and maintenance of the enhanced Project Area. Enhanced project area means the existing project area plus augmented/ increased project area.
- 8.3. The Bid document for operations and maintenance of the enhanced Project Area shall specify a Termination payment to be made to the Contractor in case the Contractor chooses not to submit its proposal or fails or declines to match the preferred offer as mentioned in Clause 8.5 below.
- 8.4. In case the Contractor after participating in the bidding procedure, fails to give the highest offer, the Contractor shall be given the first right of refusal to match the preferred offer. If the Contractor matches the preferred offer, the Parties shall enter into a suitable agreement supplemental to this Agreement to give effect to the changes in scope of the Agreement, term of Agreement and all other necessary and consequential changes. In such an event the Contractor shall pay to the bidder who had made the highest offer sum of Rs. 3 lakhs (Three Lakhs) towards bidding costs incurred by such bidder.
- 8.5. In case the Contractor (i) chooses not to submit its proposal for operations and maintenance of the enhanced Project Area (ii) is not the preferred bidder and also fails or declines to match the preferred offer, MJP shall be entitled to terminate this Agreement upon payment to the Contractor of the Termination Payment equivalent to the sum calculated as under. MJP shall refund the Performance Security and release the Letter of Credit of the Contractor after all payments due to either Parties are duly accounted for and paid.

Termination payment = Rs 15 lakhs + Cost of meters installed

$$\text{Cost of meters installed} = [(d_1 \times n_1) + (d_2 \times n_2) + (d_3 \times n_3) + (d_4 \times n_4) + (d_5 \times n_5)] - [\text{CR}]$$

Where:

d = cost of meter installed in accordance with Schedule F in terms of diameter of connection.

n = number of meters installed for the said connection type

1, 2, 3, 4, 5 = 15 mm, 20 mm, 25 mm, 40 mm, 50 mm diameter of connections

CR = Cost of meters installed recovered from Consumers

## 9. OBLIGATIONS OF THE CONTRACTOR

9.1. The Contractor shall accept all liabilities and perform all obligations of the MJP in the Project Area as an agent of MJP, in compliance with the Act, Byelaws and orders issued by Government of Maharashtra from time to time as if they were to apply to MJP. The broad scope of work is set out as under:

- i. Undertake distribution and supply of water to the Consumers in the Project Area
- ii. Undertake Operation & Maintenance of all Water Supply and Distribution Assets

### 9.2. Operations and maintenance

The Contractor shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set-out in this Agreement, the following

#### 9.2.1. Water supply

- i. The Contractor shall estimate the water supply requirements in the Project Area on a monthly basis and submit its Monthly Raw Water Abstraction and Water Supply and Distribution Plan to MJP for approval.
- ii. Provide water supply to Consumers in Project Area as per the plan approved by MJP
- iii. Provide water supply to consumers as per the service standards in Schedule H.

#### 9.2.2. Resource optimisation and conservation

- i. Contractor shall assess the Gross Yearly Demand of Raw Water for the Project Area from 1<sup>st</sup> October to 30<sup>th</sup> September of the next year and shall submit it to MJP by the end of July every year and get it approved by MJP and facilitate further submission to the Water Resources Department of GoM.
- ii. Contractor shall make all efforts to optimise the use of water and conserve resource by abstracting water from water sources at

Dhanegaon dam, Nagzari weir and Sai weir as per the approved Gross Yearly Annual Demand of Raw Water.

- iii. Contractor shall carry out energy audit at all pumping stations and water audit at the three WTPs on annual basis and submit its report to MJP for its information.
- iv. The Contractor shall undertake all necessary measures to reduce losses as recommended by the water and energy audits.

9.2.3. Operate and maintain the following:

- i. all existing Head works, i.e. Sai Head works, Nagzari Head works & Dhanegaon Head works.
- ii. all pipe lines from the above Head works to Water Treatment plants, at Arvi road, Warwanti, Harangul (Bk), Pipe lines from these Water Treatment Plants to existing reservoirs & distribution network thereafter.
- iii. water treatment plants at Arvi road, Warwanti, Harangul (Bk) and recirculation sump, recirculation and desludging pumping machinery at 80 MLD Harangul WTP.
- iv. water reservoirs comprising of 10 ESRs, 1 GSR and 2 MBRs
- v. water distribution system of around 476 kms within the Project Area
- vi. all additions to the water distribution system within Project Area made in accordance with Clause 6.1.

9.2.4. Comply with the scope of work, provide facilities, specifications and standards, collect water tariff, service levels, pay service charges for MJP/LMC employees, provide current assets and operating spares, operations and maintenance standards, provide reports, comply with Schedules B, C, D, E, F, H, J, K, L, M, N, O, P, Q, S and T of the Agreement and mentioned elsewhere in the Agreement and obtain discharge certificate.

#### 9.2.5. Compliance with standards

- i. The Contractor shall take all reasonable steps to ensure that all consumers within the Project Area receive a safe and reliable supply in accordance with Schedule H.
- ii. The Contractor shall be responsible for complying with the Act, Byelaws, MJP Standards, Regulations and other Directives as issued and modified from time to time and as applicable to any Water Supply Utility. Any penalty imposed by LMC or any other Government Authority on account of failure of the Contractor in compliance shall be borne by the Contractor.
- iii. The Contractor shall conduct its business in the manner which it considers to be best calculated to achieve the Overall Performance Standards in connection with provision of Water Supply services and the promotion of the efficient use of water by consumers.

#### 9.2.6. Consumer service

- i. The Contractor shall comply with Water Byelaws and other conditions of supply as approved and modified by MJP from time to time. Any penalty imposed by LMC or any Governmental Agency for non-compliance shall be borne by the Contractor.
- ii. The Contractor will bring to the notice of the consumers the existence of the Service Standards including its substantive revision;
- iii. The Contractor shall provide free of charge a copy of the Service Standards (and conditions of supply) as revised from time to time to each new consumer, and to any other person who requests it at a price not exceeding the cost of duplicating it.

#### 9.2.7. Consumer Complaint Handling

The Contractor shall comply with the complaint handling procedure approved by MJP. The Contractor shall:

- a. Establish Consumer Service Centres for Consumer Complaints and redressal system and keep open to public access.
- b. At each such Customer Service Centre, the Contractor shall open and maintain a register (Complaints Register) in the format prescribed in Schedule P for recording complaints by any Consumer (Complainant) at any time of the day.

- c. The Complaints Register shall be securely bound and kept in proper custody at the Consumer Service Centres. Each page of the Register shall be duly machine numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered the Complainant shall be given a receipt by such Consumer Service Centre stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns including but not limited to the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Contractor thereon.
- d. The Contractor shall inspect the Complaints Register at reasonable intervals and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Contractor shall be briefly noted in the 'Action taken' column of the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.
- e. Redress commercial and billing Complaints
- f. Make available, on demand, a copy of the complaint handling procedure, revised from time to time, for inspection by the public at each of the relevant premises during normal working hours;
- g. Provide free of charge a copy of the procedure revised from time to time to each new consumer, and to any other person who requests for it at a price not exceeding the cost of duplicating it.
- h. To comply with the Orders and Directions, if given by Consumer courts under Consumer Protection Act'1986.

#### 9.2.8. Consumer's Right to Information

The Contractor, on request of the consumer, to the extent that is reasonably available to the Contractor, shall provide:

- a. Information on all services provided by the Contractor including information on the charges, which may be applicable to the consumers
- b. Information on meter readings for the water services provided to the consumer premises by the Contractor in the Project Area;
- c. Information on the status of the consumer's account with the Contractor;
- d. The Contractor shall provide to MJP any such information as is required by it to comply with the various provisions of the Right to Information Act.'2005.
- e. The Contractor shall take all necessary steps to appoint their own Information Officer and to ensure that the provisions of Right to Information Act'2005 are duly complied.



9.3. The Contractor shall bear all expenses towards electricity energy charges for operating and maintaining Water supply and Distribution Assets, chemicals required for operating water treatment plants and water charges to be paid to Water Resources Department for lifting of raw water.

9.4. The Contractor shall bear all establishment expenses for operating and maintaining the Water Supply and Distribution Assets, including the salaries and wages of the staff deployed by the Contractor and the service charges of the MJP staff members provided to the Contractor in accordance with Schedule L.

#### 9.5. Obligation to Connect Consumers

Subject to the provisions of this Agreement, the Contractor shall have the following obligations:

- i. Subject to the provisions of the Act and Byelaws the Contractor shall, on the application of the owner or occupier of any premises within the Project Area, give supply of water to such premises within 15 days of the application requiring such supply.
- ii. The Contractor shall ensure that the Agreement for water supply connection is entered into between Executive Engineer and the Consumer prior to providing of water supply at the premises of the Consumer.
- iii. Contractor shall be responsible for incurring capital expenditure in order to provide new connections in the Project Area. Such expenditure shall be recovered from the Service Connection Charges collected from the consumers in accordance with Schedule F.
- iv. MJP shall not be responsible for payment of any shortfall in such Connection Charges required to carry out capital expenditure for providing new connections.
- v. Subject to the provisions of the Act and Byelaws the Contractor may refuse to supply, or may disconnect the supply of water to any premises.
- vi. The Contractor shall retain the Service Connection Charges collected from the consumers for giving new connections in accordance with Schedule F.

- vii. The Contractor shall collect the Security Deposit from the consumers for giving new connections, which shall be immediately transferred to MJP.

#### 9.6. Commercial Duties and Responsibilities

The Contractor shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set-out in this Agreement, the following in the Project Area:

- i. Develop a database of customers in an appropriate software technology and provide hardware and set up a billing system in accordance with Schedule D for the water consumed by the Consumers
- ii. Meter reading and billing to the consumers as per the applicable retail and bulk tariffs;
- iii. Collections from the consumers as per the billing as per the procedure set out in Clause 12.1.
- iv. Collection of arrears from Consumers due to MJP for the period prior to the Commencement Date. Upon recovery of the arrears, Contractor shall, within 7 (seven) days, provide the detail of Consumer and make such payment to MJP.
- v. Maintain consumer database and billing records

#### 9.7. Consumer Rights- Discrimination Prohibited

The Contractor shall comply at all times with all applicable Laws, Rules, and Regulations, including the terms and conditions of the Agreement relating to non-discrimination.

9.8. Maintenance shall include routine, periodic, breakdown and preventive maintenance and covers replacement of equipment/consumables, horticultural maintenance and upkeep of all Water Supply and Distribution Assets in good order and working condition.

9.9. The Contractor shall keep the Water Supply and Distribution Assets, rest areas and other Facilities in a clean, tidy and orderly condition free of litter and debris.

9.10. The Contractor shall not carry out any material modifications to the Water Supply and Distribution Assets save and except where such (i)

modification is required by Prudent Utility Practice; or (ii) modification is necessary for the Water Supply and Distribution Assets to operate in conformity with the Specifications and Standards prescribed under this Agreement. Provided that the Contractor shall notify MJP of the proposed modifications along with details thereof at least fifteen days before commencing work on such modifications and shall reasonably consider such suggestions as MJP may make within 15 (fifteen) days of receipt of such details by MJP.

9.11. The Contractor shall ensure that safety standards implemented at Head Works, Pumping Stations, Electrical Installation, Water Treatment Plants complies with safety standards prescribed under various laws (Safety Standards). The Compliance with Safety Standards will be monitored by the Executive Engineer and a breach by the Contractor of its obligations in respect of this Safety standards identified by the Executive Engineer shall be notified immediately and is required to be cured within 24 hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement. In addition, each notified breach shall lead to the award of a penalty point to the Contractor. A total of five penalty points in any continuous period of 365 days shall constitute a Non Critical Event of Default.

9.12. The Contractor shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set-out in this Agreement, the following:

- i. provide all assistance to the Executive Engineer and Technical Auditor as it may require for the performance of its duties and services;
- ii. obtain and maintain in force on and from the Commencement Date all insurance in accordance with the provisions of this Agreement and Prudent Utility Practice;
- iii. acquire such real estate, as the Contractor may deem appropriate and to indemnify and save harmless and defend MJP, and Government of Maharashtra from and against all proceedings, claims, demands, costs, expenses, losses and damages arising out of or relating to the securing of rights to use such real estate by the Contractor or any person claiming through or under the Contractor;
- iv. make timely payments to MJP as per the terms and conditions of this agreement

- v. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Contractor's obligations under this Agreement;
- vi. comply with all Applicable Laws in the performance of the Contractor's obligations under this Agreement including those being performed by any of the Contractors;
- vii. take all reasonable precautions for the prevention of accidents on or about the Water Supply and Distribution Assets and provide all reasonable assistance and emergency medical aid to accident victims;
- viii. not to place or create and nor permit any Contractor or other person claiming through or under the Agreement to create or place any Encumbrance or security interest over all or any part of the Water Supply and Distribution Assets, or on any rights of the Contractor therein or under this Agreement, save and except as expressly set forth in this Agreement;
- ix. observe and fulfill the environmental and other requirements under the Applicable Laws at Contractor's own cost and expense;
- x. be responsible for safety, soundness and durability of the Water Supply and Distribution Assets including other structures forming part thereof and their compliance with the Specifications and Standards;
- xi. after receiving possession of the Water Supply and Distribution Assets or part thereof, ensure that such site remains free from all encroachments and take all steps necessary to remove encroachments, if any
- xii. make payment to Police department or any Government Agency, if required, for provision of such services as are not provided in the normal course or are available on payment;
- xiii. indemnify the MJP against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Contractor in connection with the performance of its obligations under this Agreement;

- xiv. comply with the Transfer Requirements and hand over the Water Supply and Distribution Assets to MJP upon Termination or Expiration of the Agreement.
- xv. make all necessary arrangements for accomplishing the tasks of physical removal of the encroachments at his own cost.
- xvi. to keep in full force and effect the Performance Security deposited pursuant to the RFP in accordance with the provisions of this Agreement.

9.13. In respect of the Contractor's obligations with respect to the Approvals from MJP as set forth in clause 9.2.1, 9.2.2 and elsewhere in this Agreement the following shall apply:

- i. The Contractor shall prepare and submit with reasonable promptness and in such sequence as is consistent, three copies each of all Details and Plans to MJP for review and comments.
- ii. By forwarding the Details and Plans for review and comment to MJP, the Contractor represents that it has determined and verified that technical criteria related thereto is in conformity with the Specifications, Standards and quality set forth in this Agreement for and in respect of the Water Supply and Distribution Assets.
- iii. Within 30 (thirty) days of the receipt of the Details and Plans, MJP shall review the same and convey its comments/observations to the Contractor with particular reference to the conformity or otherwise with the Specifications and Standards set forth in this Agreement. It is expressly agreed that notwithstanding any review and comment/observations of MJP on any Details and Plans or failure of MJP to provide comments/ observations thereon, MJP shall not be liable for the same in any manner whatsoever and the Contractor shall remain solely responsible for and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement. The Contractor shall not be obliged to await the comments/observations of MJP on the Details and Plans submitted pursuant hereto beyond the period set forth hereinabove.
- iv. If the comments/observations of MJP indicate that the Details and Plans are not in conformity with the Specifications and Standards set forth in this Agreement, such Details and Plans shall be revised by the Contractor to the extent necessary and resubmitted to MJP for review, observations and comments. MJP shall give its observations and comments, if any, within 15 (fifteen) days of the receipt of such revised Details and Plans provided, however, that any observations or

comments of MJP or failure of MJP to give any observations or comments on such revised details and plans shall not relieve or absolve the Contractor of its obligation to conform to such Specifications and Standards.

9.14. Emergency De-commissioning

9.14.1. If, in the reasonable opinion of the Contractor and Executive Engineer there exists an emergency which warrants decommissioning and closure to whole or any part of the Water Supply and Distribution Assets, the Contractor shall be entitled to de-commission and close the whole or the relevant part of the Water Supply and Distribution Assets for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to Executive Engineer promptly. Executive Engineer may issue directions to the Contractor for dealing with such situations and the Contractor shall abide by such directions.

9.14.2. The Contractor shall re-commission the Water Supply and Distribution Assets or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

9.15. The Contractor shall not close any part of Water Supply and Distribution Assets for undertaking maintenance or repair works except with the prior written approval of the MJP which may delegate its authority to the Executive Engineer. Such approval shall be sought by the Contractor through a written request to be made at least 7 (seven) days before the proposed closure of part of Water Supply and Distribution Assets and shall be accompanied by particulars indicating the nature and extent of repair works and section required to be closed and the period of closure. The Contractor shall also furnish particulars indicating the minimum time required for completing such repair works. Within 5 (five) days of receiving such request, the Executive Engineer, shall grant permission with such modifications as it may deem necessary. Upon receiving such permission, the Contractor shall be entitled to close Water Supply and Distribution Assets in accordance with such permission and re-open it within the period stipulated in such permission. For any delay in re-opening such Water Supply and Distribution Assets, the Contractor shall pay Damages to MJP calculated at the rate of Rs.10,000 (Rs. Ten thousand), per day. Provided, however, that these provisions shall not apply to Emergency decommissioning under Clause 9.14

9.16. Save and except as otherwise be expressly provided in this Agreement, if the Water Supply and Distribution Assets or any part thereof shall suffer any loss or damage during the Term of the agreement, from any cause arising out of acts of omission/ commission of Contractor, the Contractor shall, at its cost and expense rectify and remedy such loss or damage or forthwith in a manner so as to make the Water Supply and Distribution Assets conform in

every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.

9.17. In the event the Contractor does not maintain and/ or repair the Water Supply and Distribution Assets or a part thereof upto and in accordance with the Operations and maintenance standards, and shall have failed to commence remedial works within 15 (fifteen) days of receipt of notice in this behalf from Executive Engineer, or the O&M Inspection Report, as the case may be, MJP shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Water Supply and Distribution Assets at the risk and cost of the Contractor and to recover the same from the Contractor. In addition to recovery of the aforesaid cost of repair and maintenance by MJP, a sum equal to 50% (fifty per cent) of such cost shall also be recovered by MJP from the Contractor as Damages.

9.18. In the event MJP does not exercise its option to undertake the required repair and maintenance after expiry of the 15 (fifteen) days period stipulated in Clause 9.17 it shall recover Damages from the Contractor for default in operating and maintaining the Water Supply and Distribution Assets in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 15 (fifteen) days and until the default is cured. The amount of Damages shall be calculated for each day of default at Rs.10,000 (Rs. One thousand) per day. Recovery of such Damages shall be without prejudice to the rights of MJP under this Agreement, including Termination thereof.

9.19. If the Contractor commences any works for curing any defects or deficiencies in the Water Supply and Distribution Assets, it shall complete such works expeditiously in accordance with Prudent Utility Practice. If such works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with Prudent Utility Practice, MJP shall recover Damages from the Contractor as if a default had occurred under Clause 9.18.

9.20. The Contractor shall not be considered in breach of its obligations under this Agreement if any part of the Water Supply and Distribution Assets is not available on account of any of the following for the duration thereof:

- i. an event of Force Majeure;
- ii. measures taken to ensure the safe use of the Water Supply and Distribution Assets except when unsafe conditions on the Water Supply and Distribution Assets occurred because of failure of the Contractor to perform its obligations under this Agreement; or
- iii. compliance with a request from MJP or the directions of any Governmental Agency the effect of which is to close all or any part of the Water Supply and Distribution Assets.

Notwithstanding the above, the Contractor shall keep all unaffected parts of the Water Supply and Distribution Assets open to use provided they can be safely operated.

9.21. The Contractor shall not assign the Agreement nor sublet the Project or any part of the Project to any person or agency.

9.22. The Contractor shall, at all times, afford access to the Site to the authorised representatives of MJP, Technical Auditors and to the persons duly authorised by any Governmental Agency having jurisdiction over the Water Supply and Distribution Assets, including those concerned with safety, security or environmental protection to inspect the Water Supply and Distribution Assets and to investigate any matter within their authority and upon reasonable notice, the Contractor shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the, operation and maintenance of the Water Supply and Distribution Assets consistent with the purpose for which such persons have gained such access to the Site.

## **10. OBLIGATIONS OF MJP**

- 10.1. MJP agrees to observe, comply and perform the following:
- i. enable access to the Water Supply and Distribution Assets, free from Encumbrances, in accordance with this Agreement
  - ii. permit peaceful use of the Water Supply and Distribution Assets by the Contractor in accordance with the provisions of this Agreement without any let or hindrance from MJP or persons claiming through or under it;
  - iii. assist and provide necessary support to the Contractor for regularizing illegal connections, disconnecting water supply of defaulting Consumers. Notwithstanding to the contrary mentioned in this subclause, MJP shall bear no financial liability for providing assistance, providing support and initiating and sustaining legal proceedings on the Consumer.
  - iv. Observe and comply with its obligations set forth in this Agreement.

## **11. PERFORMANCE MEASUREMENT**

11.1. Subject to the provisions of this agreement the Contractor will be responsible for providing the data collected at each metering point in the



system to the Executive Engineer on monthly basis for measuring the operating performance of the system.

11.2. The Contractor must meet all the following service levels mentioned in Schedule H. The formula for measuring performance standards met by the Contractor will be as under;

11.2.1. The following formula will apply for performance of the Contractor with respect to minimum service level water supply to consumers. This formula will be applied for each ESR and the connected area thereof.

$$\text{Water supplied to consumers} = [\text{Quantity measured at ESR} \times (1 - \text{Loss}\%)] - [\text{Quantity consumed by bulk consumer}]$$

$$\text{LPCD} = \frac{\text{Water supplied to Consumers}}{(\text{Household connections} \times 7)}$$

$$\text{Loss}\% = \text{Distribution Loss in accordance with Clause 11.3.}$$

The level of LPCD on a monthly basis is expected to be within the average range of 100 LPCD and under no circumstances below 80 LPCD at each ESR and the area served by the said ESR.

11.2.2. The LPCD measured at each ESR should not vary within a band of 20 LPCD on a month on month basis.

11.2.3. The losses in the system will be measured as under:

$$\text{Raw Water Transmission Losses} =$$

$$\left[ 1 - \frac{\text{Quantity of water received at WTP}}{\text{Quantity of water pumped at intake works}} \right] \times 100$$

$$\text{WTP Losses} = \left[ 1 - \frac{\text{Quantity of water discharged from WTP}}{\text{Quantity of water received at WTP}} \right] \times 100$$

$$\text{PW Transmission Losses} = \left[ 1 - \frac{\text{Quantity of water discharged from ESR}}{\text{Quantity of water discharged from WTP}} \right] \times 100$$

Where:

RW = Raw Water

PW = Pure Water

The above ratios shall be maintained as per the service standards defined in Schedule H.

- 11.3. The Contractor shall reduce the Distribution losses in incremental steps of 10% per year from the third year of operations from the Commencement Date. The Distribution Losses in the system will be measured as under:

Distribution Losses =

$$\left[ 1 - \frac{\text{Quantity of water billed in a zone}}{\text{Quantity of water discharged from ESR}} \right] \times 100$$

- 11.4. The pressure measurement in the water supply system shall involve collecting data on the amount of time taken to fill a 10 (ten) litres bucket at any connected household selected at random.

The Contractor is expected to provide water supply at a pressure that results in filling a 10 (ten) litres bucket in less than 30 (thirty) seconds from a tap nearest to the meter and with all other taps in the household kept closed.

In event the Contractor fails to comply with the pressure measurement requirements described in this Clause, a penalty of Rs. 25/ per day per complaint will be levied on the Contractor.

- 11.5. In addition the following standards will apply to the Contractor
- i. The Contractor shall provide water supply to all Consumers atleast once daily for a minimum duration of 1 (one) hour.
  - ii. 100% of all property connections (individual and shared) must be metered and computerised records of the readings must be maintained.
  - iii. 50% of Consumer meters must be read every even months and a bill for water used based on these volumetric readings must be issued to 50% of connected properties every even months by the Contractor. Balance 50% of Consumer meters must be read every odd months and a bill for water used based on these volumetric readings must be issued to 50% of connected properties every odd months by the Contractor.
  - iv. System connection requests must be fulfilled within 15 days of payment of connection fee by consumers.

- v. Consumer service and support centre must be situated at a location easily accessible to residents of the given Zone and operated on a two shift basis.
- vi. All Consumer queries and complaints to be responded to within 24 hours and redressed within 7 days of such complaint or query, except the complaints concerning low pressure or poor quality of water, which must be responded to within 12 hours and redressed within 24 hours of such complaint.
- vii. Leaks appearing at the surface must be repaired within the time period specified in Schedule H clause (E) from noticing or observing the leaks.
- viii. Collect and record data on the amount of water supplied, water billed, unaccounted for water etc and prepare a water utilisation/ loss statement on an annual basis in Accordance with the format enclosed in Schedule P.

11.6. Executive Engineer shall constantly monitor achievement of Performance Targets by the Contractor during the Term of Agreement.

## **12. BILLINGS, COLLECTIONS AND PAYMENTS**

### **12.1. Billings and Collections**

12.1.1. The Contractor shall arrange to take meter readings of the consumers and prepare computerized bills on the basis of water consumed and distributed.

12.1.2. The Contractor shall serve bimonthly bills to Consumers covering the consumption of water as recorded through the meter reading at prevailing water supply rates, and the meter rent if applicable. In addition the bills shall also include payments due to the Contractor for meter repairing and reconnection charges as applicable (Water Supply Bill).

12.1.3. The Contractor shall issue the Water Supply Bills to the Consumers within 10 (ten) days of recording the meter reading. These bills would have a maximum payment period of 30 days. The Water Supply Bill shall display the last date of payment and the Delayed Payment Charge. The Contractor is allowed to charge delayed payment interest up to 1% per month on the principal amount outstanding from the Consumers. The Contractor is not

allowed to charge delayed payment charge (interest) over the delayed payment charge.

12.1.4. In the event of any disputes for overcharging, the Consumer shall make the payment of the Water Supply Bill amount under protest and then file a complaint for redressal of his grievance.

12.1.5. The Contractors bill collection arrangements shall include arrangements with local Banks having branch offices at suitable locations in Project Area. In addition the Contractor shall make his own arrangements for Water Supply Bill collections at various locations in the Project Area.

12.1.6. The Contractor is authorised to disconnect water supply connection of any Consumer delaying payment of Water Supply Bill beyond 2 (two) months from the due date of the payment of bills subject to the following disconnection procedure adopted by the Contractor;

- i. The disconnection of water supply will be through arrears collection team (Disconnection Team) comprising of a bill collector of that zone, one fitter and labourers with necessary tools and tackles for excavation and disconnection.
- ii. The Disconnection Team shall visit the defaulting Consumer's premises and intimate the Consumer of the payments due to the Contractor as per the Water Supply Bill. The Disconnection Team shall be authorised by the Contractor to collect payments towards the pending Water Supply Bill and issue receipt for payment at the Consumer premises. Failing payment from the Consumer the Disconnection Team shall give a final warning and issue a Disconnection Notice to pay the pending Water Supply Bills within 7 (seven) days. The Disconnection Notice shall be as per the format approved by MJP it shall mention the amount due, the last date for payment and unambiguously state that the water supply connection to the Consumer premises shall be disconnected beyond the stated due date.
- iii. In event the Consumer does not pay prior to the due date mentioned in the Disconnection Notice. The Disconnection Team shall visit the defaulting Consumer and disconnect the water supply connection.
- iv. The Disconnection Team shall not disconnect water supply connection in event the Consumer makes the payment towards the pending Water Supply Bill at the time of disconnection or provides a proof of payment to the Disconnection Team.

- v. The Contractor shall reconnect the water supply connection after receiving the payments due as per the Water Supply Bill after payment of arrears and reconnection charges by the Consumers.

12.1.7. The Contractor shall collect the arrears due to MJP for the period prior to the Commencement date. The collections made by the Contractor shall be first employed towards clearing the arrears due to MJP for the period starting from April 01, 2007 till the Commencement Date.

12.1.8. Contractor shall maintain a record of total amount collected from consumers against water billed, security deposit, and taxes & duties levied as applicable and intimate the same to MJP in accordance with Clause 26.1 of this Agreement.

## 12.2. Payments to Other agencies

12.2.1. The Contractor shall make payments within the due date for bills issued by Maharashtra State Electricity Distribution Company Limited (MSEDCL) for electricity consumed at the following locations:

- i. Head works and pumping installations at Nagzari Weir, Sai Weir and Dhanegaon dam
- ii. WTPs and pumping installations at Harangul (BK), Warwanti and Arvi.
- iii. And all offices and establishments of the Contractor

12.2.2. The Contractor shall make payments within the due date for bills issued by Water Resources Department for water lifted from the Head works.

12.2.3. The bills for payment from MSEDCL and Water Resources Department will be in the name of LMC. The Contractor shall be responsible for collecting the original bills or copies thereof from the MSEDCL and Water Resources Department or LMC for making payment. The Contractor shall be responsible for payment of any charges for delayed payment and the said delayed payment charges shall not form a part of the computation of Evaluated Electricity Rate as per Clause 12.4.

12.2.4. The Contractor shall make payments to his employees, employees on service, subcontractors, suppliers and vendors within their respective payment due dates.

### 12.3. Payments to MJP

Subject to the provisions of this Agreement and in consideration of the Contractor accepting the Grant of Right and undertaking to perform and discharge its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, Contractor agrees and undertakes to pay to the MJP, a sum specified in Schedule E – Payment Schedule (the Payment).

The sum specified in Schedule E shall be paid on a monthly basis to MJP. The monthly payment due to MJP from the Contractor is specified in Schedule E for each year of operations from the Commencement Date.

In event of extension of the term of contract in accordance with Clause 3.2 the monthly payment due to MJP from the Contractor shall be equal to the highest monthly payment specified in Schedule E for the said extended term of agreement.

The Contractor shall make the payment to MJP in the following manner;

12.3.1. The MJP will raise a Demand Note on the Contractor one week prior to the completion of the month for the payment due to MJP from the Contractor.

12.3.2. The Contractor upon receipt shall take all necessary steps and ensure payment to MJP on the relevant Payment Date.

12.3.3. The Contractor shall collect and remit to MJP, the arrears from Consumers accrued during the period starting from April 01, 2007 to the Commencement Date, upon recovery of the arrears within 7 (seven) days.

12.3.4. The Contractor shall also timely remit to MJP any other charges arising from the execution of the Agreement.

12.3.5. Any delay in payment to MJP after due date shall attract a penal interest of 18% per annum quarterly compounded.

12.3.6. In case of a shortfall or default in payment by Contractor against the payment obligation, MJP may recover the same amount by encashment of Letter of Credit given by the Contractor.

12.3.7. The Contractor shall be responsible for payment of all taxes, duties, and statutory /local levies arising as a result of commercial transactions under this contract, such as, income tax, value added tax, service tax, sales tax, stamp duty etc. MJP shall not be responsible for any tax related liability, whether existing or future. However, any change in taxes/ duties/ statutory levies after the Commencement Date can be collected from consumers in Project Area through change in tariff subject to MJP's approval.

12.3.8. The Contractor shall be responsible for making payments for all penalties levied by MJP on account of non performance of its obligations as provided for in this Agreement. The said payment shall be made without demur within 30 days on receipt of letter from Executive Engineer mentioning the nature of default and the penalty levied.

#### 12.4. Compensation/ recovery for variation in electricity rates

12.4.1. The Contractor shall either receive compensation for increase in Evaluated Electricity Rate for electricity consumed or incur payment (Recovery) for reduction in Evaluated Electricity Rate for electricity consumed at the following locations (Designated Locations) in accordance with Schedule N.

- i. Head works and pumping installations at Nagzari Weir, Sai Weir and Dhanegaon dam
- ii. WTPs and pumping installations at Harangul (BK), Warwanti and Arvi.

12.4.2. The Contractor shall on a monthly basis provide a Compensation/ recovery statement to the Executive Engineer in accordance with the Computation rules for Compensation/ recovery for variation in electricity rates in Schedule N.

12.4.3. The Executive Engineer after verification of the Compensation/ recovery statement shall pass a Compensation/ Recovery order, which will be binding on the Contractor and the payment shall be made by MJP to Contractor in event of Compensation or the Contractor shall make a payment to MJP in event of Recovery within 30 days of passing such order by Executive Engineer.

12.4.4. The whole or any part of the Compensation shall be disbursed by MJP to the Contractor if and only if the Contractor is not in Material Breach of this Agreement at the time of such disbursement.

12.4.5. Notwithstanding anything to the contrary contained anywhere in this Agreement, MJP shall not pay to the Contractor for any variations, escalations on any account save and except sub - clause 12.4.1.

#### 12.5. Adjustment of arrears due to Contractor from Consumers

12.5.1. The Contractor shall receive a lumpsum payment from MJP towards the arrears due to the Contractor from Consumers on completion of the Term of Agreement.

12.5.2. The arrears due to the Contractor shall be paid by MJP at the time of issue of discharge certificate. The payment due to the Contractor for arrears shall be calculated as under:

$$\text{Lumpsum payment due to Contractor} = 0.75 \times [\text{Billed amount} - \text{Payment Collected} + \text{Amount unbilled}]$$

Where:

Billed Amount = Amount billed to the Consumers for water consumed in the last billing cycle. This amount shall not include any payments due to the Contractor for the previous billing cycles. And the Consumer is not in default of payment to Contractor for more than 2 billing cycles.

Payment Collected = Amount collected or advances collected from Consumers to be adjusted towards the amount due to the Contractor for the last billing cycle.

Amount unbilled = The amount towards water supplied to the Consumers after last billing cycle (date of last meter reading of the Consumer) till the date of completion of term of Agreement. This amount will be calculated on a proportionate basis on the consumption of previous billing cycle.

12.5.3. Notwithstanding anything inconsistent contained anywhere in this Agreement, MJP's obligation to pay under this sub clause to the Contractor shall arise subject to and only upon completion of the entire term of Agreement as per sub clauses 3.1 and 3.2 of this agreement.

### 13. PERFORMANCE SECURITY

13.1. The Consortium / Single Entity / Contractor, for due and faithful performance of the Contractors obligations during the Term of Agreement has provided to MJP Performance Security for Rs. 42,00,000/- (Rupees Forty Two Lakhs only) in the form of two separate Bank Guarantees viz. Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs. 2,00,000/- (Rupees Two lakhs only) and Bank Guarantee No. \_\_\_\_\_ dated \_\_\_\_\_ for Rs. 40,00,000 (Rupees Forty lakhs only). The Consortium / Single Entity / Contractor further agrees and undertakes to keep the bank guarantees valid



and enforceable during the Term of Agreement and Extended Term, if any subject to Clause 13.2 below. The Performance Security shall be released by MJP to the Contractor upon issuance of the Discharge Certificate by the MJP.

13.2. In the event of the Contractor being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period as granted by MJP, the MJP shall without prejudice to its other rights and remedies hereunder is entitled to encash and appropriate the Performance Security as Damages for such default. Upon such encashment and appropriation of the Performance Security, MJP shall grant a period of 15 (fifteen) days to the Contractor to provide fresh Performance Security and the Contractor shall within the time so granted furnish to MJP such Performance Security failing which MJP is entitled to Terminate this Agreement under clause 22. The provision set forth in this Clause 13.2 and Clause 13.3 shall apply mutatis-mutandis to such fresh Performance Security.

13.3. Notwithstanding anything to the contrary contained in clause 13.3, upon furnishing of fresh Performance Security in accordance with clause 13.2, the Contractor shall be granted an additional period of 60 (Sixty) days as Cure Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Contractor continuing to be in breach of the provisions of this Agreement after such Cure Period, MJP shall be entitled to terminate this Agreement under the provisions of Clause 22.

#### **14. LETTER OF CREDIT**

14.1. The Contractor shall as security for Payments to MJP under clause 12.3, provide to the MJP an irrevocable Letter of Credit from any nationalised bank for an amount equivalent to 2 (two) months amount payable to MJP by the Contractor based on Schedule E.

Without prejudice to the terms and conditions of this Agreement, the Letter of Credit shall be governed as below:

- i. The Letter of Credit shall be initially valid for a period of one year from the Commencement date.
- ii. The Contractor shall renew the Letter of Credit 15 (fifteen) days before its expiry date and furnish the same to MJP, failing which MJP shall have the right to encash the Letter of Credit.
- iii. At the beginning of each year, within one week, the amount of irrevocable Letter of Credit shall be upgraded based on Schedule E.
- iv. MJP may recover the outstanding Payment after the Payment due date by encashing the Letter of Credit.
- v. The Contractor shall, within one week of encashment of Letter of Credit by MJP, restore the same to its original level.

- vi. MJP at its own discretion may reduce the amount of Letter of Credit after one year from the Commencement Date depending upon the payment record of the Contractor.

## **15. SERVICES OF MJP AND LMC EMPLOYEES**

15.1. MJP shall provide the services of qualified staff members of MJP and LMC to the Contractor as specified in Schedule L.

15.1.1. The terms and conditions applicable for MJP and LMC employees provided on service to the Contractor shall be in accordance with Schedule L Employee Service Terms and Conditions.

15.1.2. The Contractor shall have the right to reject a maximum of 10% of employees during the term of the agreement for reasons of insubordination or unsatisfactory discharge of duties by the MJP/ LMC employees. The MJP shall replace the surrendered employee to the Contractor as per its availability.

15.1.3. The service charges of the employees on service to the Contractor shall be in accordance with Schedule L. The Contractor shall pay the fixed monthly service charges to MJP/ LMC employees from the date of signing this Agreement in accordance with Schedule K and Schedule L.

15.1.4. At the end of the Term of Agreement, the employees on service to the Contractor shall return to MJP and LMC.

## **16. CONTRACTOR'S EMPLOYEES**

16.1. The Contractor shall have the right to employ any number of personnel subject to clause 16.2 on any terms and conditions (Contractor's Employees) to discharge the day-to-day functions relating to obligations of the Contractor in Project Area.

16.2. The Contractor for the Operations and Maintenance of the Water Supply and Distribution Assets shall employ a minimum staff of 30 persons at various levels with minimum qualifications in accordance with Schedule S.

16.3. It is hereby clarified that the Contractor's employees shall not become either permanent or contract employees of MJP at any point in time during and after expiry of the term of Agreement. And the Contractor hereby agrees to indemnify MJP from all future claims and liabilities from Contractor's Employees in this regard.

**17. REPRESENTATIONS AND WARRANTIES**

## 17.1. Representations and Warranties of the Contractor

The Contractor represents and warrants to MJP that:

- i. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- iii. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- iv. It has the financial standing and capacity to undertake the Agreement;
- v. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi. It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii. All the information furnished in the Bid is, and shall be, true and correct as on the Commencement Date and the Balance Sheet and Profit and Loss Account of the Contractor for each of its Accounting Years after the Commencement Date furnished to MJP shall give true and fair view of the affairs of the Contractor;
- viii. It shall furnish a copy of the audited accounts of the Company within 120 (one hundred twenty) days of the close of its each Accounting Year after the Commencement Date and any material change subsequent to the date of such accounts shall be notified to MJP by the Contractor within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- ix. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Contractor or any Member of the Consortium or any Applicable Laws or any covenant,

agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;

- x. There are no actions, suits, proceedings, or investigations pending or, to the Contractor's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Contractor under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- xi. 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 Governmental Agency which may result in any Material Adverse Effect or impairment of the Contractor's ability to perform its obligations and duties under this Agreement;
- xii. It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- xiii. The equity share holding of M/s\_\_\_\_\_, the Lead Consortium Member shall be equal to 51% of the aggregate shareholding of the Consortium in the issued and paid up equity share capital of the Contractor at all times during the Term of Agreement. M/s\_\_\_\_\_, M/s\_\_\_\_\_ and M/s \_\_\_\_\_ who are the Consortium Members, each commit to hold a minimum equity stake equal to 26%, 10%, \_\_% of the aggregate shareholding of the Consortium in the issued and paid up equity share capital of the Contractor at all times during the Term of Agreement;
- xiv. Single entity/each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested MJP to enter into this Agreement with the Contractor pursuant to the LOI and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- xv. All rights and interests of the Contractor in and to the Water Supply and Distribution Assets shall pass to and vest in MJP on the Termination Date free and clear of all liens, claims, and

Encumbrances without any further act or deed on the part of the Contractor or MJP and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Contractor subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;

- xvi. No representation or warranty by the Contractor contained herein or in any other document furnished by it to MJP, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- xvii. It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Contractor, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of MJP or Government of Maharashtra in connection therewith.
- xviii. It warrants that it has deposited the Performance Security in accordance with the RFP and undertakes to keep the same or any replacements therefor in full force and effect in accordance with the provisions of this Agreement.

#### 17.2. Representations and Warranties of MJP.

MJP represents and warrants to the Contractor that:

- i. MJP is duly organised and validly existing under the laws of India;
- ii. MJP has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- iii. MJP has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- iv. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- v. MJP is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any

sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.

## **18. DISCLAIMER**

18.1. The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has after a complete and careful examination made an independent evaluation of the water supply system, consumer connections, Specifications and Standards, Project area and all the information provided by MJP and has determined to the Contractor's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Contractor in the course of performance of its obligations hereunder.

18.2. The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 18.1 above and hereby confirms that MJP shall not be liable for the same in any manner whatsoever to the Contractor, the Consortium Members or their Associates.

## **19. INDEMNIFICATION**

19.1. Indemnity

19.1.1. The Contractor during the term of this Agreement shall indemnify, defend and hold MJP harmless against:

- i. Any acts of omissions/commission of Contractor with regard to the Water Supply and Distribution Assets.
- ii. Any damages done intentionally or unintentionally by the Contractor Employees and MJP/ LMC Employees provided on service to the Contractor within or outside the Project Area or to the Water Supply and Distribution Assets or to the assets of third parties.
- iii. Claims against MJP made by any third party for any act of commission or omission by Contractor, Contractor shall indemnify and hold MJP harmless and compensate all the losses so caused to MJP. MJP shall also be entitled to defend any action with third parties at the cost and expenses of Contractor.
- iv. All monetary obligations or losses or implications arising out of such action of Contractor in the nature of costs, expenses or damages. MJP shall have no liability in respect of loss of profit, loss of income, loss of agreement or any other losses or damages suffered or arising out of or in connection with existence of any defects whether latent or

apparent in Water Supply and Distribution Assets and the obligation of Contractor to provide support services shall remain unaffected thereby.

- v. Claims of all Contractor's employees demanding employment as permanent or contract employees of MJP at any point during or after the expiry of this Agreement.
- vi. Claims on all the employees of MJP and LMC providing service to the Contractor against any loss/implication arising out of the actions of Contractor.

This Indemnification shall survive the term of this Agreement.

## 19.2. Procedure for claiming indemnity

### 19.2.1. Third party claims

- i. Where MJP is entitled to indemnification from the Contractor pursuant to Article 19.1, it shall promptly notify the Contractor of such claim, proceeding, action or suit referred to in Article 19.1 in respect of which it is entitled to be indemnified. Such notice shall be given as soon as reasonably practicable after the MJP becomes aware of such claim, proceeding, action or suit. The Contractor shall be liable to settle the indemnification claim within [30 days] of receipt of the above notice. Provided however that, if:
  - a. the Parties choose to contest, defend or litigate such claim, action, suit or proceedings in accordance with Article 19.2.1(ii) below; and
  - b. the claim amount is not required to be paid/deposited to such third party pending the resolution of the dispute,

The Contractor shall become liable to pay the claim amount to MJP or to the third party, as the case may be, promptly following the resolution of the dispute, if such dispute is not settled in favour of the Contractor.

- ii. MJP may contest, defend and litigate a claim, action, suit or proceeding for which it is entitled to be indemnified under Article 19.1 and the Contractor shall reimburse to MJP all reasonable costs and expenses incurred by MJP. However, MJP shall not settle or compromise such claim, action, suit or proceedings without first getting the consent of the Contractor, which consent shall not be unreasonably withheld or delayed.

Contractor shall, at its own expense, assume control of the defence of any proceedings brought against MJP if it acknowledges its obligation

to indemnify MJP, gives MJP prompt notice of its intention to assume control of the defence, and employs an independent legal counsel at its own cost that is reasonably satisfactory to MJP.

### 19.3. Indemnifiable Losses

Where MJP is entitled to Indemnifiable Losses from the Contractor pursuant to Article 19.1, it shall promptly notify the Contractor of the Indemnifiable Losses. The Contractor shall pay the Indemnifiable Losses within [30] days of receipt of the notice seeking Indemnifiable Losses by MJP.

## 20. INSURANCE

20.1. Insurance Cover: The Contractor shall effect and maintain, or cause to be effected and maintained, at no cost to MJP during the Term of the Agreement such insurances upto such maximum sums as may be required under and in accordance with the Applicable Laws and such insurance as the Contractor may reasonably consider necessary or desirable in accordance with Prudent Utility Practice, which shall include, but not limited to (i) Contractor's All Risk, (ii) Workmen Compensation, (iii) Water Treatment Plant with Machinery, (iv) All pumping machinery (v) Electrical Installations, (vi) Standard Fire and Special Perils, (vii) Storage and Handling of Chlorine Gas at WTPs (viii) Accident and (ix) Third Party Liability. The Contractor shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on MJP as a consequence of any act of omission by the Contractor during the Term of the Agreement.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Contractor pursuant to this Clause 20 are herein referred to as the "Insurance Cover".

20.2. Evidence of Insurance Cover: All insurance obtained by the Contractor in accordance with this Clause 20 shall be maintained with insurer or reinsurers, and on terms consistent with Prudent Utility Practice. Within thirty days of obtaining any insurance cover, the Contractor shall furnish to MJP, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premia payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by MJP.

20.3. Remedy on Failure to Insure: If the Contractor fails to effect and keep in force the insurance for which it is responsible pursuant hereto, MJP shall have the option to keep in force any such insurance, and pay such premia and recover the costs thereof from the Contractor.



- 20.4. Waiver of Subrogation: All insurance policies supplied by the Contractor shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, MJP, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of 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.
- 20.5. Contractor Waiver: The Contractor hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the MJP, and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Contractor may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Contractor 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.
- 20.6. Application of Insurance Proceeds: The proceeds from all insurance claims, except life and injury, shall be paid to the MJP by credit to the MJP Bank Account who shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Water Supply and Distribution Assets.

## **21. FORCE MAJEURE**

- 21.1. The MJP shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that such performance is impeded by an event of Force Majeure (a “Force Majeure”)
- 21.2. A Force Majeure event means any event or circumstance and or a combination of events and circumstances referred to in this Article (a) which are beyond the reasonable control of the affected Party (b) which such Party could not have prevented or reasonably overcome with the exercise of reasonable skill and care in relation to the implementation of the Project, (c) which do not result from the negligence of such Party and or the failure of such Party to perform its obligations hereunder and (d) which prevents a Party in whole or in part from performing its obligations hereunder including the following.
- i. Any act of God such as, drought, lightening, earthquake, landslides etc or other events of natural disaster of rate severity.
  - ii. Meteorites or objects falling from aircraft or other aerial devices, traveling at high speeds.

- iii. Fire or explosion, chemical or radioactive contamination or ionizing radiation.
- iv. Act of war (whether declared or undeclared) threat of war invasion, armed conflict or act of foreign enemy. Unexpected call up of armed forces, blockade, embargo, revolution, non religious strike, bombs or civil commotion sabotage terrorism or threat of such acts or other similar events of a political or social nature.

21.3. In respect of MJP's obligations only any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the operation or maintenance of the Water Supply and Distribution Assets or the performance of a Party's obligations including the determination levy, demand, collection, retention and appropriation of charges provided such order of a court tribunal is not attributable to negligence or omission of MJP.

21.4. Consultation and duty to mitigate

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

The Contractor shall make necessary claim applications to the Insurance Company to claim Insured sum for damage to Water Supply and Distribution Assets. The claim cleared and paid (Insurance Proceeds) by the Insurance Company will be deposited in the bank account of MJP and will be employed in mitigating the damage caused to Water Supply and Distribution Assets due to Force Majeure event.

21.5. Consequences of Force Majeure

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

The extension to the term of the Agreement shall be mutually agreed upon.

## 22. EVENT OF DEFAULT AND TERMINATION

### 22.1. Contractor Event of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by MJP of its obligations under this Agreement, shall constitute a Contractor Event of Default:

#### 22.1.1. Critical Event of Default

Failure or refusal by Contractor to perform its following obligations under the Agreement:

- i. Failure on account of Contractor to make payments as per Clause 12.3 of this Agreement
- ii. Non compliance of the service standards and performance as specified in clause 11.2.1, 11.2.2, 11.2.3 and 11.5 with total penalty as laid down in Table E and F in Schedule H exceeding Rs. 20,000/- (Rupees Twenty Thousand only) in any month.
- iii. Repeated non-compliance of Service Standards.
- iv. Repeated non-compliance of Act and Byelaws for water supply as approved and modified from time to time
- v. Failure to maintain a performance security as per the Clause 13 of this Agreement.
- vi. Failure to maintain a Letter of Credit as per the Clause 14 of this Agreement.
- vii. Sale of Water in or outside the Project Area to a third party other than MJP Consumers in the Project Area.
- viii. Contractor has engaged in a corrupt practice or/and fraudulent practice in competing for executing the contract as proved before a Competent Authority.
- ix. Contractor is in material breach of any of its obligations outlined in this Agreement.
- x. A resolution for winding up has been passed by the majority shareholders of the Contractor.
- xi. An act of Insolvency occurs with respect to the Contractor or the Contractor is adjudged bankrupt.
- xii. The Contractor has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this agreement as proved before a Competent Authority.
- xiii. Any representation or warranty made by the Contractor in this Agreement is found to be false and misleading.

- xiv. The Contractor is indulging in any malpractice or corrupt practice resulting in defamation of MJP as proved before a Judicial/ Quasi-Judicial Authority.
- xv. Failure to comply with non-critical events of default within the specified period.

#### 22.1.2. Non-critical Event of Default

- i. Failure to submit in time the information as per Clause 26.1
- ii. Failure on account of Contractor to make payments as per Clause 12.4 of this Agreement
- iii. Non compliance of the service standards and performance as specified in clause 11.2.1, 11.2.2, 11.2.3 and 11.5 with total penalty as laid down in Table E and F in Schedule H exceeding Rs. 10,000/- (Rupees Ten Thousand only) in any month.
- iv. Failure of the Contractor to comply the performance standards in accordance with Clauses 11.2.1, 11.2.2 for two consecutive months.
- v. Failure of the Contractor to comply the performance standards in accordance with Clause 11.2.3 for six consecutive months.
- vi. Non compliance of operations and maintenance standards specified in the Agreement by the Contractor.
- vii. Failure to make payments to MSEDCL, Water Resources Department and other agencies as per Clause 12.2 for over two months.
- viii. Deviation from Employee Service Terms and Conditions by the Contractor.
- ix. Failure on account of Contractor to comply with all the relevant labour laws applicable to Contractor's employees.

If any of the above is in default, the Executive Engineer shall summon the Project incharge of the Contractor to explain the reasons for such default. The Project in charge shall provide the Executive Engineer the steps the Contractor intends to take for mitigating the event of default.

If the event of default persists for a period of more than 45 days thereafter then the Executive Engineer shall recommend to the Managing Director or Director of the Contractor to urgently undertake mitigation steps to cure the event of default and replace the Project incharge, which shall be binding on the Contractor.

In event the Non Critical Event of Default persists for 45 days thereafter, it shall become a Critical Event of Default.

Notwithstanding anything to the contrary contained in this Clause and elsewhere in this Agreement, the Executive Engineer may undertake measures to cure the event of default at the risk and cost of the Contractor and the Contractor shall pay to MJP as compensation, all direct additional costs suffered or incurred by MJP arising out of the event of default plus 50% penalty, in one lumpsum of receiving the demand from MJP.

#### 22.2. MJP Event of Default

The occurrence and continuation of any of the following events, unless any such event occurs as a result of a Force Majeure Event or a breach by Contractor of its obligations under this Agreement, shall constitute a MJP Event of Default:

22.2.1. MJP is in material breach of any of its obligations under Clause 10 or any other terms and conditions, as applicable under this Agreement for a consecutive period of thirty (30) days.

#### 22.3. Termination Procedure for Critical Event of Default by Contractor

22.3.1. On the occurrence of any Critical Event of Default, or its coming to notice of MJP, MJP shall issue an Event of Default notice to the Contractor.

22.3.2. The Contractor shall eliminate/ mitigate consequences of such Event of Default within a period of 30 days.

22.3.3. In case the Contractor is unable to eliminate/ mitigate the consequences of Event of Default within the aforesaid period of 30 days, a preliminary notice of termination may be served by MJP to the Contractor, elaborating the event of default by Contractor.

22.3.4. Upon receipt of preliminary termination notice this Agreement shall be deemed to be suspended for 30 days. If the default is not cured within the suspension period, this Agreement may be terminated after serving the final termination notice to the Contractor. MJP may exercise its Step-in rights during this suspension period.

22.3.5. In the event of a prolonged event of Force Majeure a preliminary notice of termination may also be issued by MJP to the Contractor leading to the termination of the Agreement

22.3.6. Both the parties shall continue to perform their respective obligations until the serving of final termination notice, whereupon this Agreement shall terminate on date of such notice.

22.4. Termination Procedure for MJP Event of Default

22.4.1. On the occurrence of Event of Default by MJP, the Contractor shall issue an Event of Default notice to MJP.

22.4.2. MJP shall eliminate/ mitigate consequences of such Event of Default within a period of 30 days.

22.4.3. In case MJP is unable to eliminate/ mitigate the consequences of Event of Default, a preliminary notice of termination may be served by the Contractor to MJP, elaborating the Event of Default by MJP.

22.4.4. Upon receipt of preliminary termination notice this Agreement shall be deemed to be suspended for 30 days. If the default is not cured within the suspension period, this Agreement may be terminated after serving the final termination notice to the defaulting Party. MJP may exercise its Step-in rights during this suspension period.

22.4.5. Both the parties shall continue to perform their respective obligations until the serving of final termination notice, whereupon this Agreement shall terminate on date of such notice.

22.5. Consequences of Termination

22.5.1. Consequences of Termination for Contractor Event of Default

- i. Without prejudice to the other rights of MJP in case of termination, Contractor shall pay all the dues payable to MJP on the date of termination. Contractor shall pay all other dues only after the settlement of MJP accounts.
- ii. Forfeiting of performance security and encashment of Letter of Credit at once.
- iii. MJP unconditionally reserves the right to claim from Contractor any costs, expenses or loss that it may have incurred by reason of breach or failure on the part of Contractor to observe and perform any of the terms and conditions of the agreement

- iv. On termination of this Agreement however occasioned, the Contractor shall forth with deliver to MJP all papers including the forms used, partially used and unused receipts books, all promotional materials and documents which may have come into its possession or custody under the terms of this Agreement or otherwise.
- v. The Contractor shall furnish a certificate of Non-encumbrance and handover all Contractor's Assets in accordance with Clause 6.2.

#### 22.5.2. Consequences of Termination for MJP Event of Default

- i. Without prejudice to the other rights of Contractor in case of termination, MJP shall pay the Contractor on the date of termination an amount equivalent to Rs. 15 Lakhs, Book Value of the Contractor's Assets and payments for meter connections outstanding from Consumers.

Book Value of the Contractor's assets means the initial cost of the asset noted in the Contractor's Asset register net of depreciation charged on the basis of straight line method amortised equally over the Term of Agreement.

#### 22.6. Step In Rights

##### 22.6.1. Step-in Rights for Critical Event of Default by the Contractor

- i. MJP or its Designate(s) shall be entitled to immediately enter any and/or all of the Water Supply and Distribution Assets and operate the System
- ii. MJP shall have the right to forfeit the Performance Security and encash the Letter of Credit furnished by the Contractor and to recover all its dues and outstanding amounts.
- iii. MJP shall forfeit all Current Assets of the Contractor in the Project Area and to recover its outstanding dues.
- iv. The Contractor shall transfer all the Fixed Assets brought in as a part of the New Capital Expenditure in the Project Area in accordance with the Clause -6.2.
- v. A Joint Audit Team of MJP and the Contractor shall establish the levels of Inventory and Assets.

#### 22.6.2. Step-in Rights for Abandonment by the Contractor

- i. MJP or its Designate(s) shall be entitled to immediately enter any and/or all of the Water Supply and Distribution Assets and operate it in event the Contractor Abandons the Water Supply and Distribution Assets pursuant to Clause 3.4.
- ii. MJP shall forfeit the Performance Security and encash the Letter of Credit furnished by the Contractor.
- iii. MJP shall forfeit all Current Assets of the Contractor in the Project Area to recover its outstanding dues.
- iv. MJP shall forfeit all Capital Assets (Movable & Immovable) brought in the Project Area in accordance with the Clause 6.2. However, the liability of meeting the repayment obligations on account of financing arrangements for such assets shall lie with the Contractor.

In event the Contractor expresses his interest to reenter upon the Water Supply and Distribution Assets and undertake its obligations post Abandonment then MJP at his sole discretion may allow the Contractor to reenter the Water Supply and Distribution Assets and allow the Contractor to undertake its obligations in accordance with this Agreement.

Provided the Contractor shall pay for all direct costs and expenses suffered or incurred by MJP during the period of abandonment plus Rs. 10,000/- (Rupees Ten Thousand only) for per day of Abandonment as penalty, in one lumpsum and shall submit fresh performance security and Letter of Credit as per Clause 13.1 and 14.1 respectively, prior to re-entering the Water Supply and Distribution Assets.

### 23. CESSATION OF RIGHTS AND INTERESTS

- 23.1. Upon Termination of this Agreement or expiration of the Term of Agreement, the Contractor shall comply with the following:
  - a. notify to MJP forthwith the location and particulars of all Water Supply and Distribution Assets;
  - b. deliver forthwith actual possession of the Water Supply and Distribution Assets free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the MJP for fully and effectively divesting the Contractor of all of the rights and interest of the Contractor in the Agreement free of cost; and



- c. comply with the Cessation Requirements set out in Clause 23.2.

23.2. Upon Termination of this Agreement or Expiration of Term of Agreement, the Contractor shall comply and conform to the following Cessation Requirements in respect of the Water Supply and Distribution Assets:

- i. all Water Supply and Distribution Assets shall have been renewed and cured of all defects and deficiencies as necessary so that the Water Supply and Distribution Assets is compliant with the Specifications and Standards set forth in this Agreement;
- ii. the Contractor delivers relevant records and reports pertaining to the Water Supply and Distribution Assets its operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto on the Cessation Date;
- iii. the Contractor executes such deeds of conveyance, documents and other writings as the MJP may reasonably require to convey, divest and assign all the rights, title and interest of the Contractor in the Capital Expenditure made by Contractor pursuant to Clause 6.2 free from all Encumbrances absolutely and free of any charge or tax unto the MJP or its Nominee; and
- iv. the Contractor complies with any other requirements as may be prescribed under Applicable Laws to complete the cessation rights of the Contractor under this Agreement free of any charge or tax to MJP or its nominee.

23.3. Not earlier than 3 (three) months before the expiry of the Term of Agreement but not later than 2 (two) months before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, the Executive Engineer shall verify, in the presence of a representative of the Contractor, compliance by the Contractor with the Cessation Requirements set forth in Clause 23.2 in relation to the Water Supply and Distribution Assets and, if required, cause appropriate tests to be carried out at the Contractor's cost for determining the compliance therewith. In event the Contractor fails to depute his representative then the Executive Engineer shall proceed ahead with the verification without the Contractor's representative and the findings of such verification shall be binding on the Contractor.

23.4. If any shortcomings in the Cessation Requirements are found by either Party, it shall notify the other of the same and the Contractor shall rectify the

same at its cost. The provisions of Clause 24 shall apply mutatis mutandis in relation to repair or curing of defects under this Clause 23.

23.5. Upon the Contractor conforming to all Cessation Requirements and handing over actual possession of the Water Supply and Distribution Assets to MJP or a person nominated by MJP in this regard, MJP shall issue a certificate substantially in the form set forth in Schedule 'V' (the "Discharge Certificate") within 3 months of Contractor conforming to all Cessation Requirements and handing over actual possession of the Water Supply and Distribution Assets to MJP, which will have the effect of constituting evidence of cessation of all rights under the Agreement.

23.6. Issue of the Cessation Certificate shall not be unreasonably withheld by MJP. The cessation of all rights in the Agreement shall be deemed to be complete on the date when all the Cessation Requirements have been fulfilled and Discharge Certificate has been issued, it being expressly agreed that any defect or deficiency in any Cessation Requirement shall not in any manner be construed or interpreted as restricting the exercise of any rights by MJP or its nominee on or in respect of the Water Supply and Distribution Assets on the footing as if all Cessation Requirements have been complied with by the Contractor.

## **24. DEFECTS LIABILITY**

24.1. Not less than 6 months nor more than 9 months prior to the expiry of the Term of Agreement, the Contractor and the Executive Engineer shall conduct a joint inspection of the Water Supply and Distribution Assets.

24.2. Within 10 days after the completion of the Joint Inspection, the Contractor shall provide to the Executive Engineer a report on the condition of the Water Supply and Distribution Assets and the Contractor's proposals as to the renewal works required to comply with the Cessation Requirements.

24.3. Within 15 days after the receipt of the Contractor's proposal in accordance with Clause 24.2, the Executive Engineer shall review the same and convey its comments/ observation and modifications alongwith details of the grounds for such modifications to Contractor's proposal.

24.4. The renewal works will be mutually agreed by the MJP and the Contractor and the Contractor shall carry out the renewal works at its own cost.

24.5. Not less than 1 week nor more than 2 weeks prior to the expiry of the Term of Agreement, the Contractor and the Executive Engineer shall conduct a final joint inspection of the Water Supply and Distribution Assets to assess

the renewal works undertaken by the Contractor. The renewal works not attended to shall be undertaken by the Executive Engineer at the risk and cost of the Contractor. Without prejudice to other rights of MJP, the Executive Engineer shall recover the same from the Performance Security of the Contractor for failure of not undertaking renewal works.

## **25. MONITORING AND SUPERVISION**

25.1. The Contractor shall undertake periodic (at least every three month) inspection of the Water Supply and Distribution Assets to determine the condition of the Water Supply and Distribution Assets including its compliance or otherwise with the Specifications and Standards and the maintenance required and shall submit reports of such inspection (“Maintenance Reports”) to Executive Engineer.

25.2. The Executive Engineer shall review the Maintenance Reports and inspect the Water Supply and Distribution Assets at least once every three months during the Term of Agreement and make out an Inspection Report of such inspection (the “O&M Inspection Report”).

25.2.1. The Executive Engineer shall send a copy of its O&M Inspection Report to MJP and the Contractor. The Contractor shall within 30 (thirty) days of the receipt of the O&M Inspection Report remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to the Executive Engineer within the said 15 (fifteen) days period.

25.2.2. Where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days in accordance with Prudent Utility Practice, the Contractor shall undertake the works in accordance with such practice and submit progress reports of such works every month.

25.2.3. The O&M Inspection Report may also require the Contractor to undertake such tests as may be specified by the Executive Engineer for the purpose of determining that the Water Supply and Distribution Assets is at all times in conformity with the Specifications and Standards. The Contractor shall undertake such Tests without any delay and furnish a copy of the results thereof to the Executive Engineer along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by the Executive Engineer or submission of O&M Inspection Compliance Report by the Contractor shall not relieve or absolve the Contractor of its obligations and liabilities hereunder in any manner whatsoever.

- 25.3. MJP may inspect the Water Supply and Distribution Assets at any time for a review of the compliance by the Contractor with its maintenance obligations under this Agreement.

## **26. REPORTS AND AUDIT**

### **26.1. Reporting**

Without prejudice to the terms and conditions of this Agreement, the Contractor shall furnish to MJP, the following information as per schedule stated therein:

26.1.1. Contractor shall be required to submit data regarding billing and collection inclusive of Security Deposit collected on account of new connections. The data will be submitted as per the respective billing cycle.

26.1.2. Contractor shall be required to provide the performance measurements made by the Contractor in accordance with Clause 11.

26.1.3. Contractor shall be required to update the asset register and submit the same to MJP on a quarterly basis.

26.1.4. Contractor shall generate periodic Management Information System (MIS) and Monitoring Reports as required by Executive Engineer in approved formats and communicate them to Executive Engineer.

26.1.5. Contractor shall submit detailed asset /inventory status reports on an annual basis for all assets/inventories within the Project Area.

26.1.6. All correspondence, records, reports, presentations and other forms of information developed by the Contractor under this Agreement, whether electronic or physical, shall become the property of MJP upon Expiry/termination of this Agreement. MJP reserves, without limitation, the right to use procedures, forms and productivity enhancement methods developed under this Agreement elsewhere.

26.1.7. Contractor shall notify MJP of any Major Incident affecting any part of the Water Supply and Distribution Assets that has occurred and shall at the earliest possible and in any event, by no later than seven (7) days or such period as may be extended by MJP from the date of such Major Incident. Contractor shall also submit a report to MJP giving full details of the facts

within the knowledge of the Contractor regarding the incident, its cause and the remedial measures to be taken/ taken by the Contractor to prevent its reoccurrence.

## 26.2. Audit

26.2.1. MJP may, at anytime during the subsistence of this agreement, authorize any person(s) to inspect, verify and audit the performance, records and accounts of the Contractor, and the Contractor shall be obliged to extend all cooperation, assistance and facilities, as may be required, to such authorized person(s).

26.2.2. Contractor shall allow Independent Auditors appointed by MJP to audit the efficiency of the Water Supply and Distribution Assets and will extend all cooperation thereof.

26.2.3. MJP reserves the right to conduct the physical verification of the Water Supply and Distribution Assets at any time during the term of this Agreement.

26.2.4. All the aforesaid audits/verifications shall be conducted by person(s) duly authorized for the specific purpose by the Executive Engineer.

## 27. DISPUTE RESOLUTION

27.1. No arbitration shall be allowed for this Project.

### 27.2. Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-clause (b) below.
- b. In the event of any Dispute between the Parties, either Party may call upon the other party to arrive at an amicable settlement thereof. Failing this, either Party may require such Dispute to be referred to the Superintending Engineer of MJP and the Chairman of the Board or Directors of the Contractor, for the time being for amicable settlement. Upon such reference, the said two Authorities shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled

within 15 (fifteen) days of such meeting between the said two Authorities, either Party may refer the dispute to the Chief Engineer of MJP for settlement of the dispute.

**27.3. Reference to the Chief Engineer of MJP**

Any Dispute, which is not resolved amicably as provided in Clause 27.2 b shall be finally decided by reference to the Chief Engineer of MJP. The venue of such dispute resolution will be the Chief Engineer's Office at Aurangabad, Maharashtra.

**27.4. Chief Engineers Awards to be Binding**

27.4.1. The Contractor and MJP undertake to carry out any decision or award of the Chief Engineer (the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

27.4.2. The Contractor and MJP agree that an Award may be enforced against the Contractor and/or MJP, as the case may be and their respective assets wherever situated.

27.4.3. This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the Award in any dispute resolution proceeding hereunder.

**28. GOVERNING LAW AND JURISDICTION**

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

**29. MISCELANEOUS**

**29.1. Waiver**

- a. 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 or obligations under this Agreement;
  - ii. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

- iii. shall not affect the validity or enforceability of this Agreement in any manner.
  
- b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder 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.

#### 29.2. Survival

Termination of this Agreement (a) shall not relieve the Contractor or MJP 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. All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 1 (one) year following the date of such Termination or expiry of this Agreement save and except any obligations pending the Award in any dispute resolution proceeding in any court in India.

#### 29.3. Entire Agreement:

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

#### 29.4. Notices

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 Contractor, be given by letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Contractor may from time to time designate by notice to MJP, provided that notices or other communications to be given to an address outside Latur may (if they are subsequently confirmed by sending a copy thereof by first class registered airmail or by courier) be sent by facsimile to the number as the Contractor may from time to time designate by notice to MJP; and

- b. in the case of MJP, be given by letter delivered by hand and be addressed to the, Executive Engineer of MJP. Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

Copies of all notices shall also be sent to the Executive Engineer.

29.5. 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.

29.6. No Partnership

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

29.7. 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.

29.8. 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.

29.9. 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 DATE FIRST ABOVE WRITTEN**

SIGNED SEALED AND DELIVERED

For and on behalf of

MAHARASHTRA JEEVAN PRADHIKARAN

By

\_\_\_\_\_ (Signature)

Executive Engineer

SIGNED, SEALED AND DELIVERED

For and on behalf of \_\_\_\_\_

(Name of CONTRACTOR)

by:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Designation)

In the presence of:

1 \_\_\_\_\_

2 \_\_\_\_\_