

DRAFT

REQUEST FOR PROPOSAL (RFP)

FOR

***ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE
CAPACITY INCLUDING OPERATION AND MAINTENANCE ON
P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT
CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED
POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR,
SRIGANGANAGAR CITY***

Volume I: Request for Proposal (RFP)

Rajasthan State Ganganagar Sugar Mills Ltd.,
***[Address- 4th Floor, RSGSM, Nehru Sahkar Bhawan, Bhawani Singh Road
Jaipur (RAJ.)***

Website: <https://rajexcise.gov.in/>,

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Notice Inviting Bid

(Format of NIB for Publication on State Public Procurement Portal)

(Format of NIB for Publication on State Public Procurement Portal as per Rule 43(2) of RPPP Rules)

DEPARTMENT NAME- [Rajasthan State Ganganagar Sugar Mills Ltd.](#)

OFFICE OF THE- [Deputy General Manager \(Purchase\) , Rajasthan State Ganganagar Sugar Mills Ltd., 4th Floor , Nehru Sahkar Bhawan , Bhawani Singh Marg , Jaipur, e-mail-\[purchase.rsgsm@rajasthan.gov.in\]\(mailto:purchase.rsgsm@rajasthan.gov.in\)](#) Tel. Nos., Fax

NIB Number- RSGSM/DISTILLERY/RFP/HO/20
No.....

File
Date: 31.08.2022

Bid Details-

[Dy.General Manager \(Pur.\)](#), [Rajasthan State Ganganagar Sugar Mills Ltd.](#) invites Bids from interested parties for ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY proposed to be implemented on Design, Built, Finance, Operate, Transfer (DBFOT) mode.

Estimated cost of the project – 100.00 Cr. For 100 KLPD Capacity

#	Name of the Project	Price of Bid Document	Processing fees or user charges	Bid Security
1	ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY	INR 2360/-	INR 1000/-	INR 2,00,00,000.00 (Rs. Two Crore Only)

1.	Bid dates (other details provided in Instruction to Bidders)	RFP document available Online	31/08/2022
		Pre-Bid Conference Date	08/09/2022
		Bid Due Date	04/10/2022
		Bid Submission Closing Date and Time	04/10/2022 at 05:00 PM
		Opening of Techno-commercial Bids	06/10/2022 at 01:00 PM
		Opening of Financial bids	To be indicated after Techno-Commercial evaluation

2.	Payment to be made upon submission of bid	<ul style="list-style-type: none"> Bid doc fee INR 2,360 in favour of Rajasthan State Ganganagar Sugar Mills Ltd. Processing fee INR1,000 in favour of MD, RISL Bid security INR 2,00,00,000 in favour of Rajasthan State Ganganagar Sugar Mills Ltd. <p><i>All the three payments can be made through a banker's cheque / demand draft / BG/ online transfer in bank account as per Rule 42(6) and Rule 45 (2) of RTPP Rule.</i></p> <p>Bank Name: Bank of Baroda Branch Name : 22, Godam, Jaipur Account No: 25220200001309 IFSC Code: BARB0INDBAI MICR Code: 302012014</p>
3.	Opening of Bids	<p>Specific electronic bid opening procedure as specified on the e-procurement portal shall be followed.</p> <p>The Techno-Commercial Bids shall be opened at 01:00 PM on dated 06/10/2022.</p> <p>However, if opening date happens to be a holiday, then the bid will be opened on the next working day.</p>
4.	Bid Security	<p>Bid Security amounting to INR 2,00,00,000/- (Rs. Two Crore only).</p> <p>Payable via <i>a banker's cheque / demand draft / BG / online transfer in bank account</i> along with bid document cost and processing fees or user fees.</p> <p>If submitted through Bank Guarantee, it shall be from Scheduled Banks declared by Reserve Bank of India and shall be submitted with a validity of 30 days beyond the original or extended validity period of the bid as per Rule 42(6) of RTPP Rules.</p> <p>Note: In case of Center / State Government PSU, provisions of RTPP act 2012 and rules 2013 shall be applicable for bid security and performance security.</p>
5.	Procurement Method	Public Private Partnership mode- DBFOT; Single Stage-Two Envelope National Open Competitive Bidding
6.	Bidding Mechanism	Bidding will be conducted via e-procurement portal
7.	Detailed Bid available on	<ul style="list-style-type: none"> State Public Procurement Portal (SPPP)- https://sppp.rajasthan.gov.in/ e-procurement portal- https://eproc.rajasthan.gov.in/ Department website- https://rajexcise.gov.in/

8.	Key Notes	<p>a) This Bidding Documents is not transferable.</p> <p>b) No conditional or partial or incomplete bid shall be accepted.</p> <p>c) The abridged form of NIB is circulated in the national or local newspapers as per Notification No. F 7(5) Finance/ SPFC/ General/2013 dated 25.06.2020 - Rule 43 of RTPP Rules.</p> <p>d) Price of bid document and processing fee or user charges once submitted shall not be refunded.</p> <p>e) Proof of payment of Price of bid document and processing fees or user fees paid via Demand Draft or Banker's Cheque and proof of payment of Bid security shall be in the form of Demand Draft or Banker's Cheque or through Bank Guarantee be physically submitted to Procuring Entity at 4th floor, RSGSM, Nehru Sahkar Bhawan, 22 Godam Circle, Jaipur before 5 PM dated 04/10/2022 Bid (Techno-commercial and Financial) Submission Closing Date and Time</p> <p>f) Bids shall be submitted electronically on e-procurement portal with valid digital signatures certificate (DSC) before 5 PM dated 04/10/2022 , by following the procedure for submission of bids including payment of price of bid document, processing fees or user charges, bid security, etc. as provided on the e-Procurement Portal, http://eproc.rajasthan.gov.in.</p> <p>g) The Procuring Entity shall not be responsible for delay in online submission due to any reason. The electronic bidding system would not allow any late submission of bids.</p> <p>h) The bidders are required to submit:</p> <p>i. Proof of payment (<i>soft copy</i>) towards the Price of Bid Document, processing fees/ user charges or bid security amount through bank demand draft and banker's cheque should be submitted along with bid. The physical copy of receipt of NEFT/RTGS, original banker's cheque or original bank demand draft or If Bid Security is submitted through Bank Guarantee, then Original bid security in approved form for Bank Guarantee shall be submitted to ...DGM (Pur.), Rajasthan State Ganganagar Sugar Mills Ltd. before Bid (Techno-commercial and Financial) Submission Closing Date and Time, either by registered post/ speed post/ courier or by hand, failing which the bids may be declared non-responsive and will not be opened. These documents will be opened publicly before the online bid opening.</p>
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Dy.General Manager (Purchase)
Rajasthan State Ganganagar Sugar Mills Ltd.
4th floor, Nehru Sahkar
Bhawan, Bhwani Singh Road, Jaipur (Raj.)

(Abridged Form of NIB for Publication in the Newspapers)

Rajasthan State Ganganagar Sugar Mills Ltd.

NIB Number- RSGSM/DISTILLERY/RFP/HO/20

Date: 31.08.2022

NOTICE INVITING BIDS

Bids for ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY through Public Private Partnership mode of estimated value INR 100.00 Crore are invited from interested bidders up to 5 PM date 04/10/2022. Other particulars of the bid may be visited on the procurement portal (<http://eproc.rajasthan.gov.in>, <http://sppp.raj.nic.in>) of the state, and <https://rajexcise.gov.in/> departmental website.

UBN

Dy. General Manager
Rajasthan State Ganganagar Sugar Mills Ltd.
4th floor, Nehru Sahkar
Bhawan, Bhwani Singh Road, Jaipur (Raj.)

Abbreviations

BDD – Bid Due Date
BDS - Bid Data Sheet
BDF - Bidding Forms
BG - Bank Guarantee
DBFOT - Design, Build, Finance, Operate, and Transfer
DPR - Detailed Project Report
EQC - Evaluation and Qualification Criteria
FDR - Fixed Deposit Receipt
GST - Goods and Service Tax
GSTIN - Goods and Service Tax Identification Number
ITB - Instructions to Bidders
LoA - Letter of Acceptance
MoU - Memorandum of Understanding
NIB - Notice Inviting Bids
O&M - Operating and Maintenance
PAN - Permanent Account Number
PPP - Public-Private Partnership
RFP - Request for Proposal
RTPP Act, 2012 - Rajasthan Transparency in Public Procurement Act, 2012
RTPP Rule, 2013 - Rajasthan Transparency in Public Procurement Rule, 2013
SBD- Standard Bidding Document
SPFC - State Procurement Facilitation Cell

Important Instruction

The proposed procurement is in conformity with the **Public Private Partnership Policy, 2020**¹, Law relating to procurement “**The Rajasthan Transparency in Public Procurement Act, 2012**” [hereinafter called the Act or the “**RTPP Act, 2012**”] and “**The Rajasthan Transparency in Public Procurement Rules, 2013**” [hereinafter called the Rules or the “**RTPP Rules, 2013**”] under the said Act have come into force which are available on the website of State Public Procurement Portal <http://sppp.rajasthan.gov.in>. Therefore, the Bidders are advised to acquaint themselves with the provisions of the Act and the Rules before participating in the Bidding process. If there is any discrepancy between the provisions of the Act and the Rules and this Bidding Document the provisions of the Act and the Rules shall prevail.

¹ To check, whether PPP Policy, 2020 is approved and in public domain; else it should be replaced with PPP Policy, 2008; if applicable.

Disclaimer

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the Procuring Entity or any of its employees or advisors, on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Procuring Entity to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Bid for qualification and selection pursuant to this RFP (the “**Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by the Procuring Entity in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Procuring Entity, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Procuring Entity accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Procuring Entity, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder or its representatives, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with qualification of Bidders for participation in the Bidding Process.

The Procuring Entity also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Procuring Entity may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Procuring Entity is bound to select and short-list pre-qualified Bids for Bid Stage or to appoint the Successful Bidder or Concessionaire, as the case may be, for the

Project and the Procuring Entity reserves the right to reject all or any of the Bids or Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Procuring Entity or any other costs incurred in connection with or relating to its bid. All such costs and expenses will remain with the Bidder and the Procuring Entity shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the bid, regardless of the conduct or outcome of the Bidding Process.

Instructions to Bidders (ITB)

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Important Instruction:- The Law relating to procurement “The Rajasthan Transparency in Public Procurement Act, 2012” [hereinafter called the Act] and the “Rajasthan Public Procurement Rules, 2013” [hereinafter called the Rules] under the said Act have come into force which are available on the website of State Public Procurement Portal <http://sppp.rajasthan.gov.in> Therefore, the Bidders are advised to acquaint themselves with the provisions of the Act and the Rules before participating in the Bidding process. If there is any discrepancy between the provisions of the Act and the Rules and this Bidding Document, the provisions of the Act and the Rules shall prevail.

Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the draft Concession Agreement.

1. General

1.1	Scope of Bid	1.1.1	<p>In support of the Invitation to Bid as indicated in the Section I-Bid Data Sheet (BDS), the Rajasthan State Ganganagar Sugar Mills Ltd. publishes this Bidding Documents for selection of a concessionaire of the Project as named in the BDS through National Open Competitive Bidding Process as indicated in BDS. The procurement schedule for this Bid is as listed in the BDS.</p> <p>Throughout this Bidding Document:</p> <p>the term “in writing” means communicated in written form through letter, e-mail etc. with proof of receipt;</p> <p>The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto. The words and expressions beginning with capital letters and not defined herein, but defined in the draft Concession Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein;</p> <p>if the context so requires, singular means plural and vice versa; and</p> <p>“Day” means a calendar day.</p>
		1.1.2	<p>E- Procurement System</p> <p>The bidding shall be carried out through e-Procurement System². The details of system, Online Enrollment of Bidder, Digital Signature Certificate are at https://eproc.rajasthan.gov.in.</p>

² The eProcurement System of Rajasthan enables the Bidders to download the Bid Schedule free of cost and then submit the bids online through this portal. Vendors intending to participate in the e-bids of Rajasthan Government can enroll themselves through [Online Enrollment of Corporate/Bidder in website eProcurement System Government of Rajasthan](#). For Registration the Digital Signature enrollment has to be done with the e-token, after logging into the portal. Digital Signature Certificate (DSC) 'Class III' type will in bidder's name from an approved certifying agency. DSC/ e-token may be obtained from one of the authorized Certifying Authorities approved. The list of certifying authorities issuing the Digital Signature Certificates is available on the website www.cca.gov.in. The digital signature certificates (DSC) are issued with limited currency / validity date. Detailed information is also available in Bidder Manual Kit of [website eProcurement System Government of Rajasthan](#) i.e. <https://eproc.rajasthan.gov.in> for hassle_free_bid_submission,

1.2	Project Background	1.2.1	<p>The Procuring Entity has decided to undertake (the “Project”) ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY through Public Private Partnership (“PPP” Mode) on [Design, Build, Finance, Operate, and Transfer (the “DBFOT”)] basis, and has, therefore, decided to carry out the bidding process for selection of a private entity as the Bidder to whom the Project may be awarded. Brief particulars of the Project are provided in Section IV - Project Information Memorandum of the RFP.</p> <p>The award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.</p>
		1.2.2	<p>The Successful Bidder (the “Concessionaire”), shall be responsible for [designing, engineering, build, financing, procurement, construction, operation and maintenance, and transfer of the Project] under and in accordance with the provisions of a long term concession agreement (the “Concession Agreement”) as specified in BDS, to be entered into between the Successful Bidder and the Procuring Entity in the form provided by the Procuring Entity as part of the Bidding Documents pursuant hereto.</p>
		1.2.3	<p>The estimated cost of the Project (the “Estimated Project Cost”) has been specified in BDS. The assessment of actual costs, however, will have to be made by the Bidders.</p>
		1.2.4	<p>The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire’s services and obligations (the “Concession”).</p>
		1.2.5	<p>The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Procuring Entity’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Procuring Entity.</p>
		1.2.6	<p>The Procuring Entity shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Procuring Entity pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Procuring Entity</p>

			(collectively the " Bidding Documents "), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in ITB Clause 4.2 for submission of Bids (the " Bid Due Date ").
1.3	Code of Integrity and Conflict of Interest	1.3.1	<p>Bidder to ensure compliance with RTPP Act & Rules, primarily following-</p> <ul style="list-style-type: none"> i. The Government of Rajasthan requires compliance with the Code of Integrity provisions as set forth in the Section 11(2) of RTPP Act and Rule 80 (2) of RTPP Rules. ii. A conflict of interest is considered to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations. A Bidder may be considered in conflict of interest with one or more parties in a bidding process as per Rule 81(3) of RTPP Rules. <p>Upon breach, the Procuring Entity may take appropriate action in accordance with the provisions of Section 11 (3) and Section 46 of RTPP Act.</p>
		1.3.2	<p>A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification the Procuring Entity shall be entitled to forfeit and appropriate 100% of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Procuring Entity and not by way of penalty for, inter alia, the time, cost and effort of the Procuring Entity, including consideration of such Bidder's proposal (the "Damages"), without prejudice to any other right or remedy that may be available to the Procuring Entity under the Bidding Documents and/or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:</p> <ul style="list-style-type: none"> (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of an Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of not more than 25% (twenty five per cent) of the paid up and subscribed share capital; of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is not more than 25% (twenty five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies

			<p>Act, 2013. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-Clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-Clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or</p> <p>(ii) a constituent of such Bidder is also a constituent of another Bidder; or</p> <p>(iii) such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or</p> <p>(iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or</p> <p>(v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or</p> <p>(vi) such Bidder, or any Associate thereof has participated as a consultant to the Procuring Entity in the preparation of any documents, design or technical specifications of the Project.</p> <p>(vii) Such Bidder or any Associate thereof has appointed any official of the Procuring Entity, Technical Advisors of Procuring Entity for the Project, Legal Advisors of Procuring Entity for the Project, Financial Advisors of Procuring Entity for the Project, dealing with the Project, within a period of 1 (one) year from the date of award of the Project to that Bidder.</p> <p><i>Explanation</i></p> <p><i>In case a Bidder is a Consortium, then the term Bidder is used in this Clause, shall include each Member of such Consortium</i></p> <p><i>For purposes of this RFP, Associate means, in relation to the</i></p>
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			<p><i>Bidder/Members of the Consortium, a person who controls, is controlled by, or is under the common control with such Bidder/Members of the Consortium (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.</i></p>
		1.3.3	<p>Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser/consultant of the Procuring Entity in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of the LoA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Successful Bidder or Concessionaire, as the case may be, after issue of the LoA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LoA or the Concession Agreement and without prejudice to any other right or remedy of the Procuring Entity, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Procuring Entity may have thereunder or otherwise, the LoA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Procuring Entity being liable in any manner whatsoever to the Successful Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. This disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.</p> <p>(i) Notwithstanding anything to the contrary contained in Clause 1.3.2 of the RFP, a Bidder may, within 10 (ten) days after the BDD, remove from its Consortium any Member who suffers from a Conflict of Interest, and such removal shall be deemed to cure the Conflict of Interest arising in respect thereof. However his Financial Bid shall not be opened.</p> <p>(ii) Provided further, in case the Procuring Entity seeks information/clarification from a Bidders related to occurrence/non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Procuring Entity shall disqualify the Bidders, encash its Bid Security as per provision of Clause 3.10 and further may debar it under Section 46 of the Act.</p>

1.4	Eligible Bidders	1.4.1	<p>(i) A Bidder may be a natural person, private entity, or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture (JV)/ Consortium (hereinafter referred to as "Consortium").</p> <p>(ii) A Bidder, and all its members (in case of consortium), shall have the nationality of India. A Bidder shall be deemed to have nationality of India if the Bidder is a citizen or constituted or incorporated and operates in conformity with the provisions of the Laws of India. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related services.</p> <p>(iii) A Bidder debarred under Section 46 of RTPP Act shall not be eligible to participate in any procurement process.</p> <p>(iv) A Bidder should not have a conflict of interest in the procurement in question as stated in the Rule 81 of RTPP Rules and this Bidding document.</p> <p>(v) In case of JV, the bidder should ensure the compliance with Rule 39 of RTPP Rules.</p> <p>(vi) Each Bidder (either individually or as a JV member or as a group of holding company) shall submit only one Bid.</p> <p>(vii) Any change in the constitution of the firm, JV etc., shall be notified forth with by the Bidder in writing to the Procuring Entity and such change shall not relieve any former partner/ member of the firm, etc. from any liability under the Contract.</p> <p>The status of the lead partner/ representative of the Joint Venture as a major stakeholder shall not change without the consent of the Procuring Entity. New major stake holder must agree to abide by all terms and conditions of the Contract.</p>
	Special Conditions to Consortium	1.4.2	<p>Where the Bidder is a Consortium, it shall be required to form an appropriate Special Purpose Vehicle, which can be either 'Private Limited Company' incorporated under the Companies Act, 2013 or 'Trust' incorporated under Bombay Public Trust Act, 1950 or 'Society' incorporated under Societies Registration Act, 1860 (the "SPV"), to execute the Concession Agreement and implement the Project. In addition to forming an SPV, it shall comply with the following additional requirements:</p> <p>(i) number of Members in a Consortium shall not exceed as specified in BDS. However, none of the members in a Consortium should be under any sort of ineligibility under the Bid documents; and information sought in the Bid shall be provided for both the members of the Consortium in the order of their equity contribution;</p> <p>(ii) Subject to the provisions of Sub-Clause (i) above, each member of the consortium shall provide the detailed information of professional & financial competence...</p> <p>(iii) Members of the Consortium shall nominate one member as the Lead Member (the "Lead Member"), who shall have an equity</p>

			<p>share holding of at least 51% (fifty one per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix 7, signed by all the other Members of the Consortium;</p> <p>(iv) the Bidder shall furnish a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;</p> <p>(v) an individual Bidder cannot at the same time be Members of any Consortium applying for this RFP. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium applying for this RFP;</p> <p>(vi) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;</p> <p>(vii) Members of the Consortium shall enter into a binding Consortium Agreement, substantially in the form specified at Appendix 8 (the "Consortium Agreement"), for the purpose of submitting a Bid. The Consortium Agreement, to be submitted along with the Bid , shall, inter alia:</p> <p>convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;</p> <p>clearly outline the proposed roles and responsibilities, if any, of each member;</p> <p>commit the minimum equity stake to be held by each member;</p> <p>commit that the lead member of the consortium, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 51% (Fifty one per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that the member shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold equity share capital in a Bidder or its Member is held by persons resident outside India or where an Bidder or its Member is controlled by persons resident outside India; or</p> <p>Members of the Consortium undertake that the lead member shall hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of the Project (till completion of two years of operational phase successfully); and</p> <p>include a statement to the effect that all Members of the</p>
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			<p>Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement; and</p> <p>except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Consortium Agreement without the prior written consent of the Procuring Entity.</p>
1.5	Change in composition of the Consortium	1.5.1	Change in the composition of a Consortium will not be permitted by the Procuring Entity during the Bidding Process.
		1.5.2	Notwithstanding anything to the contrary contained in Sub-Clause (i) of Clause 1.3.2 a Bidder may, within 10 (ten) days after the Bid Due Date, remove from its Consortium any Member who suffers from a Conflict of Interest, and inform the Procuring Entity about such removal. Such removal shall be deemed to cure the Conflict of Interest arising in respect thereof.
		1.5.3	If the Bidder has proposed Consortium and in case such Bidder get selected as Successful Bidder, then there will be lock in period of 05 years and until expiry of such period, change in composition of the Consortium shall not be permitted.
1.6	Brief description of Bidding Process	1.6.1	The Procuring Entity has adopted a single-stage two envelope Bidding Process (via online e-procurement portal) (collectively referred to as the “ Bidding Process ”) for selection of the Bidder for award of the Project (the “ Bid Stage ”). Technical eligibility and qualification of the Bidder will be first examined based on details submitted under first envelope (the “ Techno-commercial Bid ”) with respect to the eligibility and qualifications criteria prescribed in this RFP. The Financial Bid under the second envelope shall be opened only of those Bidders whose Techno-commercial Bids are found to be responsive to the eligibility and qualifications requirements as per the RFP.
		1.6.2	Financial Bid of the technically qualified Bidders will be opened on the date and time as mentioned in the Clause 1.2 of BDS .
		1.6.3	<p>The Procuring Entity advises to the bidders to carry out site visits and to get familiarised with the Project and requirements as defined hereunder; as the bidder shall be responsible to carry out submission of the bid pursuant to this RFP in accordance to the timelines as proposed in BDS of the RFP.</p> <p>If deemed necessary by the Procuring Entity, a site visit may be arranged by the Procuring Entity, as mentioned in the BDS. The costs of visiting the site shall be at the Bidder's own expense.</p>

2. Contents of Bidding Document

2.1	Sections of the Bidding Document	2.1.1	<p>The Bidding Document consists of 3 volumes, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB Clause 2.3.</p> <p>Notice Inviting Bid</p> <p>Volume I: Request for Proposal</p> <p>Section I - Instructions to Bidders (ITB)</p> <p>Section II - Bid Data Sheet (BDS)</p> <p>Section III - Evaluation and Qualification Criteria</p> <p>Section IV - Project Information Memorandum</p> <p>Section V - Appendices (Bidding Forms)</p> <p>Volume II: Draft Concession Agreement</p> <p>Volume III: Financial Bid</p>
		2.1.2	<p>The complete bidding document is made available for downloading from the website of State Public Procurement Portal (SPPP) - https://sppp.rajasthan.gov.in/, e-procurement portal- https://eproc.rajasthan.gov.in/, - and https://rajexcise.gov.in/ as mentioned in Notice Inviting Bids (NIB). The bid processing fee of e-bidding shall have to be paid to the Procuring Entity in the amount and manner as specified in NIB and e-procurement portal.</p>
		2.1.3	<p>The Procuring Entity is not responsible for the completeness of the Bidding Document and its addenda, if they were not downloaded correctly from the State Public Procurement Portal (https://sppp.rajasthan.gov.in/) e-Procurement Portal (https://eproc.rajasthan.gov.in/) or https://rajexcise.gov.in/ as indicated at NIB.</p>
		2.1.4	<p>The Bidder is expected to examine all instructions, forms, terms and specifications in the Bidding Document. Failure to furnish all information or authentic documentation required by the Bidding Document may result in the rejection of the Bid.</p>
2.2	Clarification on Bidding Document and Pre-bid Conference	2.2.1	<p>The Bidder shall be deemed to have carefully examined the conditions, specifications, size, make and drawings, etc. of the services, works, etc. to be delivered. If any Bidder has any doubts as to the meaning of any portion of the conditions or of the specifications, drawings etc., it shall, before submitting the Bid, refer the same to the Procuring Entity and get clarifications. A Bidder requiring any clarification of the Bidding Document shall contact the Procuring Entity in writing or e-mail at the Procuring Entity's address indicated in the BDS. The Procuring Entity will respond in writing or e-mail to any request for clarification, within seven</p>

			days provided that such request is received no later than days as specified in Clause 1.2 of BDS prior to the deadline for submission of Bids. The clarification issued, including a description of the inquiry but without identifying its source shall also be placed on the State Public Procurement Portal (as per Section 22 (iv) RTPP Act 2012) and/or e-procurement portal, and should the Procuring Entity deem it necessary to amend the Bidding Document as a result of a clarification, it shall do so following the procedure under ITB Clause 2.3 through an addendum which shall form part of the Bidding Document.
		2.2.2	The Bidder or his authorised representative is invited to attend the Pre-Bid Conference, if provided for in the BDS . The purpose of the Pre- Bid Conference will be to clarify issues and to answer questions on any matter related to this procurement that may be raised at that stage.
		2.2.3	Minutes of the Pre-Bid Conference, including the text of the questions raised, and the responses given, without identifying the source, will be transmitted promptly to all Bidders who attended the Pre-Bid Conference and shall also be placed on the State Public Procurement Portal (as per Section 22 (iv) RTPP Act 2012) and the e-procurement portal along with the clarifications as Clause 2.2.1. Any modification to the Bidding Document that may become necessary as a result of the Pre-Bid Conference shall be made by the Procuring Entity exclusively through the issue of an addendum (part of Bidding documents) and not through the minutes of the Pre-Bid Conference.
		2.2.4	At any time prior to the deadline for submission of the Bids, the Procuring Entity, suo motto, may also amend the Bidding Documents, if required, by issuing an addendum which will form part of the Bidding Document.
		2.2.5	Non-attendance at the Pre-Bid Conference will not be a cause for disqualification of a Bidder.
2.3	Changes to Bidding Document	2.3.1	Any addendum with changes to the bidding document issued in accordance with provisions of section 23 of RTPP ACT, shall be part of the Bidding Document. It will be uploaded on the website of State Public Procurement Portal and e-procurement portal for prospective bidders to download. Bidders shall be responsible to download and refer such addendum, issued if any, before submitting the Bid.
		2.3.2	To give prospective Bidders reasonable time (in accordance with 'Rule 40 Time frame for procurement process' of RTPP rules) in which to take an addendum into account in preparing their Bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of the Bids, pursuant to ITB Sub-Clause 4.2, under due publication on the State Public Procurement Portal and the e-procurement portal and newspapers.

		2.3.3	Any bidder who has downloaded the Bidding Documents should check the Amendment(s), if any, issued on the Procuring Entity's website. The Procuring Entity shall not be responsible in any manner if prospective Bidders miss any Amendment(s) published on Procuring Entity's website.
		2.3.4	As per Section 23 (1) of RTPP Act in case any modification is made to the bidding documents or any clarification is issued which materially affects the terms contained in the bidding documents, the Procuring Entity shall publish such modification or clarification in the same manner as the publication of the initial bidding documents.

3. Preparation of Bids

3.1	Cost of Bidding	3.1.1	<p>The Bidder shall bear all costs associated with the preparation and submission of its Bid. The Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.</p> <p>The price of the bidding document and processing fee/user charges can be paid by bank demand draft, banker's cheque of a Scheduled Bank or online transfer in bank account.. The details and proof of these payment shall be submitted electronically through State e-Procurement Portal along with Bid. Proof of payment through the Demand Draft or the banker's cheque of a Scheduled Bank or online transfer in bank account shall be submitted in physical form at the address of Procuring Entity.</p>
3.2	Language of Bid	3.2.1	The Bid, as well as all correspondence and documents relating to the Bid exchanged by the Bidder and the Procuring Entity, shall be written in English or a language specified in the BDS . Supporting documents and printed literature that are part of the Bid may be in an other language provided they are accompanied by an self attested accurate translation of the relevant passages duly accepted by the Bidder in English/ Hindi or the language specified in the Section I - Bid Data Sheet (BDS), in which case, for purposes of interpretation of the Bid, such translation shall govern.
3.3	Documents Comprising the Bid	3.3.1	<p>The Bid shall comprise 2 (two) parts (Part-1 and Part-2) submitted simultaneously, Part-1 comprises of Techno-commercial Bid (in PDF format) and the Part-2 comprises of Financial Bid (in MS-Excel format and/or PDF format, as specified on the e-procurement portal). Both Parts comprising the Techno-commercial Bid and Financial Bid (Price Bid) shall be uploaded at www.eproc.rajasthan.gov.in.</p> <p>The Techno-commercial Bid/ Proposal and Financial Bid/ Proposal shall comprise of the documents as indicated in the BDS.</p>

3.4	Bid Submission Forms and Price Schedules	3.4.1	The Bidder shall submit the Techno-commercial Bid and Financial Bid using the Bid Submission Forms provided in Section V - Appendices (Bidding Forms) and Volume III of the Bidding Document. These forms must be completed without any alterations to their format, and no substitutes / deviation / condition shall be accepted. All blank spaces shall be filled in with the information requested.
		3.4.2	The Bidder shall submit as part of the Financial Bid, using the forms provided in Volume III of the Bidding Document. Bid amount shall be indicated clearly in both figures and words, in Indian Rupees (unless otherwise indicated in BDS), in prescribed format of Financial Bid and shall be duly signed by the Bidder's authorised signatory and stamped. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
3.5	Bid Price	3.5.1	The Bidder shall quote its Financial Bid in terms of Highest Production charges per B.L. The Bidder's must provide its Financial Bid which is equivalent to or more than the minimum bid reserve price (the " Bid Reserve Price "), if any indicated in BDS , set by the Procuring Entity for the Project. Financial Bids received below Bid Reserve Price would be summarily rejected. The Successful Bidder shall be liable to pay applicable GST/Tax on the quoted Premium amount. Actual liability of GST on Premium shall be computed at time of generating Demand Note by the Procuring Entity.
		3.5.2	All duties, taxes and other levies payable by the Bidder under the contract, or for any other cause, shall be excluded in the rates and prices and the total Bid Price shall be submitted by the Bidder.
3.6	Currencies of Bid	3.6.1	The unit rates and the prices shall be quoted by the Bidder entirely in Indian Rupees unless otherwise specified in Section I - Bid Data Sheet (BDS). All payments shall be made in Indian Rupees only..
3.7	Documents Establishing the Eligibility of the Bidder	3.7.1	To establish the eligibility in accordance with Clause 10 of Section III, the Bidders shall complete the eligibility declarations in the Bid Submission Forms and Declaration Form included in Section V .
3.8	Documents Establishing the Qualifications of the Bidder	3.8.1	To establish its qualifications for Selection of the Project Concessionaire, the Bidder shall submit as part of its Techno-commercial Bid the documentary evidence indicated for each qualification criteria specified in Section II - Evaluation and Qualification Criteria in the format specified in Section V.

3.9	Period of Validity of Bids	3.9.1	Bids shall remain valid for a time period as indicated in Section I - Bid Data Sheet (BDS), after the Bid Due Date. A Bid valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
		3.9.2	In exceptional circumstances, prior to the expiration of the Bid validity period, the Procuring Entity may request the Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. The Bid Security in accordance with ITB Clause 3.10 shall also be got extended for thirty days beyond the dead line of the extended validity period. A Bidder may refuse the request, without forfeiting its Bid Security. A Bidder granting the request shall not be permitted to modify its Bid.
3.10	Bid Security	3.10.1	Unless otherwise specified in the Section I - Bid Data Sheet (BDS), the Bidder shall furnish as part of its Bid, a Bid Security for the amount specified in the Section I - Bid Data Sheet (BDS).
		3.10.2	The Bidder shall furnish as part of its Bid a Bid Security for an amount as specified in the Clause 3.7 of BDS . The Bid Security shall be in Indian Rupees, if not otherwise specified in the Section I - Bid Data Sheet (BDS).
		3.10.3	Soft copy of Bid Security instrument or receipt of Bid Security payment shall necessarily accompany the online Bid. Any online Bid not accompanied by a proof of payment of Bid Security, if not exempted in BDS, shall be liable to be rejected. The original banker's cheque or demand draft or Bank Guarantee or physical copy of proof payment through cash should reach Procuring Entity's office before bid opening date and time at the address of the Procuring Entity.
		3.10.4	The Procuring Entity shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified under Clause 3.10.5 below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Procuring Entity will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
		3.10.5	The Bid Security taken from a Bidder shall be forfeited in the following cases, namely:- i. when the Bidder withdraws or modifies its Bid after opening of Bids; or ii. when the Bidder does not execute the Concession Agreement in accordance with Clause 6.3 after issue of letter of acceptance/ placement of Work order within the specified time period; or

			<p>iii. when the Bidder fails to commence the Project as per Concession Agreement within the time specified; or</p> <p>iv. when the Bidder does not deposit the Performance Security in accordance with Clause 6.4; in the prescribed time limit after the work order is placed; or</p> <p>v. if the bidder breaches any provision of code of integrity prescribed for bidders specified in the Section 11 of RTPP Act and Chapter VI of RTPP rules; or</p> <p>vi. If the Bidder does not accept the correction of its Bid Price pursuant to Clause 5.5.</p>
		3.10.6	<p>The Procuring Entity shall promptly refund the Bid Security of the Unsuccessful Bidders at the earliest of any of the following events, namely: -</p> <p>i. the expiry of validity of Bid Security;</p> <p>ii. the execution of Concession Agreement and Performance Security is furnished by the successful bidder;</p> <p>iii. the cancellation of the procurement process; or</p> <p>iv. the withdrawal of Bid prior to the deadline for presenting Bids, unless the Bidding Document stipulates that no such withdrawal is permitted.</p>
		3.10.7	<p>The Bid Security of a Joint Venture, Consortium or Association must be in the name of the Joint Venture/ Consortium that submits the Bid. If the Joint Venture/ Consortium has not been legally constituted at the time of Bidding, the members of the proposed Consortium or JV shall enter in to an Agreement that they shall form a legally constituted JV after the issue of Letter of Acceptance/ Letter of Intent to them and shall also declare a one of the member as the Lead Member (the “Lead Member”) in whose name the Bid Security may be submitted.</p>
		3.10.8	<p>The Bid Security of the successful bidder shall be returned promptly on furnishing the required Performance Security.</p>
3.11	Format and Signing of Bid	3.11.1	<p>The Bid shall be digitally signed by the Bidder or authorized signatory of the Bidder and should be uploaded digitally signed by DSC of the bidder or authorised signatory of the bidder which means that all the pages of the uploaded document are signed.</p> <p>The written confirmation of authorisation to sign on behalf of the Bidder shall consist of: Power of Attorney (PoA) in prescribed format provided in Appendix 6 of the Section V – Appendices (Bidding Forms) / Board Resolution (specifically issued for the Proposed Project).</p>

		3.11.2	<p>In case of a Consortium, all pages of the Bid shall be signed by the authorised signatory of the Lead Member in whose name Power of Attorney is issued in prescribed format provided in Appendix 6 of the Section V – Appendices (Bidding Forms) on behalf of the Consortium.</p> <p>In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favour of any Member, which Member shall thereafter be identified as the Lead Member, in the format at Appendix 05. In case the Bidder is a Consortium, Consortium Agreement in the format at Appendix 08 shall be submitted by the Bidder.³</p>
		3.11.3	<p>An international Bidder bidding individually or as a Member of a Consortium shall ensure that Power of Attorney is legalised/apostilled by appropriate authority notarised in the jurisdiction where the Power of Attorney is being issued and requirement of Indian Stamp Act is duly fulfilled. Also, such Bidder shall strictly adhere to the requirements as defined under the ITB Clause 3.3, and failing to submit Bid in conformity to ITB Clause 3.3 shall be liable for rejection.</p>
3.12	Number of Bids	3.12.1	<p>No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a Members of the Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.</p>
3.13	Site visit and verification of information	3.13.1	<p>Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.</p>
		3.13.2	<p>It shall be deemed that by submitting a Bid, the Bidder has:</p> <ul style="list-style-type: none"> (i) made a complete and careful examination of the Bidding Documents; (ii) received all relevant information requested from the Procuring Entity; (iii) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of

³In case of Consortium, the Member should submit a PoA in favour of the any Member as per the Format at Appendix 07. Such member shall thereafter be identified as the Lead Member. The Lead Member should submit a PoA as per the format in Appendix 06, authorising the signatory of the Bid. Other Members of the Consortium need not submit the PoA as per the format at Appendix 06 separately, authorising another authorised signatory for signing of the Bid.

			<p>the Procuring Entity relating to any of the matters referred to in Sub-Clause 3.14.1 below;</p> <p>(iv) satisfied itself about all matters, things and information including matters referred to in Sub-Clause 3.14.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations thereunder;</p> <p>(v) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 3.14.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Procuring Entity, or a ground for termination of the Concession Agreement by the Concessionaire;</p> <p>(vi) acknowledged that it does not have a Conflict of Interest;</p> <p>(vii) agreed to be bound by the undertakings provided by it under and in terms hereof; and</p> <p>(viii) has made necessary provisions for inclusion of all the direct and indirect costs related to Project development, management and operations maintenance during the Concession Period in its Bid.</p>
		3.13.3	<p>The Procuring Entity shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Procuring Entity.</p> <p>Acknowledged and Agreed by self-attesting the Bidding Documents, that it has understood the requirements of this RFP and made submission of Bid with all the necessary details, documents, etc. and indemnify Procuring Entity and its representatives and its Consultant for any infirmities, missing information, or non-submission of details essentially required for evaluation of Bidder's capacity and credit worthiness assessment for Procuring Entity to take decision related its qualification.</p>
		3.13.4	<p>Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.</p>
3.14	Verification and Disqualification	3.14.1	<p>The Procuring Entity reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Procuring Entity, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Procuring Entity shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Procuring Entity thereunder.</p>

		3.14.2	<p>The Procuring Entity reserves the right to reject any Bid and appropriate the Bid Security if:</p> <p>at any time, a material misrepresentation is made or uncovered, or</p> <p>the Bidder does not provide, within the time specified by the Procuring Entity, the supplemental information sought by the Procuring Entity for evaluation of the Bid.</p> <p>Note: Such misrepresentation/improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Members of the Consortium may be disqualified/rejected. If such disqualification/rejection occurs after the Bids have been opened and the lowest Bidder gets disqualified/rejected, then the Procuring Entity reserves the right to annul the Bidding Process and invite fresh Bids.</p>
		3.14.3	<p>In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Procuring Entity, that one or more of the eligibility and/or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LoA or entering into of the Concession Agreement, and if the Successful Bidder has already been issued the LoA or the SPV has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Procuring Entity to the Successful Bidder or the Concessionaire, as the case may be, without the Procuring Entity being liable in any manner whatsoever to the Successful Bidder or the Concessionaire. In such an event, the Procuring Entity shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Procuring Entity under this RFP, the Bidding Documents, the Concession Agreement or otherwise.</p>

4. Submission and Opening of Bids

4.1	Sealing and Marking of Bids	4.1.1	<p>Bidders shall submit their Bids to the Procuring Entity only electronically on the e-procurement portal, http://eproc.rajasthan.gov.in. In submission of their Bids, the Bidders should follow the step by step instructions given on the e-procurement portal.⁴</p>
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⁴The Procuring Entity to provide the instructions for Bidders to use the e-procurement portal that is to be used to carry out bidding process for the Proposed Project as Annexure to this RFP.

		4.1.2	The Bidder shall upload the Techno-commercial Bid and the Financial Bid separately as instructed on the e-procurement portal. The scanned copies of proof of payment of price of Bidding Document, processing fee and Bid Security shall be enclosed in Techno-Commercial bid cover. The Bid Processing Fee and Bid Security shall be paid in the name of the Procuring Entity.
4.2	Submission of Bids	4.2.1	<p>Bids must be submitted/ uploaded on http://eproc.rajasthan.gov.in no later than the Bid Due Date as indicated in the BDS.</p> <p>Bid(s) submitted in any other mode(s) shall be treated as unresponsive.</p> <p>The Authority may, at its discretion, extend the Bid Due Date by amending the Bid Document in accordance with ITB Clause 2.3, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.</p> <p>In case the Bid Security and Bid Processing Fee are submitted in the form of a banker's cheque or demand draft or bank guarantee, the Bidders shall submit these documents by mail or by hand in original no later than the Bid Due Date at the address as indicated in the BDS in separate sealed covers, duly marking the covers as "BID SECURITY AND BID PROCESSING FEE FOR....."</p>
		4.2.2	<p>The following conditions shall be adhered to while submitting a Bid:</p> <ol style="list-style-type: none"> Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendices is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information; information furnished by a Bidder (or other constituent Members, if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms; In responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with ITB Clause 3.3 and Section II - Evaluation and Qualification Criteria. in case the Bidder is a Consortium, each Member should substantially satisfy the RFP requirements to the extent specified herein.

4.3	Withdrawal, Substitution and Modification of Bids	4.3.1	A Bidder may withdraw, substitute or modify its Bid by using appropriate option on the e-procurement portal before the deadline for submission of bids as per procedure specified in Bidder Manual Kit available on e-procurement Portal.
		4.3.2	No Bid shall be withdrawn, substituted or modified in the interval between the deadline for submission of the Bids and the expiration of the period of Bid validity specified in Clause 3.9 or any extension thereof.
4.4	Bid Opening	4.4.1	Specific electronic bid opening procedure as specified on the e-procurement portal shall be followed. The bidders may witness the electronic bid opening procedure online/ offline at the Place, Date and Time specified in BDS.
		4.4.2	Only “Techno-Commercial Bids” shall be opened one at a time. Cover marked as “Financial Bids” shall not be opened. The Financial Bids shall be kept unopened until the time of opening of the Financial Bids.
		4.4.3	After completion of the evaluation of the Techno-Commercial Bids, the Procuring Entity shall invite Bidders who have submitted substantially responsive Techno-Commercial Bids and who have been determined as being qualified, to attend the electronic opening of the Financial Bids. The date, time, and location of the opening of Financial Bids will be intimated in writing by the Procuring Entity and uploaded on www.eproc.rajasthan.gov.in Bidders shall be given reasonable notice of the opening of Financial Bids.
		4.4.4	The Procuring Entity shall notify Bidders in writing whose Techno-Commercial Bids have been rejected on the grounds of being substantially non-responsive and not qualified in accordance with the requirements of the Bidding Document and that their Financial Bids will not be opened.
		4.4.5	The Bids opening committee shall conduct the electronic opening of Financial Bids of all Bidders who submitted substantially responsive Techno-Commercial Bids and have qualified in evaluation of Techno-Commercial Bids, in the presence of Bidders or their representatives who choose to be present, at the address, date and time specified by the Procuring Entity.
4.5	Late Bids	4.5.1	The electronic bidding system would not allow any late submission of bids after due date & time as per server time.
4.6	Correspondence with the Bidder	4.6.1	Save and except as provided in this RFP, the Procuring Entity shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

		4.6.2	Any information contained in the Bid shall not in any way be construed as binding on the Procuring Entity, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
		4.6.3	The Procuring Entity reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any.

5. Evaluation of Bids

5.1	Confidentiality	5.1.1	Information relating to the examination, evaluation, comparison, and post-qualification of Bids, and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Bidding Process.
		5.1.2	Any attempt by a Bidder to influence the Procuring Entity in its examination of qualification, evaluation and comparison of the Bids or Contract award decisions may result in the rejection of its Bid, in addition legal action may be taken by the Procuring Entity under the Act and the Rules.
		5.1.3	Notwithstanding ITB Sub-Clause 5.1.2, from the time of opening the Bid to the time of Contract award, if any Bidder wishes to contact the Procuring Entity on any matter related to the Bidding process, it shall do so in writing.
		5.1.4	In addition to the restrictions specified in section 49 of the RTPP Act, 2012, the Procuring Entity, while procuring a subject matter of such nature which requires the Procuring Entity to maintain confidentiality, may impose condition for protecting confidentiality of such information.
5.2	Clarification of Techno-commercial or Financial Bids	5.2.1	To assist in the examination, evaluation and comparison of the Techno-Commercial or Financial Bids, the Bid evaluation committee may, at its discretion, ask any Bidder for a clarification regarding its Bid. The committee's request for clarification and the response of the Bidder shall be in writing and submitted within stipulated time.
		5.2.2	Any clarification submitted by a Bidder with regard to its Bid that is not in response to a request by the Bid evaluation committee shall not be considered.
		5.2.3	No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetical errors discovered by the Bid evaluation committee in the evaluation of the financial Bids.

		5.2.4	No substantive change to qualification information or to a submission, including changes aimed at making an unqualified Bidder, qualified or an unresponsive submission, responsive shall be sought, offered or permitted.
		5.2.5	If a Bidder does not provide clarifications of its Bid by the date and time set in the Procuring Entity's request for clarification, failing which the Procuring Entity may take decision based on available submission.
5.3	Deviations, Reservations and Omissions in Techno-commercial or Financial Bids	5.3.1	During the evaluation of Techno-commercial or Financial Bids, the following definitions apply: (i) "Deviation" is a departure from the requirements specified in the Bidding Document; (ii) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and (iii) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
5.4	Nonmaterial Non conformities in Techno-commercial or Financial Bids	5.4.1	Provided that a Techno-commercial or Financial Bid is substantially responsive, the Procuring Entity may waive any nonconformities (with recorded reasons) in the Bid that do not constitute a material deviation, reservation or omission.
		5.4.2	Provided that a Techno-commercial or Financial Bid is substantially responsive, the Procuring Entity may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Request for information or documentation on such nonconformities shall not be related to any aspect of the Financial Proposal of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
		5.4.3	Provided that a Techno-commercial or Financial Bid is substantially responsive, the Procuring Entity will rectify non-material non-conformities or omissions (with recorded reasons) related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section II - Evaluation and Qualification Criteria.

5.5	Correction of Arithmetical Errors in Financial Bid	5.5.1	<p>Provided that a Financial Bid is substantially responsive, the Bid evaluation committee shall correct arithmetical errors during evaluation of Financial Bid as mentioned under Rule 64 of the RTPP Rules on the following basis:</p> <ul style="list-style-type: none"> (i) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected; (ii) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and (iii) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (i) and (ii) above. (iv) The item(s) for which no rates has/have been quoted or left blank would be treated as zero i.e. the bidder will execute these item(s) free of cost and the total amount would be computed accordingly.
		5.5.2	<p>If the Bidder that submitted the highest evaluated Bid does not accept the correction of arithmetical errors, its Bid shall be disqualified and its Bid Security shall be forfeited.</p>
5.6	Preliminary Examination of Techno-commercial or Financial Bids	5.6.1	<p>The Procuring Entity shall examine the Techno-commercial or Financial Bids to confirm that all documents and technical documentation requested in ITB Clause 3.3 have been provided, and to determine the completeness of each document submitted.</p>
		5.6.2	<p>The Procuring Entity shall confirm, following the opening of the Technical or Financial Bids, that the following documents and information have been provided:</p> <ul style="list-style-type: none"> i. Bid is signed, as per the requirements listed in the Bidding Document; ii. Bid has been submitted as per instructions provided in the Bidding Document and e-procurement portal; iii. Bid is valid for the period, specified in the Bidding Document; iv. Bid is accompanied by Bid Security or Bid Securing Declaration; v. Bid is unconditional and the Bidder has agreed to give the required Performance Security;

			<ul style="list-style-type: none"> vi. Price Schedules in the Financial Bid are in accordance with ITB Clause 3.4; vii. written confirmation authorization to commit the Bidder; viii. Declaration by the Bidder in compliance of Section 7 and 11 of the 'Rajasthan Transparency in Public Procurement Act' (Act); and ix. other conditions, as specified in the Bidding Document are fulfilled.
5.7	Responsiveness of Techno-commercial or Financial Bids	5.7.1	The Procuring Entity's determination of the responsiveness of a Techno-commercial or Financial Bid is to be based on the contents of the Bid itself, as defined in Clause 3.3.
		5.7.2	<p>A substantially responsive Techno-commercial or Financial Bid is one that meets without material deviation, reservation, or omission to all the terms, conditions, and specifications of the Bidding Document. A material deviation, reservation, or omission is one that:</p> <p>(a) if accepted, would-</p> <ul style="list-style-type: none"> i. affect in any substantial way the scope, quality, or performance of the Works; or ii. limits in any substantial way, inconsistent with the Bidding Document, the Procuring Entity's rights or the Bidder's obligations under the proposed Contract; or <p>(b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.</p>
		5.7.3	The Procuring Entity shall examine the technical aspects of the Bid in particular, to confirm that requirements of Section V – Appendices (Bidding Forms) have been met without any material deviation, reservation, or omission.
		5.7.4	If a Techno-commercial or Financial Bid is not substantially responsive to the Bidding Document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.
5.8	Examination of Terms and Conditions of the Techno-commercial or Financial Bids	5.8.1	The Procuring Entity shall examine the Bids to confirm that all terms and conditions specified in the Section II - Evaluation and Qualification Criteria.

		5.8.2	The Procuring Entity shall evaluate the technical aspects of the Bid submitted in accordance with Clause 3.3 and to confirm that all requirements specified in Section V – Appendices (Bidding Forms) of the Bidding Document and all amendments or changes made by the Procuring Entity in accordance with ITB Clause 2.3 have been met without any material deviation or reservation.
5.9	Evaluation of Qualification of Bidders in Techno-commercial Bids	5.9.1	The determination of qualification of a Bidder in evaluation of Techno-commercial Bids shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to Clause 3.7 and in accordance with the qualification criteria indicated in Section II - Evaluation and Qualification Criteria. Factors not included in Section II - Evaluation and Qualification Criteria, shall not be used in the evaluation of the Bidder's qualification.
		5.9.2	The Procuring Entity will carry out a detailed technical evaluation of the Bids to determine whether the technical aspects are in compliance with the Bidding Document. The Bid that does not meet minimum acceptable standards of completeness, consistency, and detail, and the specified minimum and/or maximum requirements for specified functional guarantees, will be treated as nonresponsive and hence rejected. To reach such a determination, the Procuring Entity shall examine and compare the technical aspects of the Bids on the basis of the information supplied by the Bidders, taking into consideration technical eligibility criteria as specified under the Section II - Evaluation and Qualification Criteria.
5.10	Evaluation of Financial Bids	5.10.1	The Procuring Entity shall evaluate each Financial Bid, the corresponding Techno-commercial Bid of which has been determined to be substantially responsive.
		5.10.2	To evaluate a Financial Bid, the Procuring Entity shall only use all the criteria and methodologies defined in this Clause and in Section II - Evaluation and Qualification Criteria. No other criteria or methodology shall be permitted.
		5.10.3	To evaluate a Financial Bid, the Procuring Entity shall consider the following: i. the Bid Price quoted in the Financial Bid; and ii. Price adjustment for correction of arithmetical errors in accordance with Clause 5.5.

5.11	Comparison of Bids	5.11.1	The Procuring Entity shall compare all substantially responsive Financial Bids to determine the H1 Bid in accordance with Clause 5.10.
5.12	Procuring Entity's Right to Accept Any Bid, and to Reject Any or All Bids	5.12.1	The Procuring Entity reserves the right to accept or reject any Bid, and to annul the Bidding process and reject all Bids at any time prior to Contract award without assigning any reasons thereof and without there by incurring any liability to the Bidders.
		5.12.2	The Procuring Entity reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

6. Award of Contract

6.1	Selection Criteria	6.1.1	<p>The financial evaluation will be conducted on the basis of higher production charge quoted-</p> <p>Production Charge-</p> <p>The production charge will be per Bulk Liter (B.L.) of total spirit produced by the Concessionaire. Total spirit includes production of ENA/ Ethenol and impure spirit and fusel oil. The production charge quoted by Bidder shall not be less than INR 1 per BL of total spirit production as stated above. There shall be an escalation of 10% of existing production charge after every three years from the completion of Construction period.</p>
6.2	Notification of Award	6.2.1	As per Rule 70 (6) of RTPP Rule 2013, prior to expiry of the validity period of Bid, the Procuring Entity shall inform the successful Bidder in writing, by registered post or official e-mail ID, that its Bid has been accepted.
		6.2.2	As per Rule 70 (8) of RTPP Rule 2013, if the issuance of formal letter of acceptance (LOA) is likely to take time, in the meanwhile a Letter of Intent (LOI) may be sent to the successful Bidder. The acceptance of an offer is complete as soon as the letter of acceptance or letter of intent is posted and/ or sent by email (if available) to the address of the successful Bidder.
		6.2.3	The Information of award of contract shall be communicated to all participating bidders and published on the State Public Procurement Portal in accordance with provisions of sub-section (3) of section 27 of RTTP Rules.

6.3	Signing of the Concession Agreement	6.3.1	<p>Along with the Letter of Acceptance sent to the successful Bidder, the Procuring Entity shall send the successful Bidder the Contract Agreement and request successful bidder to execute an agreement in the format given in the Bidding Document on a non-judicial stamp of requisite value at his cost and deposit the Performance Security within a period specified in the BDS. In case the successful bidder is a JV still to be legally constituted, all parties to the JV shall sign the Agreement.</p> <p>The Successful Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.</p>
		6.3.2	<p>While signing the contract, bidder will also have to submit signed copy of Bid Document in token of having accepted all the terms and condition of Bid Document. The stamp paper issued in the State of Rajasthan should be used for contract signing.</p>
6.4	Performance Security Deposit	6.4.1	<p>The amount of Performance Security shall be as specified in the BDS, of the amount of the contract value. The currency of Performance Security shall be Indian Rupees, if otherwise not specified in BDS.</p>
		6.4.2	<p>Performance security shall be furnished (in accordance with Rule 75 (3) (a) to (e) of RTPP Rules) in any one of the following forms</p> <ol style="list-style-type: none"> <i>a banker's cheque / demand draft / bank guarantee/ online transfer in bank account of RSGSM.</i> If submitted through Bank Guarantee, it shall be from Scheduled Banks declared by Reserve Bank of India and shall be submitted with a validity of 60 days beyond the original or extended period of the contract period. Bank Guarantees of a scheduled bank after it shall be verified from the issuing bank. Other conditions regarding bank guarantee shall be the same as mentioned in Rule 42 of RTPP Rule for bid-security; Fixed Deposit Receipt (FDR) of scheduled bank. It shall be in the name of procuring entity on account of bidder and discharged by the bidder in advance. The Procuring entity shall ensure before accepting the Fixed Deposit Receipt that the bidder furnishes an undertaking from the bank to make payment/premature payment of the Fixed deposit Receipt on demand to the procuring entity without requirement of consent of the bidder concerned. In the event of forfeiture of the performance security, the Fixed Deposit shall be forfeited along with interest earned on such fixed Deposit..
		6.4.3	<p>Performance Security furnished in the form of a document mentioned in ITB Clause 6.4.2 above, shall remain valid for a period of sixty days beyond the date of completion of all contractual obligations of the Bidder, including defect liability period, operation and/ or maintenance period, if any.</p>

		6.4.4	<p>Failure of the Successful Bidder;</p> <ul style="list-style-type: none"> i. to furnish the above-mentioned Performance Security, ii. to sign the Contract Agreement <p>shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Procuring Entity may either cancel the procurement process or if deemed appropriate, award the Contract at the rates of the next H1 Bidder, whose offer is substantially responsive and is determined by the Procuring Entity to be qualified to perform the Contract satisfactorily.</p>
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7. Procurement Appeals

7.1	Procurement Appeals Management	7.1.1	Any grievance of a Bidder pertaining to the procurement process shall be by way of filing an appeal to the First or Second Appellate Authority, as the case may be, as specified in the BDS , in accordance with the provisions of chapter III of the RTPP Act, 2012 and chapter VII of the RPP Rules, 2013 and as given in Appendix A to this RFP.
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8. Penalties and Punishment

8.1	Punishments	8.1.1	<p>If the Bidder during execution of works, interferes with the procurement process as mentioned in Section 42 of RTPP Act, then following actions can be taken:</p> <ul style="list-style-type: none"> i. As per Section 42 of RTPP Act, the Bidder Will be punished with fine besides forfeiture of Performance Security; and/or ii. As per Section 46 of RTPP Act, the bidder may be debarred from participating in any procurement process undertaken by the procuring entity for a period not exceeding three (03) years.
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9. Exclusive Jurisdiction

9.1	Jurisdiction of courts	9.1.1	The Courts of Jaipur district alone in Rajasthan, as specified in BDS , shall alone have exclusive jurisdiction in respect of all claims and matters arising under the consignment or for the Supply and Installation of goods.
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Section I Bid Data Sheet (BDS)

[To be filled in by the Procuring Entity]

1. General

BDS	The number of the Invitation for Bids is: RSGSM/DISTILLERY/RFP/HO/20		
1.1.1	<p>The Procuring Entity: Dy.General Manager (Pur.), Rajasthan State Ganganagar Sugar Mills Ltd.</p> <p>Name of the Proposed Project:</p> <p>ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY</p> <p>The Procuring Entity has adopted National Open Competitive Bidding Process</p>		
BDS	Procurement Schedule		
1.1.1	The Procuring Entity shall endeavour to adhere to the following schedule:		
	Sr. No.	Event Description	Date
	1.	RFP document available Online	From 11:00 hours on 31/08/2022 up to 17:00 hours on 04/10/2022
	2.	Last date for receiving queries	On 04/10/2022 up to 17:00 hours To be communicated with Procuring Entity on details as provided in clause 2.2
	3.	Pre-bid Conference	On 08/09/2022 up to 15:00 hours OR Any other date as communicated via e-procurement portal
	4.	Procuring Entity response to queries latest by	Within ... days (7 days) from date of Pre-bid Conference date.
	5.	Bid Due Date (BDD)	On 04/10/2022 up to 17:00 Hours
	6.	Opening of Techno-commercial Bids	<p>06/10/2022 at 13:00 Hours; if possible or Procuring Entity will intimate Bidders about next possible Date and Time for opening of Techno-commercial Bids.</p> <p>The bid opening shall take place at:</p> <p>Address: Rajasthan State Ganganagar Sugar Mills Ltd.</p> <p>Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)</p> <p>City: JAIPUR PIN Code: 302001</p> <p>Date: Time:</p>

	7.	Opening of Financial bids	Procuring Entity will intimate only to Technically qualified Bidders about next possible Date and Time for opening of Financial Bids. The bid opening shall take place at: Address: Rajasthan State Ganganagar Sugar Mills Ltd. Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.) City: JAIPUR PIN Code: 302001 Date: Time:
	8.	Letter of Award (LoA)	Within Fifteen days of BDD (15 days)
	9.	Validity of Bids	Ninty days from Bid Due Date (90 days)
	10.	Signing of Concession Agreement	Within fiteen days of award of LoA (15 days)
BDS 1.2.2	Concession Period: Fifteen years including Construction Period of 12 (Twelve) Months commencing from Appointed Date as per provisions of the Draft Concession Agreement. The commcession period may be extended by upto ten years in two tranches (of five years each) with mutual consent.		
BDS 1.2.3	Estimated Cost of the Project: Rs. 100.00 Crore for 100 KLPD Capacity (in words: Rupees One Hundred Crore only)		
BDS 1.4.1	Eligible Bidder: i. Bidders of Indian Nationality are only permissible. ii. The Government Owned Entity - <u>Not Permitted</u> iii. The Joint Ventures / Consortiums - <u>Permitted</u> [Joint Ventures / Consortium are permitted comprising not more than three firms/companies. The minimum equity under JV / Consortium of lead firm should be min 51%.]		
BDS 1.6.3	Bidder may visit the site before submission of bid as their convenience.		

2. Contents of Bidding Document

BDS 2.2.1	For Clarification purposes only, the Procuring Entity's address is: Dy.General Manager (Pur.), Address: Rajasthan State Ganganagar Sugar Mills Ltd. Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.) Contact No. : 0141- 2740841
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	<p>Email ID- dgmpurchase.rsgsm@rajasthan.gov.in</p> <p>Any queries or request for additional information concerning this RFP shall be submitted in writing by speed post/courier/in-person and by e-mail so as to reach the Project's Officer-in-Charge designated by the Procuring Entity as mentioned herein on or before last date for receiving queries as specified under Schedule of Bidding Process. The communications shall clearly bear the following identification/title:</p> <p>Subject: Queries/Request for Additional Information: RFP for ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY</p>
<p>BDS</p> <p>2.2.2</p>	<p>Pre-Bid Conference</p> <p>The date, time and venue of the Pre-bid Conference shall be as follows:</p> <p>Date: 08/09/2022 Time: 15:00 Hours</p> <p>Venue:</p> <p>Dy.General Manager (Pur.),</p> <p>Address: Rajasthan State Ganganagar Sugar Mills Ltd.</p> <p>Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)</p> <p>Contact No. : 0141-2740841</p> <p>Email ID- dgmpurchase.rsgsm@rajasthan.gov.in</p>

3. Preparation of Bids

<p>BDS</p> <p>3.2.1</p>	<p>The language of the Bid shall be : English</p> <p>The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language only. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the bid, the English language translation shall prevail.</p>
<p>BDS</p> <p>3.3.1.</p>	<p>The Techno-Commercial Bid/ Proposal shall consist of <u>Technical Forms as listed in Section IV: Bidding Forms or following documents.</u></p> <ul style="list-style-type: none"> (i) Bid is signed, as per the requirements listed in the Bidding Documents; (ii) Bid has been submitted as per instructions provided in the Bidding Document and e-procurement portal; (iii) Bid is valid for the period, specified in the Bidding Document; (iv) Bid is unconditional and the Bidder has agreed to give the required Performance

	<p>Security;</p> <p>(v) Covering Letter in prescribed format provided in Appendix 1;</p> <p>(vi) Techno-commercial Bid/ Proposal Submission Sheet and Techno-commercial Bid containing the filled-up Bidding Forms and Declarations related to Techno-commercial Bid, possession of required qualifications and Code of Integrity given in Section V – Appendices (Bidding Forms) ;</p> <p>(vii) Proof of payment of Bid Document Fee, Bid Processing Fees and Bid Security in accordance with Clause 3.10;</p> <p>(viii) Written confirmation authorising the signatory of the Bid to commit the Bidder, in accordance with Clause 3.11;</p> <p>(ix) Documentary evidence in accordance with Clause 3.7 establishing the Bidder's eligibility to bid;</p> <p>(x) Documentary evidence in accordance with Clause 3.8 establishing the Bidder's qualifications to perform the Concession Agreement if its Bid is accepted;</p> <p>(xi) Drawings/ designs in support of the Works to be executed (if requested);</p> <p>(xii) Partnership Deed and valid registration certificate issued by the Registrar of Firms in case of Partnership Firms. Power of Attorney in favour of the partner signing the Bid, authorising him to represent all partners of the firm;</p> <p>(xiii) GST registration certificate and GST clearance certificate from the concerned Commercial Taxes Officer and Permanent Account Number (PAN) given by the Income Tax Department;</p> <p>(xiv) Address of residence and office, telephone numbers e-mail address in case of sole Proprietorship;</p> <p>(xv) Certificate of Registration and Memorandum of Association issued by Registrar of Companies in case of a registered company. In case of any other statutory or registered body, certificate of incorporation or registration issued by concerned authorities. Power of attorney in favour of the person signing the Bid;</p> <p>(xvi) Where permitted to bid as Joint Venture, Consortium or Association, letter of formal intent to enter in to an agreement or an existing agreement in the form of a Joint Venture, Consortium or Association;</p> <p>(xvii) written confirmation of authorisation to commit the Bidder; and</p> <p>(xviii) Declaration by the Bidder in compliance of Section 7 and 11 of the RTPP Act, 2012.</p>
<p>BDS</p> <p>3.3.1</p>	<p>The Financial Bid/ Proposal shall consist of <u>Financial Forms as listed in Section IV: Bidding Forms or following documents.</u></p> <p>(i) Covering Letter in prescribed format provided in Volume III of the Bidding Document;</p> <p>(ii) Financial Bid/ Price Proposal Submission Sheet and the applicable Price Schedules, in accordance with Clauses 3.4; and</p> <p>(iii) Any other document required</p>

BDS 3.4 and 3.5	The Bid Price to be quoted by the Bidder is for Grant and/or Premium that it shall payable as mentioned below; <ul style="list-style-type: none">Premium (including Usage Fee, which is part of the Concession Fee) payable by the Concessionaire to the Procuring Entity, for the Procuring Entity granting Concession for the Proposed Project as mentioned in the Draft Concession Agreement.
BDS 3.5.1	Bid Reserve Price: Not applicable
BDS 3.9.1	The bid validity period shall be 90 days from deadline for Submission of Bids.
BDS 3.10.1	The amount and currency of the bid security shall be Rs. 2,00,00,000.00 (Rs. Two Crore Only)
BDS 3.12.1	Each Bidder shall upload on-line / submit only one bid. A Bidder who submits more than one bid for the Proposed Project will be disqualified.

4. Submission and Opening of Bids

BDS 4.2.1	The deadline for bid submission (Bid Due Date) is: Date: 04/10/2022 Time: 05:00 PM Address of submission of Physical Bid Security and Bid Processing Fee Dy.General Manager (Pur.), Address: Rajasthan State Ganganagar Sugar Mills Ltd. Head Office, 4 th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)
BDS 4.4	Opening and Evaluation of Bids <ul style="list-style-type: none">(i) The Procuring Entity shall open the Bids on the Bid Due Date, at time and place specified in Schedule of Bidding Process and in the presence of the Bidders who choose to attend.(ii) The Procuring Entity will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section II - Evaluation and Qualification Criteria.(iii) To facilitate evaluation of Bids, the Procuring Entity may, at its sole discretion, seek clarifications in writing from any/all Bidder regarding its Bid.

5. Evaluation and Comparison of Bids

<p>BDS 5.7.1</p>	<p>Tests of responsiveness</p> <p>1. As a first step towards evaluation of Techno-commercial Bids, the Procuring Entity shall determine whether each Techno-commercial Bid is responsive to the requirements of this RFP. A Techno-commercial Bid shall be considered responsive only if:</p> <ol style="list-style-type: none"> i. Techno-commercial Bid is received online in the prescribed format and documents are duly signed on all the pages by the Authorised signatory with stamp of Bidder's firm (in case of Consortium, Lead Member's firms' stamp). <p>documents listed at ITB Clause 3.3 are submitted online;</p> <p>it is received as per formats prescribed in this RFP at appendices section;</p> <p>it is received by the Bid Due Date including any extension thereof pursuant to ITB Sub-Clause 2.3;</p> <p>Bid Document Fee and Bid Security has been paid and proof of payments are uploaded;</p> <p>it is accompanied by the Power of Attorney as specified in Clause ITB 3.11 and format provided in Appendix 6,</p> <ul style="list-style-type: none"> • in the case of a Bidder being an Consortium, it shall have also to submit Power of Attorney for Lead Member as specified in ITB Clause 3.11.2 and format provided in Appendix 7; <p>it contains all the information and documents (complete in all respects) as requested in this RFP and mandatory documents as listed below;</p> <p>All Appendices with requisite information required to carry out evaluation of eligibility of the Bidder as furnished in the Section V – Appendices (Bidding Forms) in the RFP;</p> <ul style="list-style-type: none"> • copy of valid incorporation certificate or Partnership deed or Shop license or other document which is valid and accepted as valid proof of existence of the legal entity, whichever is applicable (in case of Bidder being an Consortium, such documents of all the Members of the Consortium to be submitted); • copy of PAN card, GST registration (in case of Bidder being an Consortium, such documents of all the Members of the Consortium to be submitted); • copy of audited reports certified by statutory auditor or financial statements (Balance sheet, and Profit & Loss statement) certified by CA, and CA certificate; • copy of duly notarised Consortium Agreement, if applicable; on non-judicial stamp paper; • Power of Attorney for Authorised signatory and Power of Attorney for Lead Member of Consortium, if applicable; on non-judicial stamp paper; <p>it contains information in formats same as those specified in this RFP;</p> <p>it contains certificates from its statutory auditor/CA in the formats specified at Appendix 3 (template for providing details of eligible Projects) of the RFP in case if Bidder is not having work completion or experience certificate from Client;</p> <p>it contains an attested copy of the receipt of payment of Bid Security and Bid Document Fee;</p> <p>it is accompanied by the Consortium Agreement (for Consortium), as per ITB Clause 1.4.2 and format provided in Appendix 8;</p>
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	<p>it does not contain any condition for qualification or deviation or infirmities; and it is not non-responsive in terms hereof.</p> <p>2. The Procuring Entity reserves the right to reject any Techno-commercial Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Procuring Entity in respect of such Bid. Provided, however, that the Procuring Entity may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.</p>
BDS	Evaluation parameters
5.9 and 5.10	<p>(i) Only those Bidders who meet the eligibility criteria specified in Clause 10 shall qualify for evaluation under this Section II - Evaluation and Qualification Criteria. Bids of firms/consortium who do not meet these criteria shall be rejected.</p> <p>(ii) A Bidder's competence and capability is proposed to be established by the following parameters:</p> <p>(a) Technical Capacity; and</p> <p>(b) Financial Capacity</p>

6. Award of Contract

BDS 6.5.1	The period within which the Performance Security is to be submitted by the successful Bidder and the Concession Agreement is to be signed by successful Bidder from the date of issue of Letter of Acceptance is 15 Days.
BDS 6.6.2	Performance Security at the rate of 2.5% Percent of the contract value or Performance Security Declaration, as the case may be, shall be required.

7. Procurement Appeals

BDS 7.1.1	<p>The designation and complete address of the First Appellate Procuring Entity:</p> <p>Joint Secretary, Finance (Excise) Department, Secretariat, Jaipur.</p> <p>The designation and complete address of the Second Appellate Procuring Entity :</p> <p>Any Two directors appointed by Board of Directors of RSGSM</p>
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9. Exclusive Jurisdiction

9.1.1	The Jurisdiction shall be Jaipur District only
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Section II Evaluation and Qualification Criteria

10. Eligibility and Qualification Requirement of Bidders

To be considered for opening of their financial Bid, Bidder needs to submit documents given below.

- i. The documents are divided into two (02) categories - For preliminary examinations, the documents are listed in Clause 10.1 . If Bidder fails to submit these documents, then further examination of Bids shall not be done, and the Bid will be rejected. aaa
- ii. After Bidder has submitted documents as required for Preliminary Examination, Bid will be examined for Techno-commercial Qualification based on the documents submission as listed in Clause 10.2 to 10.8.

10.1 Preliminary Examination of Bids

- iii. Bidder must submit Letter of Bid as per Bidding Form (Appendix 1)
- iv. Bidder must submit proof of payment for Bid Document price and Processing Fees as specified in NIB.
- v. Bid is accompanied by bid security (in case of Bank Guarantee, use Appendix 9. In case the bid security is submitted via bank demand draft/ Banker's Cheque/ Bank Guarantee of scheduled bank or any other paying instrument allowed under NIB, the original copy of the same should be submitted physically prior to bid opening date. In case of cash or single challan through eGRAS along with bid document cost and processing fee than the challan soft copy should be submitted along with Bid.

10.2 Essential Documents for Techno-commercial Examination:

- a) Declaration by the Bidder under **Appendix1-Annex 1 (Declaration by the Bidder in compliance of Section 7 & 11 of the Act)** that they have not been debarred by any other Procuring Entity/State Government under Section 46 of RTPP Act of The RTPP Act.
- b) Proof of registration of bidder, by submission of any of the following but not limited to-

Type of Company/Firm	Certificate
Any company, registered/ incorporated under 'Companies Act, 2013' or other applicable Laws of India	Valid certificate of incorporation
Proprietorship firm Registration under the Shop and Commercial establishment Act, 1958	Shop Establishment certificate
Partnership firm registered under "The Indian Partnership Act, 1932".	Partnership registration certificate issued by Registrar of Firms or duly notarized/Registered Deed of Partnership
A limited liability partnership (under the Limited Liability	Copy of Certification of Incorporation

Partnership Act, 2008)	
Society registered under Societies Registration Act, 1860/ Rajasthan Society Registration Act, 1958;	Society registration certificate
Trust Deed registered under The Indian Trusts Act, 1882	Certified copy of the trust deed

- c) Bidder to submit copy of **valid PAN card**.
- d) Bidder to submit **copy of GST certificate along with latest quarterly return** so that it can be verified that there is no overdue tax to be deposited to the Government.
- e) Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- f) Bidder to submit all documents as indicated at Checklist Section V.

10.3 Definition of Associate

10.3.1 In computing the Eligibility, Technical Capacity and Financial Capacity of the Bidder (Individual Bidder or Members of the Consortium) as defined under Clause 10.5 (iv) of the RFP; the Eligibility, Technical Capacity and Financial Capacity of their respective Associates would also be eligible and evaluated hereunder for qualification purpose.

- i. For purposes of this RFP, Associate means, in relation to the Bidder/Members of the Consortium, a person who controls, is controlled by, or is under the common control with such Bidder/Members of the Consortium (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.
- ii. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Members of the Consortium shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium Member as the case may be.

10.4 Evaluation of Technical Bid

Technical bid shall be evaluated on the basis of Technical score points obtained for technical capacity, Turn over and experience. Maximum points of these three criteria are 100 out of which 70 points are for Technical capacity, 15 points for Turn Over and 15 points are for experience. 30% weightage of technical score points shall be considered for deciding successful bidder.

Detail of technical score points are here under.

10.5 Technical Capacity

- (i) Bidder should be registered with the authorities concerned for meeting out statutory requirements of having PAN , GST, registration no. of PF, ESI, Works contract registration under section 7 and/or 11 of Contract Labour Act 1970.
- (ii) In last 5 year from bid due date, Bidder (including its consortium members) should have experience of one year for operation and maintenance of at least one distillery of minimum 30

KLPD capacity OR one bottling plant of minimum 50.0 lacs BL per annum capacity. With reference to the experience, bid shall be evaluated as under:-

Experience	POINTS
Minimum 1 Year	5
From 1 Year to 3 Years	10
More than 3 Years	15

- iii. Proposed production capacity by the bidder (including its consortium members) shall be evaluated as under:-

Proposed production capacity (in KLPD)	POINTS
100	50
101-150	55
151-200	60
201-250	65
250 and Above	70

- iv. Financial Capacity

For demonstrating Financial Capacity (the “**Financial Capacity**”), the Bidder shall, preceding the BDD, have:

- (i) A minimum Net Worth equivalent to INR 25 Crore **(in words - Rupees Twenty Five Crore only)** at the close of the preceding Financial Year.
 - Lead Member shall have a minimum Net Worth of [80% (eighty per cent)] of the threshold limit defined in Clause 10.5 (iv) above, in the immediately preceding Financial Year; and
 - Each Member of the Consortium shall individually have a minimum Net Worth of [12.5% (twelve and half per cent)] of the threshold limit defined in Clause 10.5 (iv) above, in the immediately preceding Financial Year.

Note: The combined technical capability and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 02 (two) years from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 12.5% (twelve and a half per cent) of the Estimated Project Cost specified in the Concession Agreement⁷ or hereunder.

- (ii) The average annual turnover of the Bidder (including its consortium members) should be at least INR 50.00 crore or more during last three years. It also includes the turnover of group companies

of the bidder. In support of this, bidder shall submit three years' audited balance sheet. The evaluation of average turnover shall be as under:-

Average Turnover (INR in Cr)	POINTS
Minimum 50	5
From 51 to 100	10
From 101 and Above	15

Illustration: A bidder has quoted 200 KLPD technical capacity, 100 Cr turn over and 2 Years of experience. Technical score shall be calculated for this bid 80 technical score points. Hence, the weightage of technical score point will be 30% of 80 i.e. 24 marks.

The minimum technical score required to qualify a bidder is 60. The weightage of technical score is 30%.

Note: Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within three months of the closing of the latest Financial Year of a Bidder, it shall ignore such Financial Year for the purposes of its Application and furnish all its information and certification with reference to the 03 (three) years (for financial capacity), preceding its latest Financial Year. For the avoidance of doubt, Financial Year shall, for the purposes of a Bid submission hereunder, mean the accounting year followed by the Bidder in the course of its normal business

10.6 O&M Experience

The Bidder shall do the O&M of the Project and Project facilities and/or engage an experienced O&M contractor or hire qualified and trained personnel for operation and maintenance of the Project in conformity with the provisions of the Concession Agreement.

10.7 Credential requirements

10.7.1 The Bidder shall enclose with its bid, to be submitted as per the format at Appendix 4, complete with Annexes, the following:

- (i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/received or works commissioned, as the case may be, during the past 10 (ten) years in respect of the Projects specified in Clause 10.5 above. In case a particular job/contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/contract by producing a certificate from its statutory auditor or the client; and
- (ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding Financial Year, and also specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause. For the purposes of this RFP, net worth (the "**Net Worth**") shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.

- The Net worth for assessing financial capacity shall be computed as mentioned below;

For Company = (Paid up Equity Capital + Reserves & Surplus – Revaluation Reserve) – (Accumulated Losses + Intangible Assets)

For Partnership = (Aggregate of Partner's Capital Account + Reserves - Aggregate of Drawings by Partners) – (Aggregate of Advances to Partners)

For Proprietorship = (Proprietor's Capital Account + Reserves - Drawings by Proprietor) – (Advances to Proprietor)

For Society/Trust = (Society's/Trust's Capital Account (Corpus Fund) + Reserve Fund – Advances to Trustees or Members, if any to be certified by Chartered Accountant)

10.7.2 A Bidder including any Members of the Consortium or Associate should, in the last 03 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Procuring Entity or a judicial pronouncement or arbitration award against the Bidder, Members of the Consortium or Associate, as the case may be, nor has been expelled from any Project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Members of the Consortium or Associate. Provided, however, that where an Bidder claims that its disqualification arising on account of any cause or event specified in this Clause is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Procuring Entity for seeking a waiver from the disqualification hereunder and the Procuring Entity may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Processor on the implementation of the Project.

10.7.3 The following conditions shall be adhered to while submitting the bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendix is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- v. Information supplied by a Bidder (or other constituent Members if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms. Invitation to submit Bids will be issued only to Bidders whose identity and/or constitution is identical to that at qualification;
- vi. In responding to the Bid submission, Bidders should demonstrate their capabilities in accordance with the provisions of the RFP; and
- vii. In case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified and herein.

10.8 Details of Experience

- (i) The Bidders should furnish the details of Eligible Experience for the last 1 Year immediately preceding the Bid Due Date.
- (ii) the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% (twenty six per cent) equity during the entire year for which Eligible Experience is being claimed;

- (iii) Experience as a consortium member will be considered in proportion to the equity holding in the Project at the time of execution/construction of the Project;
- (iv) The Bidders shall quote experience in respect of a particular Eligible Project, even though the Bidder (either individually or along with a Member of the Consortium) may have played multiple roles in the cited Project. Double counting for a particular Eligible Project shall not be permitted in any form.
- (v) The Bidders must provide the necessary information relating to Technical Capacity as per format of Appendix 3.

10.9 Financial Evaluation

The financial evaluation will be conducted on the basis of the weighted average of the production capacity and production charge per B.L.. **Bidder shall quote per B.L. production charge and quantity of the final product to be manufactured per year.** Minimum production of 3 Crore B.L. per 100 KLPD per year shall be considered for computing annual production charge offered by a bidder. The highest production charge per B.L. quoted shall be treated as 100 and proportionate weightage given to others accordingly. A weight of 70% will be awarded for per year production charge.

Illustration: The highest rate quoted by a bidder for production charge is Rs. 2 / B.L. One of the bidders has quoted production charge of Rs. 1 / B.L. Therefore, the weightage shall be computed as 50%. Hence, weightage of production charge will be 70% of 50 marks i.e. 35 marks.

Selection of the Bid-

A sum of both the weights i.e. 30% of Technical score points and 70% of Financial weightage awarded as above will be calculated for each bid. Final bid will be awarded to the highest value received in this calculation.

Illustration: A bidder has quoted 200 KLPD technical capacity, 100 Cr turn over and 2 Years of experience. Technical score shall be calculated for this bid 80 technical score points. Hence, the weightage of technical score point will be 30% of 80 i.e. 24 marks.

And if Production charge quoted Rs. 1 / B.L. and highest quoted production charge in bid is Rs. 2 / B.L. then financial weightage shall be 50 marks.

A sum of both the weightage $24 + 50 = 74$ marks, shall be awarded.

Production Charge-

Production charge will be per Bulk Liter (B.L.) of total spirit produced by the concessionaire. Total spirit includes production of ENA/ Ethenol and impure spirit and fusel oil. The production charge will be levied from the thirty seventh month after the agreement. There shall be an escalation of 15% of existing production charge after every three years.

Bidder shall quote per B.L. production charge. Minimum production of 3 Crore B.L. per year shall be considered for computing annual production charge offered by a bidder.

Section III Project Information Memorandum

Particulars	Description
Name of the Project	- FOR ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY .
Project Location	- CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN YEARS
Project Land Area	- 45852.647 sq mt.
Estimated Project Cost	- INR 100.00 Crores Only for 100 KLPD Capacity
Project Structuring	<p>- <u>Obligations of Concessionaire-</u></p> <p>(i) The concessionaire shall ensure the compliance of statutory requirements, timely repair and maintenance of plant and machinery and its part thereof ,enhancement of plant and machinery as per requirement with the prior permission of RSGSM, production of ENA/Ethanol and will watch all other expectations defined in scope of work.</p> <p>(ii) Successful bidder will arrange auxiliary supply/DG Set on his own cost. All tools/tackle/machinery which will used in lifting of molasses and water from sugar mill tank/reserve to distillery will R&M and operate by The concessionaire on his own cost.</p> <p><u>Payment-</u></p> <p><u>A- Annual fixed amount:-</u></p> <p>The fixed amount of Rs. 2.25 Crore + GST per annum to be paid by concessionaire to RSGSM for the use of required total land, building, furniture and fixtures and existing machinery. There shall be an escalation of 10% of existing fixed amount after every three years.</p> <p><u>B- Production charge -</u></p> <p>Production charge will be per Bulk Liter (B.L.) of total spirit produced by the concessionaire. Total spirit includes production of ENA/ Ethenol and impure spirit and fusel oil. The production charge will be levied from the thirty seventh month after the agreement. There shall be an escalation of 15% of existing production charge after every three years.</p>

		Bidder shall quote per B.L. production charge. Minimum production of 3 Crore B.L. per year shall be considered for computing annual production charge offered by a bidder.
Concession Period	-	<p>Initially the period of concessionaire agreement will be for FIFTEEN YEARS, which may further be extended up to ten years in two tranches with mutual consent in accordance with the Concession Agreement.</p> <p>The Concessionaire is required to complete the construction, supply and installation of the additional facility required for functioning of 100 KLPD (Kilo Litter Per Day) distillery within 12 (twelve) months from signing of Concession Agreement.</p>
Brief Project Scope for Concessionaire	-	<p>The concessionaire shall enhance the capacity of existing 30 KLPD distillery to minimum of 100 KLPD , however, if the concessionaire desires ,capacity may further be enhanced more than 100 KLPD capacity in accordance with the Concession Agreement.</p> <ol style="list-style-type: none"> The concessionaire can produce and sell E.N.A./Ethanol from the distillery plant. It will not be mandatory to sell the product / by-product to RSGSM, the concessionaire can sell products/ by-products of distillery plant in open market also. The concessionaire can install and operate bottling plant for own / third party products/ brands. The concessionaire shall ensure operation of plant throughout the year as per Central Pollution Control Board(CPCB) / Rajasthan State Pollution Control Board (RSPCB) norms. If the operations of the distillery plant are not undertaken for two consecutive years from the date of agreement or in the intermittent period of agreement and the plant remains idle, RSGSM can terminate the contract without seeking the explanation for such non-operation . In case of such termination performance security will be forfeited and to-date fixed amount shall be recovered. Arrangement of all types of tools and tackles at its own level. The concessionaire shall be responsible for any damage of machinery during operation and maintenance, except Natural Calamity. The concessionaire would be completely responsible for the safety and security of its employees and shall take all steps required under the laws or otherwise in this direction, RSGSM shall not be responsible for any claim or compensation for the staff engaged by the concessionaire. The concessionaire shall follow and comply with all

		<p>statutory requirements e.g. provident Fund, Factories Act, ESI and Minimum Wages Act etc.</p> <p>viii. Responsibility of maintenance of all equipment's and accessories thereof required for operation of the plant will be of the concessionaire .</p> <p>ix. For the enhancement in Capacity of plant or any modification/up gradation required in existing plant and machinery or installation of any new plant and machinery or part thereof , the entire capital expenditure shall be incurred by the concessionaire from its own resources . After the contract period , capital assets will be transferred in sound an appropriate condition to RSGSM.</p> <p>x. Others-</p> <ul style="list-style-type: none"> a) Penalty imposed, if any, by excise department for less recovery or for any reason shall be born by the concessionaire. b) Penalty imposed, if any, by state/ central pollution control board for non-conforming operation or for any other reason as directed by RSPCB/CPCB then such penalty shall be born by the The concessionaire. c) Repair material , Consumables for repair and maintenance , fuels , essential manpower etc shall be arranged by the concessionaire. d) Following delegated plant and machinery, if is required to get repaired by the concessionaire , then it will only be got repaired from its manufacturer or authorized dealer and necessary material will be brought from OEM :- <ul style="list-style-type: none"> (a) Power Turbine and Alternator and their control panel, AVR. (b) Boiler feed pumps. (c) All DCS systems and VFD'S, UPS, Battery.
Permissible use allowed for Project	-	Industrial Land
Other particulars, if any deemed necessary by the Procuring Entity	-	<p>Loan from the financial institutions:- The concessionaire may require loan from the financial institutions regarding expansion/up-gradations /enhancement of the capacity In that case the concessionaire will be allowed to mortgage only on the new machineries procured by the Concessionaire, however the concessionaire shall not be allowed to mortgage the land and building and existing machinery of the distillery plant.</p>

The minimum development obligations and requirements are provided in Volume II- Draft Concession Agreements.

Section IV Appendices (Bidding Forms)

Checklist for submission of documents

Checklist provided hereunder is only for guidance/reference purpose, however Bidders are advised to thoroughly read and review the RFP documents in order to understand requirements and documents required to be submitted in the Bid.

Sr. No.	Compliances and submission of documents as part of Bid submission	Submission Status		Reference Clause
		Yes	No	
1	Whether Bid Document fee, Bid Processing Fee and Bid Security paid (Demand Draft/ Bank Guarantee/ Banker's Cheque)? Has the proof of such payments submitted along with the Bid?			3.10
2	Whether all the pages of the Bid and RFP documents stamped and signed by Authorised Signatory?			3.11
3	Has all the Appendices submitted in prescribed formats?			3.3
i	Appendix 1–Covering Letter for Bid Submission			3.3
	Details of Registration/ Incorporation of the Bidder as firm/ company/ society etc. including complete address, telephone/ fax/ mobile numbers, e-mail address etc. (enclose copies of certificate of registration/ incorporation issued by concerned authority like Registrar of Firms, Registrar of Companies, Registrar of Societies, etc., Memorandum of Association/ Partnership Deed/ By-laws/ others.			
	Permanent Account Number (PAN) Card issued by Income Tax Department (For Each Bidder or member of a JV/ consortium)			
	GSTIN Registration Number and a copy of GSTIN return for the previous quarter. (For Each Bidder or member of a JV/ consortium)			
ii	Appendix 1–Annex 1 Declaration by the Bidder			
lii	Appendix 2–Particulars of Bidder			
(a)	In case of any company, registered/incorporated under <u>Companies Act 1956</u> or 'Companies Act, 2013' or other applicable Laws of India (to submit valid certificate of incorporation)			
(b)	In case of a partnership firm, <u>registered under the Indian Partnership Act 1932</u> , to submit a Partnership Registration Certificate issued by Registrar of Firms or duly notarized / Registered Deed of Partnership			
(c)	IN case of a limited liability partnership (<u>under the Limited Liability Partnership Act, 2008</u>) in India, to submit copy of Certification of Incorporation)			
(d)	In case of Proprietorship Firm <u>registered under the Shop and Commercial Establishment Act 1958</u> , to submit a Registration Certificate			

(e)	In case of any Society registered under Societies Registration Act, 1860; or <u>Rajasthan Societies Registration Act 1958</u> ; to submit a Society registration certificate issued by the office of the Registrar of Cooperatives, or Trust registered under The Indian Trusts Act, 1882, Trust Registration Certificate			
(e)	Copy of valid Permanent Account Number (PAN) Card.			
(f)	Copy of Goods and Services Tax (GSTIN) registration certificate along with copy of last GSTIN return.			
iv	Appendix 3-Technical Capacity of Bidder			10.5
	Template for providing details of eligible Projects – separate filled template for each Project showcased for eligibility purpose			10.7.1
	Copy of valid experience certificate from Client			
v	Appendix 4–Financial Capacity of Bidder			10.5.4
	CA certificate as per Appendix 04			10.7.1
	Audited financial statements (Balance Sheet and Profit & Loss)/Audited annual report			
vi	Appendix 5–Statement of Legal Capacity			3.3
vii	Appendix 6–Power of Attorney for signing of Bid <i>Alternative- An organizational document, board resolution or its equivalent specifying the representative's authority to sign the Bid is also acceptable and should be uploaded along with the Bid.</i>			3.11
Viii	Appendix 7–Power of Attorney for Lead Member of Consortium (for Consortium only)			1.4.2
ix	Appendix 8–Consortium Agreement (for Consortium only)			1.4.2
x	Appendix 9- Bank Guarantee Template for Bid Security			3.10

Appendix 1 Cover Letter for Techno-commercial Bid

(To be furnished on the letterhead of the Bidder/Lead Member)

Date:

To,

Dy.General Manager (Pur.),
Rajasthan State Ganganagar Sugar Mills Ltd.
Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)

Subject: Submission of the Techno-commercial Bid for the Project of “**ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY**”.

Dear Sir,

1. With reference to your RFP bearing Bid ID no 20 published on e-procurement portal, dated 31/08/2022 vide Bid Notice no. RSGSM/DISTILLERY/RFP/HO/20, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for qualification for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We acknowledge that the Procuring Entity will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid Project, and we certify that all information provided in the Bid and in appendices is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. I/We shall make available to the Procuring Entity any additional information it may find necessary or require to supplement or authenticate the qualification statement.
4. I/We acknowledge the right of the Procuring Entity to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we/any of the Consortium members or our/their associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Procuring Entity or a judicial pronouncement or arbitration award, nor been expelled from any Project or contract by any public Procuring Entity nor have had any contract terminated by any public Procuring Entity for breach on our part.
6. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP document, including any Addendum issued by the Procuring Entity;
 - (b) I/We do not have any conflict of interest in accordance with ITB Clause 1.3 of the RFP;
7. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
8. I/We believe that I/we satisfy the Net Worth criteria and meet all the requirements as specified in the RFP document and am/are qualified to submit a bid.
9. I/We declare that we/any Members of the Consortium, or our/its associates are not a Member of a/any other Consortium applying for the Bidding Process for the referred Project.

10. I/We certify that in regard to matters other than security and integrity of the country, we/any Members of the Consortium or any of our/their associates have not been convicted by a court or indicted or adverse orders passed by a regulatory Procuring Entity which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/We further certify that in regard to matters relating to security and integrity of the country, we/any Members of the Consortium or any of our/their associates have not been charge-sheeted by any agency of the Government or convicted by a court.
12. I/We further certify that no investigation by a regulatory Procuring Entity is pending either against us/any Members of the Consortium or against our/their associates or against our CEO or any of our directors/managers/employees.
13. I/We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide department of disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process.
14. I/We further certify that we/any Members of the Consortium or any of our/their associates are not barred by the Central/State Government or any entity controlled by it, from participating in any Project, and no bar subsists as on the date of bid.
15. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Procuring Entity of the same immediately.
16. The Statement of Legal Capacity as per format provided at Appendix 05 of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of Consortium, as per format provided at Appendix 06 and 07 respectively of the RFP, are also enclosed.
17. I/We understand that the Successful Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/2013, or shall incorporate as such prior to execution of the Concession Agreement.
18. I/We hereby confirm that we shall comply with the O&M requirements specified in the Draft Concession Agreement published by the Procuring Entity as part of the Bidding Documents.
19. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Procuring Entity in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. I/We agree and undertake to abide by all the terms and conditions of the RFP document.
21. We agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement to development, operate and maintain the Project.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder/Lead Member

Appendix 1- Annex 1: Declaration by the Bidder

[Declaration to be provided by the Bidder/ Consortium Members as per Clause 1.3 and in compliance of Section 7 & 11 of the RTPP Act, 2012]

(To be prepared and submitted as per applicable rules on Non-Judicial Stamp Paper)

In relation to our Bid submitted to Dy.General Manager (Pur.), Rajasthan State Ganganagar Sugar Mills Ltd.

Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.) for procurement of ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY in response to their Notice Inviting Bids No RSGSM/DISTILLERY/RFP/HO/20 Dated 31/08/2022 we hereby declare under Section 7 and 11 of the RTPP Act, 2012, that;

1. We possess the necessary professional, technical, financial and managerial resources and competence required by the Bidding Document issued by the Procuring Entity;
2. We have fulfilled our obligation to pay such of the taxes payable to the Central Government or the State Government or any local authority, as specified in the Bidding Document;
3. We are not insolvent, in receivership, bankrupt or being wound up, not have my/our affairs administered by a court or a judicial officer, not have my/our business activities suspended and are not the subject of legal proceedings for any of the foregoing reasons;
4. We do not have, and our directors and officers not have, been convicted of any criminal offence related to our professional conduct or the making of false statements or misrepresentations as to our qualifications to enter into a procurement contract within a period of three years preceding the commencement of this procurement process, or not have been otherwise disqualified pursuant to debarment proceedings;
5. We do not have a conflict of interest as specified in the RTPP Act, 2012, the RTPP Rules, 2013 and this Bidding Documents, which materially affects fair competition; and
6. We have complied and shall continue to comply with the Code of Integrity as specified in the RTPP Act, 2012, the RPP Rules, 2013 and this Bidding Documents, till completion of all our obligations under the Concession Agreement.

Date:

Place:

Signature of Bidder

Name:

Designation:

Address:

Appendix 2 Particulars of Bidder

(To be furnished on the letterhead of the Bidder/Lead Member)

1. General Information

State whether applying as Bidder (Sole Firm)/Lead Members of the Consortium:

- (a) Name of Bidder (Sole Firm)/Lead Member (legal Name):
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/or commencement of business:

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Particulars of individual(s) who will serve as the point of contact/communication for the Bidder:

- (a) Name:
- (b) Designation:
- (c) Company:
- (d) Address:
- (e) Telephone Number:
- (f) E-Mail Address:

4. Particulars of the Authorised Signatory of the Bidder:

- (a) Name:
- (b) Designation:
- (c) Address:
- (d) Phone Number:

5. In case of a Consortium:

The information above (1-4) should be provided for all the Members of the Consortium.

(a) A copy of the Consortium Agreement, as envisaged in Clause 1.4.2 (vii) should be attached to the Techno-commercial Bid.

(b) Information regarding the role of each Member should be provided as per table below:

Sr. No.	Name of Member	Role ^s	Percentage of equity in the Consortium ^{ss}
1.			
2.			

Note:

The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 1.4.2

The per centage of equity should be in accordance with Clause 1.4.2

The following information shall also be provided for the Bidder, including each Members of the Consortium:

Name of Bidder/member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/any Members of the Consortium been barred by the [Central/State] Government, or any entity controlled by it, from participating in any Project (OMT/BOT/otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of bid?		
3.	Has the Bidder/any Members of the Consortium paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder and each of the Members of its Consortium(where applicable) or any of their associates disclosing material non-performance or contractual non-compliance in past Projects, contractual disputes and litigation/arbitration in the recent past, if any to be provided below (Attach extra sheets, if necessary):

7. Business Profile of the Bidder/Members of the Consortium:

Bidder of the Consortium shall have to submit their Company brochure here. (Color scan of brochure shall be attached). If the Bidder doesn't have company brochure, then in that case, applicant shall provide details as follows;

- Background of applicant's entry into infrastructure development sector
- Experience of applicant in infrastructure sector (no. of Projects completed, managed, etc.)
- Any specialization/expertise, services offered
- Accolades, awards, recognition, etc.
- Membership, association, tie-ups with private sector, etc.

Note: In case if the Bidder is a Consortium, in that case, Business Profile of each of the Members of the Consortium to be furnished on their respective Company's letterhead or submit Company's Business Brochure.

Appendix 3 Technical Capacity of the Bidder

[Refer to Clauses 10.5 and 10.8]

(To be furnished on the letterhead of the Bidder/Lead Member)

Technical Eligibility of the Bidder

Bidder type	Particulars of Projects undertaken	Project Duration (Month, 20XX to Month, 20XX)	Production Capacity of Distillery
Single entity Bidder			
Consortium Member 1			
Consortium Member 2			

Instructions:

Provide details of only those Projects that have been undertaken by the Bidder under its own name and/or by an Associate as defined and specified in Clause 10.3 and/or by a Project company eligible under Clause 10.8.

A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate as defined and specified in Clause 10.3, shall be provided.

Other points to take into consideration are as follows:

- Bidders are required to provide documentary evidences in support of the experience claimed above.
- This Appendix shall be duly certified by the Chartered Accountant/ Statutory Auditor/ Officer with Rank higher than Executive Engineer (in case of Government Project).

Appendix 4 Financial Capacity of the Bidder

[Refer to Clauses iv and 10.7]

(To be furnished on the letterhead of the Bidder/Lead Member)

Financial Status about Bidder

Bidder type ^{\$\$}	Member Code [£]	Net Cash Accruals					Net Worth ^{££}
		Year 1	Year 2	Year 3	Year 4	Year 5	Year 1
a)	b)	c)	d)	e)	f)	g)	h)
Single entity Bidder							
Consortium Member 1							
Consortium Member 2							
Total							

The Bidder shall provide copies of its audited financial statements and other financial data for the immediately preceding three years. The statements shall include, but not limited to, for the immediately preceding three years:

- A Audited financial accounts
 - b Statement of accounting policies
 - c Chartered Accountant's Certificate for annual turnover and net worth for last three Financial Years as mentioned in the table above.
 - d Additional information supporting the evaluation of the company's financial and legal status, if any
 - e The information provided shall be detailed enough to demonstrate, and allow evaluation of the Bidder's financial capacity to fulfill its financial obligations, if awarded the contract.
 - f Banks from which references can be obtained
- Name of Bank:
Address:
Tel and Fax No.

Listing of bankers shall be deemed as an authorisation by the Bidder(s) for the Procuring Entity to request such references and for the bankers to release them to the Procuring Entity.

Note:

\$For conversion of other currencies into rupees, see notes below Appendix B2.

\$\$A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

£For Member Code, see instruction 4 at Appendix 4.

££The Bidder should provide details of its own Financial Capacity or of an Associate as defined and specified in Clause 10.3.

Instructions:

The Bidder/its constituent Consortium Members shall attach copies of the balance sheets, financial statements and Annual Reports for 05 (five) years preceding the Bid Due Date. The financial statements shall:

reflect the financial situation of the Bidder or Consortium Members and its/their Associates where the Bidder is relying on its Associate's financials;

be audited by a statutory auditor;

be complete, including all notes to the financial statements; and

correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

2. Net Cash Accruals shall mean Profit After Tax + Depreciation.

3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + reserves not available for distribution to equity shareholders).

4. Year 1 will be the latest completed financial year, preceding the bidding. Year 02 shall be the year immediately preceding Year 01 and soon. In case the Bid Due Date falls within 03 (three) months of the close of the latest financial year, refer to refer to in the foot note 12.
5. In the case of a Consortium, a copy of the Consortium Agreement shall be submitted in accordance with Clause 1.4.2 (vii) of the RFP.
6. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 10.7 (ii) of the RFP.

Appendix 5 Statement of Legal Capacity

(To be furnished on the letterhead of the Bidder/Lead Member)

Ref. Date:

To,

**Dy.General Manager (Pur.),
Rajasthan State Ganganagar Sugar Mills Ltd.
Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)**

Dear Sir,

I/We hereby confirm that I/we/our members in the Consortium (constitution of which has been described in the bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (Insert member's name) will act as the Lead Member of our Consortium.

We have agreed that (Insert individual's name) will act as our representative/will act as the representative of the Consortium on its behalf and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

Appendix 6 Power of Attorney for signing of Bid

[Refer Clause 3.11]

(On non-judicial stamp paper of INR _____, duly attested by notary public)

Know all men by these presents, We..... (name of the firm and Address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms. (name), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for qualification and submission of our Bid for the “_____” proposed or being developed by the **Rajasthan State Ganganagar Sugar Mills Ltd.** (the “Procuring Entity”) including but not limited to signing and submission of all bids, Bids and other documents and writings, participate in Pre-bids and other conferences and providing information/responses to the Procuring Entity, representing us in all matters before the Procuring Entity, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Procuring Entity in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Procuring Entity.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20.....

For

(Signature, name, designation and Address)

Witnesses:

1.

(Notarised)

2.

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

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

- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

Appendix 7 Power of Attorney for Lead Member of Consortium

[Refer Clause 1.4.2]

(On non-judicial stamp paper of appropriate value, duly attested by notary public)

Whereas the **Rajasthan State Ganganagar Sugar Mills Ltd.** (“the **Procuring Entity**”) has invited Applications from interested parties for the “**ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY**” (the “**Project**”).

Whereas, and (collectively the “**Consortium**”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal document (RFP), and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and Procuring Entity to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Application for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, (collectively the “**Consortium**”) being Members of the Consortium having our registered office as mentioned, M/s. having our registered office at ,and M/s. having our registered office at , (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s. having its registered office at, being one of the Members of the Consortium, as the **Lead Member** and true and lawful attorney of the Consortium (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Bidding Process and, in the event the Consortium is awarded the concession/contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its Application for the Project, including but not limited to signing and submission of all Application, Applications and other documents and writings, accept the Letter of Award, participate in Bidders’ and other conferences, respond to queries, submit information/documents, sign and execute contracts and undertakings consequent to acceptance of the Application of the Consortium and generally to represent the Consortium in all its dealings with the Procuring Entity, and/or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s Application for the Project and/or upon award thereof till the Concession Agreement is entered into with the Procuring Entity.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20....

For
(Signature)
.....
(Name & Title)

For
(Signature)
.....
(Name & Title)

Witnesses:

1.

2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

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

Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.

Appendix 8 Consortium Agreement

[Refer Clause 1.4.2]

(On non-judicial stamp paper of appropriate value, duly attested by notary public)

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

AMONGST

1. Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the **"First Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at (hereinafter referred to as the **"Second Part"** which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the **"Parties"** and each is individually referred to as a **"Party"**

WHEREAS,

- (a) **Rajasthan State Ganganagar Sugar Mills Ltd.**, established under a Statutory Body, constituted under the _____, represented by its Dy.General Manager (Pur.), and having its principal offices at Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (Rajasthan, India) (hereinafter referred to as the **"Procuring Entity"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited Proposals (the **"Bid"** or **"Proposal"**) by its Request for Proposal No. dated (the **"RFP"**) for pre-qualification and short-listing of Bidders for the **"ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY "** (the **"Project"**).
- (b) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other Proposal documents in respect of the Project, and
- (c) It is a necessary condition under the RFP document that the Members of the Consortium shall enter into a Consortium Agreement and furnish a copy thereof with the Proposal.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- (i) The Parties do hereby irrevocably constitute a consortium (the **"Consortium"**) for the purposes of jointly participating in the Bidding Process for the Project.

- (ii) The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Successful Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “**SPV**”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Procuring Entity and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

Party of the First Part shall be the Lead Members of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding and execution of the Project until the time such Consortium is not registered and formation of SPV; and

- (a) Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;
- (b) Party of the Second Part shall be the Members of the Consortium.

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP to be issued at Bid Stage, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

- (i) The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:
 - First Party:
 - Second Party:
- (ii) The Parties undertake that each of the Parties shall, at all times during the operational Period, maintain their respective share in the SPV as proposed during the time of Application submission.
- (iii) The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (i) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and Procuring Entity to enter into this Agreement;
 - (a) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and Procuring Entity to execute

this Agreement on behalf of the Members of the Consortium is annexed to this Agreement, and will not, to the best of its knowledge:

- (ii) require any consent or approval not already obtained;
 - (iii) violate any Applicable Law presently in effect and having applicability to it;
 - (iv) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (v) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (vi) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (a) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (b) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Application Security by the Procuring Entity to the Bidder, as the case may be.

9. Miscellaneous

- (i) This Consortium Agreement shall be governed by laws of India.
- (ii) The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Procuring Entity.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SECOND PART

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

Notes:

- *The mode of the execution of the Consortium Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Each Consortium Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favour of the person executing this agreement for the delegation of power and Procuring Entity to execute this agreement on behalf of the Members of the Consortium.*
- *For a Consortium Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

Appendix 9 Bank Guarantee Template for Bid Security

B.G. No.:

Dated:

1. In consideration of you, *****, having its office at _____, (hereinafter referred to as the **"Procuring Entity"**, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of _____ (a company registered under the Companies Act, 2013) and having its registered office at _____ (and acting on behalf of its Consortium) (hereinafter referred to as the **"Bidder"** which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ENHANCEMENT OF DISTILLERY WITH 100 KLPD AND ABOVE CAPACITY INCLUDING OPERATION AND MAINTENANCE ON P.P.P. MODE FOR FIFTEEN YEARS HAVING PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY Project on DBFOT basis (hereinafter referred to as the **"Project"**) pursuant to the RFP Document dated _____ issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as **"Bidding Documents"**), we (Name of the Bank) having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the **"Bank"**), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Procuring Entity an amount of INR _____ (Rupees _____ only) (hereinafter referred to as the **"Guarantee"**) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Procuring Entity stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Procuring Entity is disputed by the Bidder or not, merely on the first demand from the Procuring Entity stating that the amount claimed is due to the Procuring Entity by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding INR _____ (Rupees _____ only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Procuring Entity and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Procuring Entity shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Procuring Entity that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Procuring Entity and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Procuring Entity shall be entitled to treat the Bank as the principal debtor. The Procuring Entity shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Procuring Entity, and the Bank shall not be released from its liability under these presents by any exercise by the Procuring Entity of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Procuring Entity or any indulgence by the Procuring Entity to the said Bidder or by any change in the constitution of the Procuring Entity or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Procuring Entity to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Procuring Entity may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Procuring Entity in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. _____ (Rupees _____ only). The Bank shall be liable to pay the said amount or any part thereof only if the Procuring Entity serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before _____ (indicate date falling 180 days after the Bid Due Date).

Signed and Delivered by Bank

By the hand of Mr./Ms, its and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

Annexures

Annexure A Guidelines of the Department of Disinvestment

**No. 6/4/2001-DD-II
Government of India
Department of Disinvestment**

**Block 14, CGO Complex
New Delhi.
Dated 13th July 2001.**

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- i. In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
 - (a) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.
 - (b) In both (a) and (b) as mentioned above, disqualification shall continue for a period that Government deems appropriate.
 - (c) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.
 - (d) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
 - (e) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
 - (f) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EoI) from the interested parties. The interested parties would be required to provide

the information on the above criteria, along with their Expressions of Interest (Eol). The bidders shall be required to provide with their Eol an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/Managers/employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with Eol.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

Annexure B Grievance Handling Procedure during Procurement Process (Appeals)

1. Filing an appeal

- i. If any Bidder or prospective Bidder is aggrieved that any decision, action or omission of the Procuring Entity is in contravention to the provisions of the Act or the Rules or the Guidelines issued thereunder, he may file an appeal to the First Appellate Authority as specified in the Bid Data Sheet, within a period of ten days from the date of such decision, action, or omission, as the case may be, clearly giving the specific ground or grounds on which he feels aggrieved:
 - (a) Provided that after the declaration of a Bidder as successful in terms of section 27 of the Act, the appeal may be filed only by a Bidder who has participated in procurement proceedings:
 - (b) Provided further that in case a Procuring Entity evaluates the Techno-commercial Bid before the opening of the Financial Bid, an appeal related to the matter of Financial Bid may be filed only by a Bidder whose Techno-commercial Bid is found to be acceptable.
 - (c) After hearing the parties, the First Appellate Authority shall dispose of the appeal and pass an order within a period of 30 days of the date filing of the appeal.
 - (d) If the First Appellate Authority fails to dispose of the appeal within the period 30 days of the date of filing the appeal or if the bidder or prospective bidder or the Procuring Entity is aggrieved by the order passed by the First Appellate Authority, the bidder or prospective bidder or the procuring entity, as the case may be, may file a second appeal to the Second Appellate Authority as specified in the Bid Data Sheet, within fifteen days. The Second Appellate Authority, after hearing the parties, shall dispose of the appeal and pass an order within a period of 30 days which shall be final and binding on the parties.

2. Appeal not to lie in certain cases

No appeal shall lie against any decision of the Procuring Entity relating to the following matters, namely:-

- i. determination of need of procurement;
 - (a) provisions limiting participation of Bidders in the bidding process;
 - (b) the decision of whether or not to enter into negotiations;
 - (c) cancellation of a procurement process;
 - (d) applicability of the provisions of confidentiality.

3. Form and procedure of filing an appeal

- i. An appeal shall be in the annexed Form along with as many copies as there are respondents in the appeal.
 - (a) Every appeal shall be accompanied by an order appealed against, if any, affidavit verifying the facts stated in the appeal and proof of payment of fee.
 - (b) Every appeal may be presented to First Appellate Authority or Second Appellate Authority, as the case may be, in person or through registered post or authorised representative.

4. Fee for filing appeal

- i. Fee for first appeal shall be rupees two thousand five hundred and for second appeal shall be rupees ten thousand, which shall be non-refundable.
- (a) The fee shall be paid in the form of bank demand draft or banker's Cheque of a Scheduled Bank in India payable in the name of Appellate Authority concerned.

5. Procedure for disposal of appeals

- i. The First Appellate Authority or Second Appellate Authority, as the case may be, upon filing of appeal, shall issue notice accompanied by copy of appeal, affidavit and documents, if any, to the respondents and fix date of hearing.
- (a) On the date fixed for hearing, the First Appellate Authority or Second Appellate Authority, as the case may be, shall,-
- ii. hear all the parties to appeal present before him; and
- iii. peruse or inspect documents, relevant records or copies thereof relating to the matter.
- (a) After hearing the parties, perusal or inspection of documents and relevant records or copies thereof relating to the matter, the Appellate Authority concerned shall pass an order in writing and provide the copy of order to the parties to appeal free of cost.
- (b) The order passed under sub-clause (c) above shall be placed on the State Public Procurement Portal.

Annexure C Form No. 1

(See rule 83 of RTPP Act, 2012)

(Memorandum of Appeal under the RTPP Act, 2012)

Appeal Noof

Before the (First / Second Appellate Authority)

1. Particulars of appellant

- (i) Name of the appellant:
- (ii) Official address, if any:
- (iii) Residential address:

2. Name and address of the respondent(s):

- (i)
- (ii)
- (iii)

3. Number and date of the order appealed against and name and designation of the officer / authority who passed the order (enclose copy), or a statement of a decision, action or omission of the Procuring Entity in contravention to the provisions of the Act by which the appellant is aggrieved:

4. If the Appellant proposes to be represented by a representative, the name and postal address of the representative:

5. Number of affidavits and documents enclosed with the appeal:

6. Grounds of appeal:
.....
.....(Supported by an affidavit)

7. Prayer:

Place

Date

Appellant's Signature

DRAFT CONCESSION AGREEMENT

FOR

***ENHANCEMENT 100 KLPD AND ABOVE, OPERATION AND
MAINTENANCE OF DISTILLERY OF PRESENT CAPACITY
OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER
PLANT AT CHAK 23F, TEH. SHRIKARANPUR,
SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN
YEARS***

Volume II: Draft Concession Agreement

June, 2022

(Draft Version)

**Standard Bidding Documents (SBD) for Projects
implemented through Public Private Partnership (PPP) on
Design, Build, Finance, Operate and Transfer (DBFOT)
mode**

Rajasthan State Ganganagar Sugar Mills Ltd.,

***[Address- 4th Floor, RSGSM, Nehru Sahkar Bhawan, Bhawani Singh Road
Jaipur (RAJ.)***

Website: <https://rajexcise.gov.in/>,

Email ID- purchase.rsgsm@rajasthan.gov.in

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Part I – Preliminary

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Concession Agreement¹

This CONCESSION AGREEMENT is entered into on this theday of, 20...

BETWEEN

1. **Rajasthan State Ganganagar Sugar Mills Ltd.** , , established under the [*specify the relevant act under which the authority has been set-up*], represented by its [Designation of the signing Authority) and having its principal office at **4th Floor , Nehru Sahkar Bhawan , Bhawani Singh Marg , Jaipur** (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2. **Rajasthan State Ganganagar Sugar Mills Ltd.** a company incorporated under the provisions of the Companies Act, 2013 {applicable provisions} with CIN and having its registered office at _____, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

¹ Instructions for Project-specific customisation of this document

Note-1: The provisions in box brackets are to be retained in the draft Concession Agreement forming part of Bidding Documents and shall be suitably modified after the issue of Letter of Award (LOA) in order to reflect the bid specific particulars in the Concession Agreement. (See Appendix-I)

Note-2: Blank spaces are to be retained in the draft Concession Agreement and shall be suitably filled after the issue of LoA in order to reflect bid specific particulars in the Concession Agreement. However, blank spaces shall be retained in all Schedules, which contain formats that are to be used after the Concession Agreement is executed.

Note 3: Footnotes are guidance of the Procuring Entity and shall be omitted before publishing the Draft Concession Agreement.

- (a) The Authority had resolved to “Enhancement 100 klpd and Above, Operation and Maintenance of Distillery of Present capacity of 30 KLPD with 1.2 MW biomass based power plant at Chak 23F, Teh. ShriKaranpur, Sriganganagar City on P.P.P. MODE for FIFTEEN YEARS” (the “**Project**”) on design, build, finance, operate and transfer (the “DBFOT”) basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into. The Authority had adopted a single stage two envelop bidding process and accordingly invited proposals by its {Tender Notice/ Request for Proposal No. _____, dated: _____} (the “**Request for Proposal**” or “**RfP**”) for selection of bidders for development of the Project including construction, operation and maintenance, and to transfer the Project to the Authority at no cost at the end of the Concession Period.
- (b) The Authority had prescribed the technical and commercial terms and conditions in the RfP, and invited bids comprising technical and financial bids from the bidders for undertaking the Project.
- (c) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the {Selected Bidder/Consortium comprising [Name of the Lead Member of Consortium/JV], [Name of the 1st Member of Consortium/JV] and [Name of the 2nd Member of Consortium/JV] (collectively the “Consortium”) withas its lead member (the “ Lead Member”)} and issued its Letter of Acceptance No. _____, dated _____ (hereinafter called the “**LoA**”) to the {Selected Bidder/ Consortium } requiring, inter alia, the execution of this Agreement within 45 (forty-five) days of the date of issue thereof.
- (d) {The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire as a Special Purposed Vehicle (SPV)² company under the Companies Act 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/ Consortium under the LoA,} including the obligation to enter into this Concession Agreement pursuant to the LoA for undertaking the Project.
- (e) {By its letter dated _____, the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LoA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof }
- (f) The Authority has {agreed to the said request of the Selected Bidder/Consortium} and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

² SPV can be either Private Limited or Limited Liability company registered as per applicable law of The Companies Act, 2013.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and Agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

Article 1 Definitions and Interpretation

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (Including those in Article 41) shall, unless repugnant to the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the schedules and used therein shall have the meaning ascribed thereto in the Schedules.

- Applicable Permits** : “Applicable Permits” means all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals exemptions, etc. required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of the Concession Agreement
- Approvals** : “Approvals” means all approvals, permissions, authorisations, consents and notifications from any Governmental Authority, regulatory or departments or organisations, etc. , as may be applicable.
- Authority** : “Authority” shall mean **Deputy General Manager (Purchase) , Rajasthan State Ganganagar Sugar Mills Ltd.** or its official representative, Project’s Officer-in-charge/Nodal Officer or any new authority created by dissolving/ merging/ subsuming, etc. of the Authority.
- Bid Document** : “Bid Document” shall mean any document issued by the Authority as part of the Bid Process, including addendum, corrigendum and any clarifications issued by Authority.
- Bid Process/ Selection Process** : “Bid Process” / “Selection Process” shall mean various activities taken up by the Authority leading up to the selection of the Concessionaire and signing of Concession Agreement between the Concessionaire and the Authority.
- Bid Security** : “Bid Security” shall have the meaning as referred in Clause 9.2 of Volume I-RfP.
- Business Operations** : “Business Operations” shall be activities/services that Concessionaire proposes to carry out/deliver through this Project, which shall be in accordance with the permissible use as per prevailing Development Plan (DP)/Development Control Regulations (DCR).
- Change in Scope** : “Change in Scope” shall mean any agreed change to the scope of the Project to accommodate a need not originally defined in the Concession Agreement or Price agreement which relates to the Project and which will require an adjustment to the Project Cost and/or schedule and/or Private Investment and/or Grant Support, which can either increase or decrease the scope and/or cost.
- Clearance** : “Clearance” means, as on the date of execution of the Concession Agreement, any consents, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.

Concessionaire	: “Concessionaire” shall mean Sole Proprietorship Firms, Partnership Firms, Companies registered under Company’s Act, Societies registered under societies Act and Trust registered under Trust Act. A group of such members (hereinafter called the Consortium) coming together to implement the Project.
Concession Agreement	: “Concession Agreement (CA)” shall mean the Agreement to be entered into between the Concessionaire and Authority for the running, operation and maintenance of the Project.
Effective Date	: “Effective Date” means the date on which the Concession Agreement is signed between the Concessionaire and Authority.
Encumbrances	: “Encumbrances” means, in relation to the Project Facilities, 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities, where applicable herein.
Financial Bid	: “Financial Bid” shall mean the Commercial quote/bid submitted by the Concessionaires in manner and format as defined under this RfP and this Document.
Lease Deed	: “Lease Deed” as defined in the Schedule P of this Agreement
Performance Security Deposit	: “Performance Security Deposit” shall have the meaning as referred in Clause 10.1 of Article 10.
Premium	: “Premium” shall mean the amount to be paid upfront/annually by the Concessionaire as quoted in its Commercial Bid and payable as per the schedule provided in Clause 24.1.
Production Charge	: Production charge mean the per B.L. of total spirit production amount to be paid by the concessionaire.
Project site/ Facility/Facilities	: shall mean the ENHANCEMENT 100 KLPD AND ABOVE, OPERATION AND MAINTENANCE OF DISTILLERY OF PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN YEARS
Selected/Successful /Preferred Bidder	: The Bidder who quotes the highest Premium (in case no bidder quotes premium) offered to the Authority shall ordinarily be declared as the Selected Bidder.
Usage Fee	: “Usage Fee” shall mean the yearly amount payable for the proposed land provided by the Authority to the Concessionaire on lease basis for the purpose defined hereunder and as referred in Clause Error! Reference source not found.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or Concessionaire of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns subject to the provisions of this Agreement;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (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) Reference to a “**business day**” shall construed as reference to a day (other than a Sunday) on which banks in Jaipur are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or survey) for the payment of repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**merger**”, “**amalgamation**”, “**takeover**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, 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 Sub-Clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement and the Request for Proposals (“**RfP**”) 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;
- (v) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-Clauses, Provisos or Schedules of or to this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which reference occurs; and reference to a paragraph shall, subject to anything contrary specified

therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears

(w) 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 (the “**Damages**”) and

(x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a Concession should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and for these purposes the General Clauses Act 1897 shall not apply.

1.3 Measurements and Arithmetic Conventions

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

1.4 Priority of Agreements, Clauses and Schedule and Errors/Discrepancies

1.4.1 This Agreement, and all other Agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein

i.e the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

- 1.4.2 It is hereby declared that if in case the Authority's legal entity i.e. 'Deputy General Manager (Purchase), **Rajasthan State Ganganagar Sugar Mills Ltd.**, changes its form or gets dissolved/merged or gets converted into any new Authority, the new authority shall become the Authority under this Agreement who shall exercise full rights and powers vested upon it with regards to provision of this Agreement and other legal provisions for the referred Project and with Concessionaire.
- 1.4.3 Subject to provision of Clause 1.4.1 in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in another Clause;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedules relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.

Part II - The Concession

Article 2 - Scope of Project

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:

- (a) Details of the Project Site are set forth in the Schedule A, whereas the detailed terms and conditions with respect to Concessionaire’s obligation towards design, development/upgradation, operation and maintenance along with procurement of goods/services/materials for the Project are set forth in Schedule B; whereas provisions related to Project Facilities are as specified in Schedule C, and conformity with the Specifications and Standards set forth in Schedule D along with the {Minimum Development Obligations set forth in Schedule S};
- (b) Undertake Operation and Maintenance of the Project and Project Facilities in accordance with the provisions of this Agreement; and
- (c) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

Article 3 - Grant of Concession

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to construct, operate and maintain the Project and provide Services (the “**Concession**”) during the Concession period of [____ (in words____)] years³ including [Construction Period of ____ (in words____) years and Operation Period of ____ (in words____)] years commencing from Appointed Date as defined under Clause 16.1 of this Agreement, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Provided further that at any time no earlier than 3 (three) years prior to completion of the Concession Period specified hereinabove, the Parties may, with mutual agreement, extend the Concession Period for such further period as they may determine, but not exceeding [____ (in words____)] years, in any case.
- 3.1.3 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted, shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) Finance and construct the project and project facilities - design, build, finance, operate and transfer the Project as per scope of work stipulated in Schedule B of this Agreement, further detailed in the {Minimum Development Obligations (MDO) as stipulated in Schedule S} of this Agreement and transfer the project to the Authority on the Transfer Date;
 - (c) non-exclusive possession and access to the extent conferred by the provisions of this Agreement;
 - (d) perform and fulfill all Concessionaire’s obligations under and in accordance with this Agreement;
 - (e) demand, collect appropriate user charges/ fee from visitors/users liable for payment of charges for visiting or using any facility or any part thereof;

³ To be ascertain from the Techno Commercial Feasibility Report

- (f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to performance of the obligations of the Concessionaire under this Agreement; and
 - (g) neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project and Project / Project facilities nor transfer, lease or part possession thereof, save and except as expressly permitted under this Agreement or the Substitution Agreement.
- 3.1.4 {The Concessionaire shall pay and discharge all rates, taxes, charges and assessment of every description, which at any time hereafter during the said term be assessed charges or imposed upon the Authority as owner of the land or the Concessionaire as tenant in respect thereof.
- 3.1.5 Nothing contained herein, including the act of granting permission to develop the Project Facility at the Site shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Project Facility in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project Facility in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.}

Article 4 - Conditions Precedent

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 3, Article 4, Article 5, Article 7, Article 8, Article 9, Article 10, Article 12, Article 20, Article 39 and Article 41 or unless the context otherwise requires, the respective rights and obligations of the parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing Performance Security to the Authority in accordance with the Article 10 of this Agreement, at any time within 15 days from the date of this Agreement or an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 15 days of the notice, or such longer period not exceeding [120 (one hundred and twenty)] days as may be specified therein, and the Condition Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (h) procured all Applicable Permits relating to environmental protection and conservation of the Site and the land forming part of the Right of Way under Clause 11.2 and 11.3;
- (i) to finalise and set-up three-tier project monitoring and management framework.

Provided that the Authority may, at its discretion, waive the Condition Precedent in Clause 4.1.2 (b) till 6 months prior to Scheduled Date as provided in the Schedule G; and Clause 4.1.2 (d) for a maximum period of [180 (one hundred and eighty] days. All other Condition Precedents shall have to be satisfied prior to declaration of Appointed Date.

4.1.3 The Conditions Precedents required to be satisfied by the Concessionaire within a period of 60 days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) Provided Performance Security (as defined under Clause 10.1.1 of this Agreement) to the Authority.;
- (b) Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
- (c) Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;

- (d) Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
- (e) executed and procured execution of Substitution Agreement;
- (f) procured all the Applicable Permits specified in Schedule E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (g) executed the Financing Agreements and delivered to the Authority 03 (three) true copies thereof, duly attested by a Director of the Concessionaire. Also, Procuring and furnishing the following confirmations, in original, from the Applicant/ Members of Consortium:
 - it/they shall at all times comply with the provisions of Article 11.2 in respect of their shareholding in the Concessionaire;
 - it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement; and
 - the Applicant is/each of the member of the Consortium is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioning Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (h) delivered to the Authority 03 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 03 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (i) delivered to the Authority {from Consortium Members, their respective} confirmations of the correctness of the representatives and warranties set forth in Sub-Clause (k), (l) and (m) of Clause 8.1 of this Agreement;
- (j) deliver to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the Authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof; and
- (k) satisfy itself about the availability of minimum 90% (ninety per cent) of the Construction Zone as per joint memorandum signed in accordance with Clause 11.3.1 and 11.3.2 subject to the condition that the available Construction Zone shall be sufficient for achievement of COD.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit

- 4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible. Subject only to payment of Damages, it is agreed between the Parties that the obligations to fulfill each Parties' Conditions Precedent is an independent obligation of the respective Party.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Condition Precedent. Each Party shall promptly inform other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority⁴

In the event that (i) the Authority does not facilitate fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security and upon reaching such limit, the Concessionaire may, in its sole discretion terminate the Agreement. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided further that in the event of delay by the Concessionaire in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.3.

4.3 Damages for delay by the Concessionaire⁵

In the event (i) that the Concessionaire does not procure fulfillment of any or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period of [180 (one hundred and eighty)] days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's of delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security, and upon reaching such limit, the Authority may, in its sole discretion and subject to the provision of clause 11.2, Terminate the Agreement.

⁴ If the Procuring Entity deemed necessary and relevant, can change the provisions hereunder and propose per day penalty provisions for each conditions precedent

⁵ If the Procuring Entity deemed necessary and relevant, can change the provisions hereunder and propose per day penalty provisions for each conditions precedent

Further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction/upgradation of the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisions of Clause 11.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 01st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. Provided, however, that in the event the non-occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security and the Additional Performance Security, if any, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

Article 5 – Shareholding

5.1 Ownership Structure

The Applicant/Consortium has caused the Concessionaire to be incorporated as a Special Purpose Vehicle (SPV)/ Company to implement, operate and maintain the Project/ Project Facilities and render services in accordance with this Agreement. The shareholding pattern of [Concessionaire/ each member of the Consortium in the Concessionaire] is [Details to be added based on information shared by the Successful Bidder]⁶.

5.2 Shareholding

The Concessionaire shall ensure that the Applicant/ members of the Consortium maintain Management Control at least until expiry of the second (2nd) year after COD as also maintain their equity holding in the Concessionaire such that⁷:

- (a) Successful Bidder/Consortium Members together with its/their Associates hold not less than 51% (fifty-one per cent) of its issued and paid up equity and that no member of Consortium whose technical and financial capacity was evaluated for the purposes of Pre-qualifications in response to Request for Proposal shall hold less than 26% (twenty-six per cent) of such equity until expiry of second (2nd) year after COD. At any time, after expiry of the aforesaid share holding period, lead member can approach Concession Authority for approval proposing a new entity/ consortium as per provisions stipulated under the Clause 6.3 of this Agreement. Procuring Authority may at its sole discretion consider and approve it subject to the entity/consortium meeting the eligibility criteria as prescribed in the RfP Document; and
- (b) M/s [●] (“**Lead Member**”) of the Consortium (as proposed in the Consortium Agreement submitted as part of the proposal submitted) legally and beneficially holds at any time not less than 50% (fifty per cent) of the Consortium’s holding in the paid-up equity capital of the Concessionaire. Any Transfer of shareholding in the Concessionaire and/or direct or indirect change in the Management Control of the Concessionaire, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Concessioning Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) [if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anticompetitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.]

Provided, nothing contained in this Article shall preclude or prevent pledge of shares in the Concessionaire in favor of Senior Lenders as security for the Financial Assistance subject to the enforcement and consequent Transfer thereof only with the prior written consent of the Concessioning Authority as stated hereinbefore and in accordance with the Financing Documents.

⁶ This provision would be edited depending on whether the bidder is a single applicant or a Consortium. Also, detailed shareholding pattern as proposed in the Consortium Agreement (in case of Consortium) to be mentioned.

⁷ This provision would be edited depending on whether the bidder is a single applicant or a Consortium. Sub Article (b) will be omitted in case the bidder is a single Applicant.

5.3 Constituent Documents

The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium. In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Date of Award of Concession to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessioneing Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessioneing Authority and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

Article 6 - Obligations of the Concessionaire

6.1 Obligations of the Concessionaire

- 6.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expenses, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 6.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the concessionaire shall, discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 6.1.4 The Concessionaire shall, at its own cost and expenses, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, other than those set forth in clause 4.1.2 and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, license, Agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - (g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(h) transfer the Project to the Authority upon Termination or expiry of this Agreement, in accordance with the provisions of this Agreement.

6.2 Obligations relating to Project Agreements

- 6.2.1 It is expressly agreed that the Concessionaire shall, at all times, be reasonable and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other Agreement, and no default under any Project Agreement or Agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 6.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such Agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 6.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt due to the Concessionaire and shall respond to the request for consent no later than 30 (thirty) days from the receipt of such request from the Concessionaire.
- 6.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such Agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). Further, it is clarified that in case both the

Authority and Lenders' Representative decide to exercise their right to step-in, the Authority shall have the sole right to step into the Project Agreements. For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter Party(s) of each of the Project Agreements, where under such counter Party(s) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 6.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the [EPC Contractor and] an O&M Contractor and execution of the [EPC Contract] and O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously and no later than 30 days from the date of receipt of the proposal along with the draft Agreement by the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

6.3 Obligations relating to Change in Ownership

- 6.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 6.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or

beneficial ownership or control of any Equity, in aggregate of [25% (Twenty-Five per cent)]⁸ or more of the total Equity of the Concessionaire; or

- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 6.3.2:

- (i) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of [15% (fifteen per cent)] or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

6.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work

⁸ Threshold amount mentioned is standard across different MCAs; and Procuring Entity to consider retaining it, unless otherwise decide to after appropriate legal consultation.

permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

6.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective function.

6.6 Sole Purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

6.7 Branding of Project

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name as deemed appropriate by the Bidder, with prior written intimation to the Authority about the branding of the Project.

6.8 Obligation – others

6.8.1 Obligations to Pay Taxes - All applicable existing and future taxes/charges/fees property tax, municipal (corporation) Tax, stamp duty, registration charges, service tax/GST/ legal documentation charges and any other charges, if any in respect of this Project as may be due and payable by the Concessionaire pursuant to Applicable Laws, shall be paid on the priority basis as and when they accrue and become payable.

6.8.2 The Concessionaire shall permit the Authority to prominently display its name and logo at the entrance of the Facility and such other locations as the Authority may deem fit. Cost of such display boards shall be borne by the Authority.

Article 7 - Representations and Warranties

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 6.3 and that the {Selected Bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold at least 26% (twenty six per cent) of Equity during the lock in period of [05 (five) years (Construction Period – 02 (two) years and Operation Period – 2 (two) years)], thereafter along with its Associates. Provided further that any such request made under Clause 6.3 and 8.1(k), at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders;
- (l) {the Selected Bidder/ each Consortium Member and its/their} Associates have the financial standing and resources, to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with the terms of this Agreement;
- (m) {the Selected Bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority and that none of the Project Assets shall be acquired by it 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;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality 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;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.
- (q) all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and

- (r) All undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.
- (s) As per direction /guidelines of RREC no Bio-Mass power plant more than 5.0 MW capacity can be established in the project site. So, the concessionaire shall have to take prior permission of Rajasthan Renewal Energy Corporation (RREC) for capacity enhancement in existing Bio-Mass power plant of 1.2 MW capacity.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations under this Agreement;
- (b) it has taken all necessary action under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) {it has the right, power and authority to manage and operate the Project up to the Appointed Date}⁹;
- (h) it has good and valid right to the site, and has power and authority to grant license in respect thereto to the Concessionaire;
- (i) it has not entered into any other Agreement, Concession, transaction, arrangement or understanding in relation to the same Project and or Project facilities or part of the Project with any third Party, or the sale, Concession assignment, or other disposition in whole or in part in respect of the said land other than the disclosed in this Agreement;
- (j) till the time the Concessionaire complete the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the Concession Period, interfere with

⁹ Condition to be retained only in case of the Toll Road and Highway Projects, and deleted for other Project as deemed necessary

peaceful deployment of the Project by the Concessionaire, except in accordance with the provisions of this Agreement.

7.3 Disclosure

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

Article 8 – Disclaimer

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Tender Notice, scope of the services to be provided, Project site, Specifications and Standards set for providing quality of services, local conditions, possible demand and all information provided by the Authority, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 9.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their Associates} or any person claiming through or under any of them .
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 9.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 9.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 9.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 9.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III - Development and Operations

Article 9 - Performance Security (To be filled in by the bidder)

9.1 Performance Security

The Concessionaire shall, for the performance of its obligation hereunder during the Concession Period, provide to the Authority an irrevocable and unconditional guarantee in form of Performance Security Deposits (PSDs) in accordance with the Clause 10.1.1 and 10.1.2.

9.1.1 Construction and O&M Period Performance Security Deposit (PSD)

Concessionaire shall have to pay an amount of _____ INR (Rupees _____), equivalent to [5% (five per cent)] of the estimated Project Development Cost, as Performance Security Deposit (PSD-I) for the Construction Period (Phase-I). PSD-I shall be payable in form of Bank Guarantee (BG) or Fixed Deposit Receipt (FDR) from any Nationalised Bank payable at [City/Location of Procuring Entity] in Favour of "[HOD of the Procuring Entity]". Such BG shall be Valid for period equivalent to the period of Construction Period plus six months (01 years + 06 months).

1. The Concessionaire shall provide PSD-I to the Authority no later than 15 (fifteen) days from the date of this Agreement.
2. PSD-I shall be retained by the Authority for a period of [12 months (period for Phase I of development of Project) + 06 months (grace period between Phase I and Phase II)]. The Authority shall return BG for PSD-I not less than 45 days from furnishing PSD-II for Phase II of the operational phase of the Concession.
3. Until such time the PSD-I is provided by the Concessionaire pursuant hereto and the same comes into effect, the EMD shall remain in force and in effect, and upon such provision of the PSD-I pursuant hereto, the Authority shall release the EMD to the Concessionaire.
4. Notwithstanding anything to the contrary contained in this Agreement, in the event PS-I is not provided by the Concessionaire within the period specified in this Clause 10.1.1 (1), the Authority may encash the EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.2 Operation Period - Performance Security Deposit (PSD-II)

Concessionaire shall have to pay amount equivalent to _____ INR (Indian Rupees _____ only) as Performance Security Deposit (PSD-II) for the Operation Period (Phase-II) in form of Bank Guarantee (BG) or Fixed Deposit Receipt (FDR) from any Nationalised Bank payable at City/Location of Procuring Entity in Favour of "[HOD of the Procuring Entity]". Such BG shall be valid for period equivalent to the Operation Period plus [six months (28 years + 06 months)].

9.2 Appropriation of PSD

Upon occurrence of a Concessionaire default or failure to meet any Conditions Precedents, by due date, to the concerned authorities, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the Security Deposits ("EMD, or PSD") as damages for such Concessionaire default. Upon such invocation and appropriation from the Security Deposit, the Concessionaire shall, within [30 (thirty)] days thereof, replenish, in case of partial appropriation, the Security Deposit to its original level, and in case of appropriation of the entire Security Deposit provide a fresh Security Deposit, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Security Deposit as aforesaid failing which the Authority shall be entitled to terminate the Concession Agreement in accordance with Article 32. Upon replenishment or furnishing of a fresh Security Deposit, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure period of [90 (ninety)] days for remedying and Concessionaire default, and in the event of the Concessionaire not curing its default within such cure period, the Authority shall be entitled to encash and appropriate such Security Deposits as damages, and to terminate this Agreement in accordance with Article 32.

9.3 Release of PSD

The PSD shall remain in force and effect for the period as defined in Clause or for a period of one year from Termination Date in case this Concession Agreement is terminated in pursuance to Article 32. Upon request made by the Concessionaire for release of the PSD-II along with the particulars which establish satisfaction of the requirements specified under this Clause 10.6, the Authority shall release the PSD forthwith.

9.4 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

9.4.1 the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire, the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

9.4.2 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been

terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

9.5 Procurement of the Site

- 9.5.1 On and after signing the memorandum referred to in Clause 11.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

9.6 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority/Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

Article 10 – Utilities on the Project Site and Trees

10.1 Existing utilities

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing right of way or utilities on, under or above the Project Sites are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

10.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Project Sites if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessionaire or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

10.3 New utilities

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Project Sites for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Project Sites to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Project Sites under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

10.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

Article 11

11.1 Obligations prior to the commencement of construction

Prior to commencement of construction Works, the Concessionaire shall;

- (k) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (l) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;
- (m) make its own arrangements for quarrying and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits; and
- (n) procure all such approvals/consents/permits as necessary as per applicable laws for start of the commercial operation of the Project.

11.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the Project Sites and shall undertake the necessary maintenance works for this purpose.

11.3 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project as set forth in, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 03 (three) copies each of all Drawings.
- (b) By submitting the Drawings the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as- built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

11.4 Construction of the Project

- 11.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Project as specified in Schedule B and Schedule C, (the period between Appointed Date and Scheduled Completion Date shall be referred to as “**Construction Period**”). The [270th (Two hundred and seventyth) day] from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.
- 11.4.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of [90 (ninety)] days from the date set forth for such Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of [0.1% (zero point one per cent)] of the amount of PSD for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 13.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 13.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 11.4.3 In the event that the Project is not completed and COD does not occur within the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement, forfeit the PSD as to recover the Damages and the Concession granted to the Concessionaire shall come to cease inevitably.
- (i) The Concessionaire is required to complete the construction, supply and installation of the additional facility required for functioning of 100 KLPD (Kilo Liter Per Day) distillery within 12 (Twelve) months of signing of Concession Agreement. If the operations of the distillery plant are not undertaken for two consecutive years from the date of agreement or in the intermittent period of agreement and the plant remains idle, RSGSM can terminate the contract without seeking the explanation for such non-operation . In case of such termination performance security will be forfeited and to-date fixed amount shall be recovered. However, if the

Concessionaire submits its request in writing to the Authority, agreeing to consider and accept extended COD, also accepts to pay 05% (five per cent) of the PSD as penalty charges

(i) .

(ii)

11.5 Construction of service roads by the Authority¹⁰

[The Authority shall, at any time after the [8th (eighth)] anniversary of the Appointed Date, be entitled in its discretion to undertake at its cost, construction of service roads on the Project in accordance with the specification and standards applicable to other district roads (ODRs) in the State. Such construction shall be undertaken without causing undue disruption to traffic and upon its completion, the Concessionaire shall have the obligation to maintain the service roads in accordance with Good Industry Practice and regulate the use thereof in accordance with the provisions of this Agreement.]

11.6 Incentives for timely achievement of Project Milestones

If in case the Concessionaire is able to complete the Construction of the Project before or within the Stipulated under Clause 13.4 and Schedule G of this Agreement, the Authority shall pay specified amount as incentive for timely performance showcased by the Concessionaire. The incentive payment shall be as follows:

- (i) ____ per cent of Performance Security/ First year Concession Fee/ Annuity pay out for timely completion of the each Project Milestones before or within Stipulated time under Schedule G; and
- (ii) ____ per cent of Performance Security/ First year Concession Fee/ Annuity pay out for timely completion of the entire Project before or within Scheduled Completion Date defined under Schedule G.

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

11.7 - Monitoring of Construction Monthly Progress Reports

11.8 During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report on progress of the Construction Works and shall promptly give such other relevant information. Inspection

11.9 During the Construction Period, authority may carry out the inspection of construction and installation. Suspension of unsafe Construction Works

11.9.1 The Authority may by notice require the Concessionaire to rectify forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety and the against the prevailing law and regulations.

11.10 The Concessionaire shall, pursuant to the notice under Clause 14.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. Subject to the provisions of Clause 29.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “Preservation Costs”) shall be borne by the Concessionaire. Completion Certificate

Upon completion of Construction Works it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule J (the “**Completion Certificate**”).

Article 12 - Entry into Commercial Service

12.1 Commercial Operation Date (COD)

12.1.1 The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 15, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “**COD**”). The Project shall enter into commercial service on COD (the period between Commercial Operation Date and Transfer Date shall be referred to as “**Operation Period**”) whereupon the Concessionaire shall be entitled to demand and collect Payments in accordance with the provisions of this Agreement.

12.2 Damages for delay

12.2.1 Subject to the provisions of Clause 13.4, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of PSD-I for delay of each day until COD is achieved.

Article 13 - Change of Scope

13.1 Change of Scope

- 13.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 17 and the costs thereof shall be expended by the Concessionaire and reimburse to it by the Authority, in accordance with Clause 17.3.
- 13.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 17 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 13.1.3 Any works or services which are provided under and in accordance with this Article 17 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

13.2 Procedure for Change of Scope

- 13.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 13.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, if any construction activity is contemplated and approved by the Authority; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information

shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

13.2.3 Upon receipt of information set forth in Clause 17.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an Agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 17.5.

13.2.4 The provisions of this Agreement, in so far as they relate to Project, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 17.

13.3 Payment for Change of Scope

13.3.1 Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to [20% (twenty per cent)] of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, [20% (twenty per cent)] of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

13.3.2 Notwithstanding anything to the contrary contained in Clause 17.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 17.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of

180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project..

- 13.3.3 In case of Change of Scope, accepted and approved by the Authority; in such case, there shall be possibility of additional revenue sharing model to be worked out between the Authority and the Concessionaire based on assessment of the Change of Scope.

13.4 Restrictions on certain works

- 13.4.1 Notwithstanding anything to the contrary contained in this Article 17, but subject to the provisions of Clause 17.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Project; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Project and issuing the Provisional Certificate.
- 13.4.2 Notwithstanding anything to the contrary contained in this Article 17, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.
- 13.4.3 Notwithstanding anything to the contrary contained in this Article 17, the Concessionaire shall be entitled to nullify any Change of Scope Order, if any, initiated by the Authority and if it causes the cumulative costs relating to all the Change of Scope Orders in any of the following conditions are met:
- (a) The variation would, if implemented, give rise to a breach of any legal requirement or good industry practice. Alternatively, if the variation/Change of Scope would adversely affect the ability of the Concessionaire to exercise its rights and powers to perform its obligations under the Concession Agreement;
 - (b) The Concessionaire does not have the legal capacity to implement the variation/Change of Scope;
 - (c) The variation/Change of Scope would, if implemented, make any insurance effected or to be effected unavailable on reasonable commercial terms;

(d) The variation/Change of Scope is not technically feasible on reasonable commercial terms; and

(e) It would place the Concessionaire in breach of its LoA/Financing Agreement.

13.5 Power of the Authority to undertake works

13.5.1 Notwithstanding anything to the contrary contained in Clauses 17.1.1, 17.2 and 17.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 17.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority²¹, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

13.5.2 The works undertaken in accordance with this Clause 17.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 17.5.

13.6 Reduction in Scope of the Project

13.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

this Clause 17.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

13.6.2 For determining the obligations of the Concessionaire under this Clause 17.6, the provisions of Clauses 17.1, 17.2, and 17.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

13.6.3 There shall be no reduction in Scope due to reason attributed to reduction in Technical and Financial Capacity of the Concessionaire during the Concession Period whatsoever, which will result in the Authority terminating the Concession Agreement as per provisions of Clause 32.1; except failure to fulfil its obligations due to Force Majeure conditions as per Article 29.

Article 14 Operation and Maintenance

14.1 O&M obligations of the Concessionaire

14.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) [Procuring and ensuring safe, smooth and uninterrupted use of the Project, including prevention of loss or damage thereto, during normal operating conditions]¹²;
- (b) Collecting and appropriating the Fee/Charges/Project Revenues, as permitted under this Agreement;
- (c) [Minimizing disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State/City]¹³;
- (d) Carrying out periodic preventive maintenance of the Project;
- (e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, lifts, water supply systems, firefighting systems, electrical / power / electricity systems structures, markings, lighting, signage and other control devices;
- (f) Undertaking major maintenance such as resurfacing, repairs to structures, and repairs and refurbishment of system and equipment;
- (g) Preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- (h) Preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Project;
- (i) Protection of the environment and provision of equipment and materials therefore;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing safe, smooth and uninterrupted use of the Project;

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

(k) Maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;

(l) Complying with Safety Requirements in accordance with Article 19.

14.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at a location as suggested by the Authority, at its own cost].

14.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all internal/ circulation roads¹⁴.

14.2 Maintenance Requirements

14.2.1 The Concessionaire shall procure that at all times during the Operation Period; the Project conforms to the maintenance requirements set forth in Schedule K (the “**Maintenance Requirements**”).

14.3 Maintenance Manual

14.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause shall apply, mutatis mutandis, to such revision.

14.3.2 Without prejudice to the provision of Clause 18.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

14.4 Maintenance Program

14.4.1 On or before COD and no later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual program of preventive, urgent and other scheduled maintenance (the “**Maintenance Program**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Program shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) Criteria to be adopted for deciding maintenance needs;
- (d) Intervals and procedures for carrying out inspection of all elements of the Project;
- (e) Intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) Arrangements and procedures for carrying out safety related measures; and
- (g) Intervals for major maintenance works and the scope thereof.

14.4.2 Within 15 (fifteen) days of receipt of the Maintenance Program, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

14.4.3 The Concessionaire may modify the Maintenance Program as may be reasonable in the circumstances, and the procedure specified in Clauses 18.4.1 and 18.4.2 shall apply *mutatis mutandis* to such modifications.

14.5 Safety, breakdowns and accidents

14.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, closures, diversions, breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary Lights and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

14.5.2 The Concessionaire’s responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the use of the Project. [For this purpose, it shall maintain and operate a round-the-clock

rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 30,000 (thirty thousand) kilograms.]¹⁵

14.6 De-commissioning due to Emergency

14.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants decommissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority Without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

14.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Authority of the same without any delay.

14.6.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

14.7 Project closure

14.7.1 Save and except as provided in Clause 18.6, the Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Program, except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Program and a copy of such permission shall be sent to the Authority.

14.7.2 The provisions of Clause 18.7.1 shall not apply to de-commissioning under Clause 18.6.1 or to any closure for a period not exceeding 2 (two) hours in a

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when usage of the Project is comparatively lower.

- 14.7.3 Upon receiving the permission pursuant to Clause 18.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in reopening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the PSD-II, for each day of delay until that part of the Project has been re-opened for use.

14.8 Damages for breach of maintenance obligations

- 14.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 2% (two per cent) of the PSD-II, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 14.8.2 The Damages set forth in Clause 18.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and, in the event, that it contests such Damages, the Dispute Resolution Procedure shall apply.

14.9 Authority's right to take remedial measures

- 14.9.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the

avoidance of doubt, the right of the Authority under this Clause 18.9.1 shall be without prejudice to its rights and remedies provided under Clause 18.8.

14.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 18.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 18.9.2 and debit the same to O&M Expenses under the relevant Clauses of the Escrow Agreement.

14.10 Overriding powers of the Authority

14.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

14.10.2 In the event that the Concessionaire, upon notice under Clause 18.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 18.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 18.9 along with the Damages specified therein.

14.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 29.4 the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of

doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 29. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 18.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

14.11 Restoration of loss or damage to the Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

14.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws and the provisions of this Agreement.

14.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay.

Provided further that the Concessionaire shall keep all unaffected parts of the Project open to Users, provided they can be operated safely.

14.14 Installation and operation of CCTV

The Concessionaire shall install and operate a closed-circuit television system to monitor such parts of the Project as may be necessary and expedient for a safe, secure and smooth operation thereof.

14.15 Barriers and Diversions

[The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Project Site except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security, law and order, any diversions of traffic from, or closing down of approach roads to the Project that may cause a material adverse effect on the flow of traffic to and from the Project.]¹⁶

14.16 Advertising on the Project Site

- The Concessionaire shall take prior approval from the Authority before undertaking any commercial advertisement activity at the Project Site.
- Before putting any steel or other sort of structures for such hoarding etc. the Bidder must take prior permission from the Authority.

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

Article 15 - Safety Requirements

15.1 Safety Requirements

15.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in Schedule L (the “**Safety Requirements**”).

15.1.2 The Authority shall appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

15.1.2 During Construction Period

- (a) Concessionaire must ensure that necessary and precautionary safety related provisions are made during the construction work at the Project Site.
- (b) Concessionaire to ensure adopting and practicing standard safety and security provisions including providing Personnel Protection Equipments and safety gears to workers engaged in the Project and deploy requisite fire-fighting equipments such as fire extinguishers, Metal Fire Water/Sand buckets at preferable locations in the Project premise in working conditions and conduct safety check on periodic basis.

15.1.3 During Operation Period

- (a) The Concessionaire shall comply with the provisions of this Agreement, applicable laws and regulations and conform to Good Industry Practice for securing the safe business operations related to proposed sports and other permissible activities to be carried out in the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project facilities, and shall submit safety plan and programs per applicable laws and regulations.
- (b) The Concessionaire must deploy requisite fire-fighting equipments such as fire extinguishers, Metal Fire Water/Sand buckets at preferable locations in the Project premise in working conditions and conduct safety check on periodic basis.
- (c) The Concessionaire is expected to make provision of First Aid Kit equipped with all the requisite medical items, First Responder Bag to take care of any accidents and emergencies situation(s). For preparedness, Concessionaire should maintain kits with all the requisite items at all time during the Concession Period, and if required shall ensure timely refilling of items that have been used during emergency situation(s).

- (d) The Authority shall appoint an experienced and qualified firm or organisation (the “Safety Consultant”) on need basis, to carry out safety audit of the Project facilities in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.
- (e) Concessionaire shall install CCTV cameras within the Project Premises to ensure required security within the Project Premises. There should be a dedicated Security Control Room with required set-up for live monitoring as well as recording facility.

15.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, even if any, not forming part of the Scope of the Project shall be undertaken and funded in accordance with the provisions of Article 17. [Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 17.3.2, be borne from out of a dedicated safety fund (the “Safety Fund”) to be funded, owned and operated by the Authority or a substitute thereof.]

Article 16 - Monitoring of Operation and Maintenance

16.1 Monthly status reports

16.1.1 During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

16.1.2 During the Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the month, as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

16.2 Inspection

The Independent Engineer shall inspect the Project at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Program and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

16.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire.

16.4 Remedial measures

- 16.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 20.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 16.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 20.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 18.8.

16.5 Project Revenue Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each quarter, a statement of Fee substantially in the form set forth in Schedule (the “**Project Revenue Statement**”). The Concessionaire shall also furnish to the Authority such other information as the authority may reasonably require, at specified intervals, in discharge of its statutory functions.

16.6 Reports of unusual occurrence

- 16.6.1 The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 20.5, accidents and unusual occurrences on the Project shall include:
- (a) Death or injury to any person;
 - (b) Damaged or dislodged fixed equipment;
 - (c) Any damage or obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;

- (d) Disablement of any equipment during operation;
- (e) Communication failure affecting the operation of the Project;
- (f) Smoke or fire;
- (g) Flooding of the Project; and
- (h) Such other relevant information as may be required by the Authority or the Independent Engineer.

(Note: In case of the Toll Road and Highway Project, the Procuring Entity to add relevant Articles after this Article on - Traffic Regulation, Emergency Medical Aid, and Traffic Census. To review relevant provisions for these Articles, please refer Model Cocession Agreement of NHAI prepared for DBFOT Project)

- Part IV - Financial Covenants

Article 17 - Financial Close

17.1 Financial Close

17.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within [60 (Sixty)] days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the PSD for each day of delay, or for a further period not exceeding [200 (two hundred)] days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said [60 (Sixty)] days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

17.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

17.2 Termination due to failure to achieve Financial Close

17.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 29.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.

17.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the EMD and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not solely as a result of the Authority being

in default of any of its obligations under Clause 4.2, it shall, upon Termination, release the Bid Security/ EMD or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the EMD /Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security/ EMD.

(Note: In case of the any PPP Project, if the Procuring Entity agrees to provide financial support in form of Grant, procuring entity to add relevant Article on Grant. To review relevant provisions for these Article, please refer Model Concession Agreement of NHAI prepared for DBFOT Project)

Article 18 – Grant

18.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “**Concession Fee**”) a sum of _____ (Rupees _____) per annum. For avoidance of any doubt, the Concession Fee shall be the Premium, as defined hereunder and in the RFP document, offered by the Bidder in its Bid to be paid to the Authority and the Usage Fee specified in Clause 23.2.

18.2 Premium

18.2.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of Premium (the “**Premium**”) a sum of Rs. _____/- (rupees _____ only) (as quoted by the Selected Bidder in the Financial Bid and accepted by the Authority). The Concessionaire shall make payment of Premium as per below mentioned schedule:

No. of Installment	Payment Milestone	% of Premium	Mode of Payment
1st (First)	Within 30 days from the date of issuance of LoA	20%	Account payee Cheque/ Demand Draft/ Pay Order/ RTGS/ NEFT from nationalized bank in favour of '[HOD of the Procuring Entity]' payable at [Location/City of Procuring Entity]
2nd (Second)	On or before 06 months from the Appointed Date	20%	
3rd (Third)	On or before 12 months from the Appointed Date	20%	
4th (Fourth)	On or before 18 months from the Appointed Date	20%	
5th (Fifth)	On or before 24 months from the Appointed Date	20%	

18.2.2 The Concessionaire has made payment of 1st installment of the Premium amounting to Rs. _____/- (rupees _____ only) by way of account payee Cheque/ Demand Draft/ Pay Order/ RTGS/ NEFT dated _____ bearing No _____ drawn on _____ in favour of '[HOD of the Procuring Entity]' payable at [Location/City of Procuring Entity]. All the instalments for payment of Premium shall be made by Concessionaire in form of account payee cheques/demand draft/pay order/RTGS/NEFT from Nationalised Bank in India in favour of '[HOD of the Procuring Entity]' payable at [Location/City of Procuring Entity].

18.2.3 The Concessionaire shall within 30 days of issuance of LoA, submit four different Bank Guarantees from any Nationalised Bank, (as per format enclosed in Schedule F of the Concession Agreement) for amount equivalent to the 2nd, 3rd, 4th and 5th installment of Premium, which shall be valid for a period of 06, 12, 18 and 24 months respectively from the date of signing of the Concession Agreement, as a security against the payment of 2nd, 3rd, 4th and 5th installment of Premium. The Bank Guarantees submitted by Concessionaire as a security against payment of installment of Premium shall be returned to the Concessionaire after payment of respective installment of the Premium.

18.2.4 In the event the Concessionaire makes any default in payment of any installment of the Premium, the Authority shall encash the respective Bank Guarantee submitted by the Concessionaire and recover the amount of Premium along with levying penalty for such delay of Premium installment payment. The Bank Guarantee submitted by the Concessionaire as a security against the 2nd, 3rd, 4th and 5th installment of premium shall never be treated as actual payment of premium, it shall act only as a security for the respective installment of Premium.

(a) Any delay in payment of the Premium installments as specified in this Agreement on the due dates shall attract interest at the rate of 15% per annum for unpaid period.

(b) If the payment of Premium installments or any other payment as specified in this Agreement remains unpaid for a period exceeding 90 (ninety) days from the due date, the Authority shall terminate the Agreement as per the provision of Article 30 of this Agreement.

18.2.5 In the event of failure of completion of the Project Development works during the Construction Period of the Concession Period as mentioned in the scope of work, Security Desposit with PSD-I as furnished by Concessionaire to the Authority till date shall be forfeited and the Concessionaire shall be blacklisted.

18.3 Usage Fee

18.3.1 The Concessionaire shall make yearly payment of Usage Fee at the rate of [02% (two per cent) of the Premium quoted]¹⁷ during the Concession Period as per terms and conditions defined hereunder. Usage Fee shall become due and payable every year during the Operation Period – 28 (twenty-eight) years, starting from the Commercial Operation Date (COD) till the end of the Concession Period.

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

- (i) The Construction Period (initial period of 02 (two) years of Concession Period) shall be consider as **“Usage Fee Free Period”**.

18.3.2 The Ground rent shall be revised after expiry of the Concession Period (i.e. on renewal of Concession Period and execution of Concession Agreement for such renewal period) and shall be calculated as per the prevailing rules and regulations then.

- (a) The Concessionaire shall bear the liability of applicable GST on the Usage Fee payable to the Authority. So, the Authority shall include liability of such GST applicable on Usage Fee payable on year-on-year basis in the demand note itself.

18.3.3 Any delay in payment of the Premium and Usage Fee or any other payment as specified in this Agreement on the due dates shall attract interest at the rate of 15% (fifteen per cent) per annum for unpaid period.

18.3.4 The Payment Schedule and timelines for payment of Usage Fee during the Operation Period of the Concession Period is as presented below:

- (a) All the instalments for payment of Usage Fee shall be made by Concessionaire in form of account payee cheques/demand draft/pay order/RTGS/NEFT from Nationalised Banks in India in favour of '[HOD of the Procuring Entity]' payable at [Location/City of Procuring Entity].
- (b) The Authority will issue a yearly Demand Note for payment of the Usage Fee in the first month of each respective year, every year during the Operation Period. The Concessionaire is liable to pay Usage Fee for the respective year, within grace period as mentioned in the Demand Note. Any late payment shall attract penalty charges of 1.25% (one point twenty-five per cent) per month till the time such amount is not paid.
- (c) If the payment of Usage Fee due remains unpaid for a period exceeding 90 (ninety) days from the due date, the Authority shall terminate the Agreement as per the provision of Article 30 of this Agreement.
- (d) Concessionaire shall be liable to pay applicable Service tax/GST tax over and above the Usage Fee to Authority. Concessionaire should later claim such tax liability as input credit and reduce its tax liability. Concessionaire is advised to understand modalities of GST taxation from Tax Consultant or competent authority.

18.3.5 In the event of failure of operations and maintenance of the Project during the Operation Period of the Concession Period as mentioned in the scope of work, PSD-II as furnished by Concessionaire to the Authority till date shall be forfeited and the Concessionaire shall be blacklisted.

18.3.6 Other charges as applicable and detailed in the Concession Agreement will have to be borne by the Concessionaire.

18.4 Taxes and Penalties

- 18.4.1 The Concessionaire shall have to pay all central/state/local govt. taxes and levies such as Municipal Tax, Non-Agriculture Tax, Property Tax, Water Bills, Electric Bills, Service Tax, etc. during the concession period. Any new levies, taxes, cess etc. if any, imposed by Government Authorities on the Authority for awarding the contract shall be recovered from the Concessionaire separately by the Authority.

Article 19 – Project Revenues

19.1 Collection and appropriation of Project Revenues

- 19.1.1 The fixed amount of Rs. 2.25 Crore + GST per annum to be paid by concessionaire to RSGSM for the use of required total land, building, furniture and fixtures and existing machinery. There shall be an escalation of 10% of existing fixed amount after every three years.
- 19.1.2 Production charge will be per Bulk Liter (B.L.) of total spirit produced by the concessionaire. Total spirit includes production of ENA/ Ethenol and impure spirit and fusel oil. The production charge will be levied from the thirty seventh month after the agreement. There shall be an escalation of 15% of existing production charge after every three years. Minimum production of 3 Crore B.L. per year shall be considered for computing annual production charge offered by a bidder.

Article 20 - - Insurance

20.1 Insurance during Concession Period

20.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice] or for amount deemed fit necessary as part of business continuity plan, adhering to condition as defined in Clause 27.1.2. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

20.1.2 The value of insurance covered for Project with respect to loss caused due to fire, earth quake or other natural calamities should be for amount not less than 50% of the Estimated Project Cost in any case.

20.2 Insurance Cover

20.2.1 Without prejudice to the provisions contained in Clause 27.1, the Concessionaire shall, during the Operation Period of the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) Comprehensive third-Party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- (c) The Concessionaire's general liability arising out of the Concession;
- (d) Liability to third parties for goods or property damage;
- (e) Workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

20.3 Notices to the Authority

20.3.1 No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

20.4 Evidence of Insurance Cover

20.4.1 All insurances obtained by the Concessionaire in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Concessionaire to the Authority.

20.5 Remedy for failure to insure

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

20.6 Waiver of subrogation

20.6.1 All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 27 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.7 Concessionaire's waiver

20.7.1 The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire 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.

20.8 Application of insurance proceeds

20.8.1 The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 26.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

20.9 Compliance with conditions of insurance policies

20.9.1 The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies affected in accordance with this Agreement.

Article 21 - Accounts and Audit

21.1 Audited accounts

- 21.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Project Revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within [180 (one hundred and eighty)] days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 21.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 21.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

21.2 Appointment of auditors

- 21.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

21.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

21.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

21.2.4 The Authority shall have the right, but not obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) as may be decided by the Authority to undertake concurrent audit of the Concessionaire’s accounts.

21.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of the Clause 20.5, save and except where such certification is expressly provided.

21.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 28.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

21.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

Part V - Force Majeure and Termination

Article 22 - Force Majeure

22.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 29.2, 29.3 and 29.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

22.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 29.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) The discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) Any event or circumstances of a nature analogous to any of the foregoing.

22.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

22.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) Compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) Any event or circumstance of a nature analogous to any of the foregoing.

22.5 Duty to Report Force Majeure Event

22.5.1 Upon occurrence of a force majeure event, the affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

22.5.2 The affected Party shall not be entitled to any relief under the Concession Agreement for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 Effect of Force Majeure Event on the Concession

22.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

22.6.2 at any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Construction Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

- (b) after COD, whereupon the Concessionaire is unable to collect Project Revenues despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Project Revenues on account thereof.

22.7 Allocation of Costs Arising out of Force Majeure

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

22.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the **“Force Majeure Costs”**) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) Upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on Debt Due, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include any costs which are expressly covered under any provision of this Agreement or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

22.7.3 Save and except as expressly provided in this Article 29, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.9 Termination Payment for Force Majeure Event

22.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (Ninety Per Cent) of the Debt Due less Insurance Cover.

22.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity

22.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 32.3.2 as if it were an Authority Default.

- (a) If the Termination is on account of a Non-Political Event or an Indirect Political Event, the Authority shall not be liable to make any Termination Payment under this Clause 29.9.3. Upon Termination under Clause 29.8, the Authority shall return the EMD/ Bid Security and /or Performance Security provided by the Concessionaire if the same has not been returned by the Authority; or
- (b) If the Termination is on account of Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal that would be payable under the Clause 32.3.2 as if it were an Authority Default. Upon Termination under Clause 29.8, the Authority shall return the Bid Security and/or Performance Security provided by the Concessionaire if the same has not been returned by the Authority. Provided that the proceeds from such insurance on the Project Assets shall be considered for the above calculation and that all proceeds from insurance shall be

remitted to the Authority and further that no Termination Payment shall be due from the Concessionaire to the Authority under this Clause 29.9.3.

22.9.4 Provided the Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Authority from the Concessionaire as on the Termination Date.

22.9.5 the Concessionaire hereby expressly agrees that the Termination Payment under this Clause 29.9 shall constitute full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement due to Force Majeure events and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

22.10 Dispute Resolution

In the event that the parties are unable to agree in good faith about the occurrence or existence of a force majeure event, such dispute shall be finally settled in accordance with the dispute resolution procedure provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

22.11 Excuse from performance of obligations

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

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

Article 23 - Compensation for Breach of Agreement

23.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 30.5 and 32.6, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

23.2 Compensation for default by the Authority

Subject to the provisions of Clause 30.5 and 32.6, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include debt repayment obligations or other consequential losses, loss of profit, EPC Contractors claims, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

23.3 Extension of Concession Period

Subject to the provisions of Clause 30.5, in the event that a material default or breach of this Agreement set forth in Clause 30.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Project Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Project Revenues remained suspended on account thereof.

23.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

23.5 Mitigation of costs and damage

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

Article 24 - Suspension of Concessionaire's Rights

24.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement, and pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

24.2 Authority to act on behalf of Concessionaire

24.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 26.3.

24.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred- during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

24.3 Revocation of Suspension

24.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the

Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

24.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

24.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

24.5 Termination

24.5.1 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 31.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32 as if it is a Concessionaire Default under Clause 31.1.

24.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 31.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual Agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

Article 25 - Termination

25.1 Termination for Concessionaire Default

25.1.1 The Concession Agreement, as the case may be, shall be liable to be terminated without the Procuring Entity being liable in any manner whatsoever to the Successful Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

- (a) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause **Error! Reference source not found.**1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Procuring Entity, or a ground for termination of the Concession Agreement by the Concessionaire;
- (b) In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Procuring Entity, that one or more of the eligibility and/or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LoA or entering into of the Concession Agreement, and if the Successful Bidder has already been issued the LoA or the SPV has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Procuring Entity to the Successful Bidder or the Concessionaire, as the case may be, without the Procuring Entity being liable in any manner whatsoever to the Successful Bidder or the Concessionaire. In such an event, the Procuring Entity shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Procuring Entity under this RFP, the Bidding Documents, the Concession Agreement or otherwise.
- (c) A Bidder including any Members of the Consortium or Associate should, in the last 03 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial Procuring Entity or a judicial pronouncement or arbitration award against the Bidder, Members of the Consortium or Associate, as the case may be, nor has been expelled from any Project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Members of the Consortium or Associate. Provided, however, that where an Bidder claims that its disqualification arising on account of any cause or event specified in this Clause **Error! Reference source not found.** is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Procuring Entity

for seeking a waiver from the disqualification hereunder and the Procuring Entity may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Processor on the implementation of the Project.

- (d) The concessionaire shall ensure operation of plant throughout the year as per Central Pollution Control Board(CPCB) / Rajasthan State Pollution Control Board (RSPCB) norms. If the operations of the distillery plant are not undertaken for two consecutive years from the date of agreement or in the intermittent period of agreement and the plant remains idle, RSGSM can terminate the contract without seeking the explanation for such non-operation . In case of such termination performance security will be forfeited and to-date fixed amount shall be recovered.
- (e) The Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not pre-qualified or upon return of the Application Security by the Procuring Entity to the Bidder, as the case may be.
- (f) The Concessionaire is required to complete the construction, supply and installation of the additional facility required for functioning of 100 KLPD (Kilo Liter Per Day) distillery within 12 (Twelve) months of signing of Concession Agreement. If the operations of the distillery plant are not undertaken for two consecutive years from the date of agreement or in the intermittent period of agreement and the plant remains idle, RSGSM can terminate the contract without seeking the explanation for such non-operation

25.1.2 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure Event. The defaults referred to herein shall include the followings:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 10.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 10.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (nineny) days;

- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 120 (one hundred and twenty) days;
- (d) The Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 13.4.3;
- (f) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (g) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (h) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (j) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (k) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 6.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (q) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be

wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

1. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 2. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 3. Each of the Project Agreements remains in full force and effect;
- (r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (t) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (u) the Concessionaire issues a Termination Notice in violation of this Agreement; or
- (v) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

25.1.3 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 32.1.3.

25.1.4 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders

stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case maybe, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

25.1.5 Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

25.1.6 Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

25.2 Termination for Authority Default

25.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire; or
- (b) The Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) The Authority fails to provide, within a period of 180 (one hundred and eighty days) from the Appointed Date, the Right of Way and other statutory clearances required for construction of the Project;
- (d) The State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority; or

- (e) The Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

25.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

25.3 Termination Payment

25.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Clause 32.3.5.

25.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(a) Debt Due; and

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

25.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (Ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

25.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason

whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

25.3.5 Upon Termination on account of Concessionaire Default at any time prior to COD, no Termination Payment shall be due and payable for expenditure comprising the first 30% (Thirty per cent) of the Total Project Cost and in the event of expenditure exceeding such 30% (thirty per cent), the provisions of Clause 32.3.1 shall, to the extent applicable to Debt Due, apply for and in respect of such excess expenditure. The Parties further agree that for the purposes of this Clause 32.3.5, Total Project Cost shall mean the amount specified in the RFP Volume I Document.

25.3.6 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire.

25.4 Certain limitations on Termination Payment

25.4.1 Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty-five per cent) of the Total Project Cost.

25.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 28.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency Loans within 60 (sixty) days of the date of conversion of such foreign currency Loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date on which the Agreement is terminated.

25.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) Be deemed to have taken possession and control of the Project forthwith;
- (b) Take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) Require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

25.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, Security Deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

25.7 Limitation of Liability

Niether Party shall be liable to the other for any loss of profit, loss of business, loss of production, loss of contracts or for any indirect or other consequential loss or damage whatsoever that may be suffered by the other Party, except to the extent that such consequential loss or damage is attributable to gross negligence, deliberate default, fraud, fraudulent misrepresentation or willful misconduct by the defaulting Party, its personnel or agents.

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 32.3, 32.8 and 32.9 of this Agreement, shall not exceed [100% (one hundred per cent)] of the Total Project Cost.

25.8 Mutual Foreclosure

25.8.1 Without prejudice to any provision of this Agreement, the Authority and Concessionaire may foreclose this Agreement by mutual consent in circumstances which does not constitute any Party's default. Such a foreclosure can occur in any of the following 2 (two) categories as per the mutual consent of the Authority and the Concessionaire:

- (a) Type A Foreclosure: Foreclosure with mutual consent without any liability or consequential future liability for either Party; or
- (b) Type B Foreclosure: Foreclosure with mutual consent With compensation to the Concessionaire including any pending settlements / claims as per the provisions under Clause 32.8.2.

25.8.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a notice to the other Party and upon issuance of such notice, the other Party may within a reasonable time- frame either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.

25.8.3 In either case of the other Party agreeing to the proposed foreclosure or otherwise, and with prior written approval of the Lenders' Representative, the Parties may negotiate the terms and conditions of the Mutual Foreclosure Agreement and this Agreement shall stand terminated upon execution of the Mutual Foreclosure Agreement.

25.8.4 In the event the Parties mutually agree to foreclose this Agreement as a Type B Foreclosure under Clause 32.8.1, the Authority shall be liable to compensate the Concessionaire as per the provisions under Clause 32.8.3.

25.8.5 Any attempt or endeavour for foreclosure by mutual agreement under this clause shall, subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed that all the rights, claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement hereunder.

25.8.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.

25.9 Stuck Projects

25.9.1 In casethe Project has not achieved COD one year post the Scheduled Completion Date as provided in Schedule G, and proceedings have been started against the Concessionaire before the NCLT under the Insolvency and Bankruptcy Code, 2016, then the Project shall be mutually foreclosed and Authority shall pay to the Concessionaire, by way of foreclosure payment, an amount equal to the lower of:

- (ii) 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) Of such unpaid claims shall be included in the computation of Debt Due; or
- (iii) Value of work done, which means the lower of (a) as assessed by Independent Engineer on the basis of contract agreement between the Concessionaire and its EPC Contractor, or (b) as assessed by the Independent Engineer as per the Schedule of Rates (SoR) of concerned State and of concerned year, moderated by a factor of (Ttoa Project Cost/Cost of the project under the Financing Agreement).

25.10 Continuity upon Termination

In case of Termination under the Clause Article 32 and notwithstanding pendency of any judicial/quasi-judicial proceedings, the Authority, in accordance with its responsibility and being rightful duties as per the [_____ Act, _____] for developing and maintaining the Project, in public interest, may appoint/cngage another contractor to execute or complete the Project with or without appropriate changes or modifications. Such an appointment or engagement shall be without prejudice to Concessionaire's liabilities and obligations under Clauses of Article 34 and similar such Clauses. In case termination of this Agreement is found to be invalid or untenable pursuant to legal or quasi-judicial proceedings, the Authority shall put the Concessionaire to the same financial position as if such termination had never happened.

Article 26 - Divestment of Rights and Interest

26.1 Divestment Requirements

26.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) Notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmers and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
- (e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

26.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third Party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the

issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

26.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 34 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 33.

26.3 Cooperation and assistance on transfer of Project

26.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

26.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

26.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 33.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

26.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule U

(the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

26.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

26.6 Divestment costs etc.

26.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favor of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such Divestment shall be borne by the Authority.

26.6.2 In the event of any Dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

Article 27 - Defects Liability after Termination

27.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account.

27.2 Retention in Escrow Account

27.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to 5% (five per cent) of the Concession Fee and Usage Charges for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.

27.2.2 Without prejudice to the provisions of Clause 34.2.1, the Independent Engineer shall carry out an inspection of the Project Facilities at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Facilities is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

27.2.3 The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Performance Guarantee

under this Clause 34.2.3, the retention of funds in the Escrow Account in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.

Part VI – Other Provisions

Article 28 Assignment and Charges

28.1 Restrictions on assignment and charges

28.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a Party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

28.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

- (a) liens arising by operation of law (or by an Agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow account arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project; and
- (d) Liens or encumbrances required by any Applicable Law.

28.3 Substitution Agreement

28.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the Agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule O.

28.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

28.3.3 Assignment by the Authority

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

Article 29 - Change in Law

29.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 Crore (Rupees One Crore)¹⁸ and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

29.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 Crore (Rupees One Crore) and 0.5% (zero point five per cent) of the Realisable Fee in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its Obligations under this Agreement.

29.3 Protection of NPV

Pursuant to the provisions of Clauses 36.1 and 36.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

29.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

29.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

Article 30 Concession Renegotiation

30.1 Basis for Concession Renegotiation

Nothing contrary to the provisions of the Article 4, Article 17, Article 22, Article 25, Article 29, and Article 36 to deal with events/ circumstances and possible action to mitigate the effect of such events/circumstances, the provision of this Clause can be exercise by the Authority in case of events arising during the effective period of this Agreement post COD, and such events attributes are clearly reflective that the project is distress and has:

- (i) material adversity and likely to result in default under the Concession Agreement at some future point should it continue;
- (ii) not caused deliberately by the Concessionaire; and
- (iii) likely to cause adverse outcomes for the Authority and/or users of the Concession assets.

The provisions of this Article shall not be applicable and considered for renegotiation of the Concessions under this Agreement, in case of the followings

- any event of distress that was foreseeable at the time of financial close;
- any event that would affect the Concessionaire as any other company in its ordinary course of business (for example general changes in law);
- any impact arising from assumptions made or risks taken any the Concessionaire in preparing its bid;
- any impact arising directly or indirectly from the performance, action or inaction of the Concessionaire; and
- any failure of any associated party to the Concessionaire to perform or provide finance to the Concessionaire.

Evidences that are required to allow renegotiation of the Concession Agreement shall include

- renegotiation is likely to have direct cost implications for the Authority that are less than the financial outcomes of doing nothing;
- renegotiation is likely to have social benefits or avoided costs that, in the absence of a formal, defined Value for Money (VFM), provides better long-term outcomes; and
- renegotiation is not materially different in terms of risk allocation to the Authority.

30.2 Events defining Project Distress

As used in this Agreement, the expression “**Project Distress**” or “**Project Distress Event**” shall, save and except as expressly provided otherwise, mean occurrence of any or all of Events post COD as specified below;

- (i) Lower than expected Project Revenues;
- (ii) Higher than expected operational costs;
- (iii) Sudden increase in government taxes and/or tariff and/or charges and/or levies that has considerable impact on the operational cash flows of the Project;
- (iv) Delays from competent government authorities affecting commercial operations of the Concessionaire;
- (v) Variation more than threshold limits as setout in the Agreement due to Change of Scope and/or Change of Law, and clear need established to sustain the Project in the public interest; and
- (vi) Occurrence of any force majeure event not specified under the Article 29 of this Agreement.

30.2.1 Once, Parties have mutually agreed for likely future occurrence or of actual occurrence of Project Distress Event, should undertake their respective detailed assessment of the such Event and its impact on the Project. The Concessionaire should submit its Detailed Assessment Report on the Project Distress Event within [90 (ninety)] days from both the parties agreed and decided to undertake individual assessment of the event. The Report that the Concessionaire is expected to submit must specify the following:

- possible occurrence or actual occurrence is not due to lapse and/or failure on part of the Concessionaire is fulfilling its obligations as stipulated in this Agreement;
- Its objective assessment of impact of event on the Project and revised business plan to either survive such event with admissible solutions which can be agreed upon by the Parties with ambit of the applicable government regulations; and
- Revised financial model and financial adjustments to be made to survive such event.

30.2.2 The Authority shall constitute Project Evaluation Committee (PEC) comprising of members as deemed necessary with competent qualification and experience to undertake the assessment of the situation. Formation of such Committee shall be completed within [30 (thirty)] days from both the parties agreed and decided to undertake individual assessment of the event. The committee should comprise of the following members, wherein the Authority shall make best efforts to consider independence of the Experts;

- Representation of Authority through
 - Head of the Organisation;
 - Head of Finance Department;

- Head of the Technical Department; and
- Authorised Representative for the Project
- Representation of Independent Members as Subject Matter Expert with minimum 15 years of relevant experience;
 - Relevant Sector Expert;
 - PPP/ Procurement Expert;
 - Legal Expert (experience of public procurement and PPPs); and
 - Finance Expert.

30.2.3 The Scope of the such Project Evaluation Committee shall be:

- To undertake review of the Project documents, original financial model and project feasibility report submitted by the Concessionaire as Condition Precedents;
- To collect the other necessary project's operational details from the Concessionaire to baseline assessment and emerged scenario due to Project Distress Event;
- To review the Detailed Assessment Report and proposed revised business plan submitted by the Concessionaire;
- Undertake fact-based and objective assessment to:
 - Identification of cause and fault, resulting/ that will result in Project Distress Event;
 - Material implication of such event on the Project and impact of it for the the Parties;
 - Risk assessment due to such Event;
 - Financial cost assessment for the Project;
 - Adverse consequences assessment;
 - Possible solutions for financial equilibrium to be maintained; and
 - Possible revised terms and conditions of the amended concession agreement to be considered by the Parties, which are within the ambit of applicable provisions of the applicable government regulations.

30.2.4 The PEC should submit their Report within [120 (one hundred and Twenty)] days from the date the PEC was set-up. The findings of the PEC Report to be shared with Parties through a Joint Meeting.

30.3 Amendment to Concession Agreement

- 30.3.1 Upon findings of the PEC Report shared with the Parties, the Concessionaire shall respond back with its views on it within [30 (Thirty)] days. If the findings and revised terms and conditions as suggested by the PEC are agreeable to both the Parties, the Authority shall submit the report prepared by the Concessionaire as well as PEC along with proposed Amendment to the PPP cell – Government of Rajasthan, for their inputs and Finance Department, Government of Rajasthan for their approval. Basis the inputs of the PPP cell, the Finance Department may approve or reject or recommend modifications in the Amendment to the Authority for execution. All the signed amendments of the Concessions must be sent by the Authority to the Finance Department along with a copy to PPP Cell within 30 (thirty) days of execution of such amendment.
- 30.3.2 If in case, either of the Parties does not agree to the findings and and revised terms and conditions as suggested by the PEC, the parties may request PPP cell and Finance Department to intervene and help parties to agree to an Amendment acceptable to both the parties. In case, the proposed Amendment by PPP Cell and Finance Department is also not agreeable to either or both the parties, either of the party may propose to Terminate this Agreement.
- 30.3.3 The Termination related provisions of this Agreement shall be considered in case Parties proceed with Termination of this Agreement. Further, to be fair to the Parties and safeguard interests of the Parties, the Termination related Payment will be processed by the Authority in accordance with the respective provisions of Article 32 of this Agreement, considering Termination attributed to the Party proposing it.
- 30.3.4 If in case, either of the Party does not agree, with the provision of the Clause 37.4.3 mentioned above, the Parties may rely on to amicably resolving the conflict/ disagreement through provisions of Clause 40.2 of this Agreement.

Article 31 Liabilities and Indemnity

31.1 General indemnity

31.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related Agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority or to any User, or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

31.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related Agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related Agreement, and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

31.2 Indemnity by the Concessionaire

31.2.1 Without limiting the generality of Clause 38.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) Failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

- (b) Payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) Non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

31.2.2 Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with no infringing work or part or process, or modify the same so that it becomes non-infringing.

31.3 Notice and contest of claims

31.3.1 In the event that either Party receives a claim or demand from a third Party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

31.4 Defense of claims

- 31.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third Party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 31.4.2 If the Indemnifying Party has exercised its rights under Clause 38.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 31.4.3 If the Indemnifying Party exercises its rights under Clause 40.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such Party has been authorized in writing by the Indemnifying Party;
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
 - (d) The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

1. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
2. That such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

31.4.4 Provided that if Sub-clauses (b), (c) or (d) of this Clause 38.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

31.5 No consequential claims

31.5.1 Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

31.6 Survival on Termination

31.6.1 The provisions of this Article 37 shall survive Termination

Article 32 - Rights and Title over the Site

32.1 Licensee rights

32.1.1 For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as a licensee subject to and in accordance with this Agreement, and to this end; it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

32.2 Access rights of the Authority and others

32.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority and/or its contractors, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

32.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any facilities / utilities specified in Article 12, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such facilities and utilities.

32.3 Property Tax

32.3.1 All Property Taxes on the Site shall be payable by the [Authority]¹⁹, as owner of the Project Site, provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duty and other charges, if any, payable on the grant of license comprising this Agreement shall be paid by the [Authority]²⁰.

32.4 Sub-division and Sub-letting

The Sub-division and Sub-letting in this Project shall be carried out based on the following instructions;

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

²¹ The Procuring Entity to careful evaluate the need to propose such framework, or can propose single Committee to be manage by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not deem necessary to be deleted.

- 32.4.1 Sub-division of whole or part of land shall not be permitted by the authority during the Concession Period under any circumstances.
- 32.4.2 Concessionaire shall not be allowed to Sub-let or Sub-lease whole or any part of the land parcel as referred to in this Agreement.
- 32.4.3 The Concessionaire shall not sub-license or sub-lease or sublet the whole or any part of the Project to third parties i.e. contractors, O&M service providers, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.
- (i) Such parties shall be engaged for a specific time period and for a specific purpose and shall enter into a separate **O&M Contract/Agreement**.

Article 33 - Dispute Resolution

33.1 Dispute Resolution

33.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 40.2.

33.1.2 The parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

33.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the [HOD of the Procuring Entity] of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 40.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 40.3.

33.3 Arbitration

33.3.1 Any dispute which is not resolved amicably by conciliation, as provided in Clause 40.2 shall be finally decided by reference to arbitration by an Arbitral Tribunal constituted mutually selected by the both parties from the list of approved arbitratitors panel.

33.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 40 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

33.3.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

33.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder. Further, the Parties unconditionally acknowledge and agree that notwithstanding any dispute between the, each Party shall proceed with the performance of its respective obligations, pending resolution of Dispute in accordance with this Article.

Article 34 - Disclosure

34.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Program, the Maintenance Requirements and the Safety Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Site and the Concessionaire’s Registered Office. The Concessionaire shall prominently display at the Project Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

34.2 Disclosure of documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

34.3 Withhold disclosure of documents

Notwithstanding the provisions of Clauses 41.1 and 41.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 41.1 and 41.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 35 - Redressal of Public Grievances

35.1 Complaints Register

- 35.1.1 The Concessionaire shall maintain a public relations office at the Site where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at each entrance the Site so as to bring it to the attention of all Users.
- 35.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 35.1.3 Without prejudice to the provisions of Clauses 42.1.1 and 42.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

35.2 Redressal of complaints

- 35.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 35.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, the Authority may advise the Complainant to seek appropriate remedy under the Consumer Protection Act, 1986, at his own risk and cost.

Article 36 - Miscellaneous

36.1 Governing Law and Jurisdiction

This Concession Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at [Location/City of the Procuring Entity] shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

36.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

36.3 Depreciation and Interest

36.3.1 For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

36.3.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

36.4 Delayed payments

36.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a

demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to [5% (five per cent)] above the daily average Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

36.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

36.5 Waiver

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

(a) 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;

(b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

36.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

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

36.7 Exclusion of Implied Warranties etc.

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

36.8 Survival

36.8.1 Termination shall;

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

36.8.2 All obligations surviving termination shall only survive for a period of 03 (three) years following the date of such Termination.

36.9 Entire Concession Agreement

This Concession Agreement and the schedules together constitute a complete and exclusive statement of the terms of the Concession Agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

36.10 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

36.11 No partnership

This Concession Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or Authority to enter into any Concession Agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

36.12 Third Parties

This Concession Agreement is intended solely for the benefit of the parties, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement, unless expressly provided in this Agreement.

36.13 Successors and Assigns

This Concession Agreement shall be binding upon, and inure to the benefit of the parties and their respective and lawful successors and permitted assigns, as per the provisions of this Agreement.

36.14 Notices

Any notice or other communication to be given by any 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 Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the [Location/City of the Procuring Entity] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

If to the Concessionaire

Name of Concessionaire) : M/s.

Kind Attention (Name) : Mr/Ms.

Designation :

Address :

Telephone :

Fax :

Mobile :

Mail Address :

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have

an office in the [Location of the Procuring Entity] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

If to Authority

Name of the Procuring Entity :
Kind Attention : Shri./Smt.
(Name of Authorised Officer)
Designation :
Address :
Telephone :
Fax :
Mobile :
Mail Address :

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

36.15 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.

36.16 Counterparts

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

36.17 Validity

This Concession Agreement shall be valid for the entire Concession Period as defined in this Agreement.

Article 37 - Definitions

37.1 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:

“Accounting Year” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“Additional Facilities” means the facilities created on the peripheral land parcels to the Project Site or other than the Project Site, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the users, and which are in addition to the Project Facilities;

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point four two per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

“Affected Party” shall have the meaning as set forth in Clause 32.1;

“Agreement” or **“Concession Agreement”** means this Agreement, its Recitals, and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government of Rajasthan including rules, regulations and notifications made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

“Appointed Date” shall mean the date on which the Concessionaire satisfies the Condition Precedent for Concessionaire as described under Article 4, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

“Arbitration” shall have the meaning set forth in Clause 40.3;

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“Associate” or **“Affiliate”** means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and Policies of such person, whether by operation of law or by contract or otherwise);

“Authority” shall have the meaning attributed thereto in the array of Parties as set forth in the Paragraph **Error! Reference source not found.** of the Recitals of this Agreement;

“Authority Default” shall have the meaning as set forth in Clause ;

“Authority Representative” means such person or persons as may be authorized in writing by the Authority 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 the Authority under this Agreement;

“Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“Bid” means the documents in their entirety comprised in the bid submitted by the {Selected Bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and

“**Bids**” shall mean the bids submitted by any and all pre-qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “Commercial Operation Date” shall have the meaning as set forth in Clause 16.1;

“**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and two years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning as set forth in Clause 17.1;

“**Change in Law**” shall have the meaning as set forth in Article 36;

“**Company**” means the company acting as the Concessionaire under this Agreement;

“**Completion Certificate**” shall have the meaning as set forth in Clause 15.2;

“**Concession**” shall have the meaning as set forth in Clause 3.1;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

“**Concession Period**” means the period starting on and from Appointed Date and ending on the Transfer Date. For avoidance of doubt it is clarified that the Concession Period shall include the Construction Period (two years) plus a fixed period of (twenty eight years) of Operation & Maintenance Period from the COD;

“**Concessionaire Default**” shall have the meaning as set forth in Clause 32.1.1;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 4.1.1;

{“**Consortium**” shall have the meaning as set forth in Recital (B);}

{“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;}

“**Construction Period**” means the period beginning from the Appointed Date and ending on COD;

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

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

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

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

“**DBFOT**” or “**Design, Build, Finance Operate and Transfer**” shall have the meaning as set forth in Recital (A);

“**Damages**” shall have the meaning as set forth in Sub-clause (w) of Clause 1.2.1 of 0;

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

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

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

“Deemed Performance Security” shall have the meaning as set forth in Clause 10.4;

“Development Period” means the period from the date of this Agreement until the Appointed Date;

“Dispute” shall have the meaning as set forth in Clause 40.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 40;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 33.1;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule H, and shall include ‘as built’ drawings of the Project;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

“EPC Contractor” means the person with whom the Concessionaire has entered into an EPC Contract;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project, 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the

purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

“Escrow Account” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning as set forth in Clause 26.1.2 and Schedule V;

“Escrow Bank” shall have the meaning as set forth in Clause 26.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule V;

“Estimated Project Cost” shall be the cost estimated by the Authority for development of the Project and provided in the Volume I of the RfP (Instructions to Bidders).

“Financial Close” means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements which shall be communicated by the Lender’s Representative to the Authority in writing. Such communication from Lender’s Representative shall be treated as date on which the Financial Close is achieved;

“Financial Default” shall have the meaning as set forth in Schedule O;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and Projections therein;

“Financial Package” means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

“Financing Agreements” means the Agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of Loans, guarantees, subscription to non-convertible debentures and other debt instruments including LoAn Agreements, guarantees, notes, debentures, bonds and other debt instruments, security Agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 6.2.3;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 29.1;

“GoI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a

reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient use of the Project;

“Government” means the Government of the India;

“Government Instrumentality” means any department, division or sub-division of the Government or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 41;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 41;

“Independent Engineer” shall have the meaning as set forth in Clause 21.1;

“Indirect Political Event” shall have the meaning as set forth in Clause 29.3;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 27, and includes all insurances required to be taken out by the Concessionaire under Clause 27.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“Intellectual Property” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programs and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“LoA” or “Letter of Award” means the letter of award referred to in Recital (D);

“Lenders’ Representative” means the person duly authorized by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“Licensed Premises” shall have the meaning as set forth in Clause 11.2;

“Maintenance Manual” shall have the meaning as set forth in Clause 18.3.1;

“Maintenance Program” shall have the meaning as set forth in Clause 18.4.1;

“Maintenance Requirements” shall have the meaning as set forth in Clause 18.2;

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

“Nominated Company” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“Non-Political Event” shall have the meaning as set forth in Clause 29.2;

“O&M” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities, in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including

- (a) cost of salaries and other compensation to employees,
- (b) cost of materials, supplies, utilities and other services,
- (c) premium for insurance,
- (d) all taxes, duties, cess and fees due and payable for O&M,
- (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs,
- (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and
- (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“O&M Inspection Report” shall have the meaning as set forth in Clause 20.2;

“Operation Period” means the operation and maintenance period of 15 (fifteen) years commencing from COD and ending on the Transfer Date;

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

“Performance Security” shall mean PSD-I and PSD-II and have the meaning as set forth in Clause 10.1;

“Physical Progress” shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Engineer based on the relevant guidances/ guidelines issued from time to time by the Authority.

“Political Event” shall have the meaning as set forth in Clause 29.4;

“Price Index” shall comprise: (a) 70% (seventy per cent) of WPI; and (b) 30% (thirty per cent) of CPI (IW), Which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“Project” means the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project in Site, and its subsequent development in accordance with this Agreement;

“Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material Agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any Agreement for procurement of goods and services involving a consideration of up to Rs.25 crore (twenty five crore);

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, [drainage works, traffic signals, sign boards, electrical systems, communication systems, rest areas, relief centers, administrative offices]; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, Security Deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule G for completion of the Project on or before the Scheduled Completion Date;

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule C;

“Project Milestones” means the Project milestones as set forth in Schedule G;

“Provisional Certificate” shall have the meaning as set forth in Clause 15.3;

“Punch List” shall have the meaning ascribed to it in Clause 15.1.1;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Reference Exchange Rate**” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Reference Index Date**” means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

“**Request for Proposals**” or “**RFP**” shall have the meaning as set forth in Recital (C);

“**Right of Way**” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“**Safety Consultant**” shall have the meaning as set forth in Clause 19.1.2;

“**Safety Requirements**” shall have the meaning as set forth in Clause 19.1;

“**Scheduled Completion Date**” shall have the meaning as set forth in Clause 15.3.1;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

“**Site**” shall have the meaning as set forth in Clause 11.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**State**” means the State / or the Union Territory of, as the case may be, and

“**State Government**” means the State Government of Rajasthan, unless otherwise specified in relevant clause in this Agreement;

“Statutory Auditors” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 28.2.1;

“Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date: (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of Loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter-Bank Offer Rate) plus 02% (two per cent) in case of Loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date; provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Substitution Agreement” shall have the meaning as set forth in Clause 35.3;

“Suspension” shall have the meaning as set forth in Clause 31.1;

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“Termination” means the expiry or termination of this Agreement and the Concession hereunder;

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

“Termination Payment” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“Tests” means the tests set forth in Schedule I to determine the completion of the Project in accordance with the provisions of this Agreement;

“Total Project Cost” means cost of Project Development as estimated by the Authority, which is Rs. 100,00,00,000 INR (Rupees one hundred crore only);

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

“**User**” means a person who uses or intends to use the Project or any part thereof in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning as set forth in Clause 33.4; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

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

Signed, Sealed and Delivered For and on behalf of The Authority by

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the [.....] day of [.....], 20[...] hereunto affixed in the presence of [] Director, who has signed these Presents in token thereof and, Company Secretary /Authorized Officer who has countersigned the same in token thereof:

.....
Signature
Designation
Name
Address
Email
Fax:
[Name of the Procuring Entity]

.....
Signature
Designation
Name
Address
Email
Fax:

In the presence of:

1.
.....
.....
.....
2.
.....
.....
.....

In the presence of:

1.
.....
.....
.....
2.
.....
.....
.....

Date:
(DD/MM/YYYY format)

Location: [Location/City of the Procuring Entity, where this Agreement is executed], Rajasthan

Part VII - Schedules

Schedule A - Details of the Site

(See Clause 11.1)

1 The Site

1.1.1 Site of the ENHANCEMENT 100 KLPD AND ABOVE, OPERATION AND MAINTENANCE OF DISTILLERY OF PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN YEARS **Project shall include land, buildings, structures and works as described in Annexure-I of this Schedule A.**

1.2 An inventory of the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred in Clause 11.3.1 of the Agreement.

(Annexure-I: Detailed information about the Project Premises handed over to the Concessionaire to be provided hereunder)

Schedule B - Scope of the Project

The Concessionaire shall develop the Project on the designated land parcel (the “**Project Site**”) admeasuring approximately _____ sq mt, on Design, Build, Finance, Operate and Transfer (DBFOT) basis for the purpose and use as defined in the Bid Documents and hereunder. Under this, the Concessionaire shall be given exclusive right for construction, development, operation and maintenance of the Project.

1 Preliminary Activities

Before handover of Project to Concessionaire, the Authority and the Concessionaire shall carry out Joint Inspection visit to Project site and take stock of existing condition of the Project site and all related assets. Upon Joint Inspection visit by Officer-In-Charge and Concessionaire as obligatory process at time of handing over of Project site, Authority shall issue letter notifying permission to initiate necessary work as stipulated and governed by conditions defined in next section of this Schedule.

1.1 Three-Tier Project Monitoring and Management Framework²¹

The Authority understands and deems necessary for effective monitoring and management to propose three-tier Monitoring and Management Framework. This framework shall comprise of three committees – 1) at Authority level Committee, 2) Expert Committee, and 3) State Level Committee. The Authority to decide members of each of the Committees, which shall not be more than five members in each of the respective Committees. The Authority shall finalise the Committee and its roles and responsibility and overall institutional arrangement, which shall be shared with the Concessionaire for its understanding and necessary further action during the Concession Period. The role of these committees should be to provide technical and advisory support to the Authority and guidance, if required, to the Concessionaire to ensure best interest of the Parties related to successfully implement the Project and achieve Project objectives.

2 Scope of Work for the Project

The Primary and broad Scope of Work for the Project is to Design, Build, Finance, Operate and Maintain the Project for Concession Period of [____ (in words____)] and then to transfer back to the authority after successful completion of the Concession Period. The Concession Period shall commence from the Effective Date as per provisions of this Agreement. The concessionaire is also expected to adhere to the Minimum Development Obligations provided as Schedule S with this Agreement.

The Project ‘_____’ shall be awarded to the Concessionaire for a period of 30 (thirty) years from the date of signing of Concession Agreement. At the end of Concession Period the Concessionaire shall hand over the entire site and all the Project assets (movable and immovable assets) in good condition/working condition to the Authority at no cost. The detailed Scope of work for the Project is as under;

2.1 Scope of Work - Construction Period (Phase-I)

²¹ The Procuring Entity to carefully evaluate the need to propose such framework, or can propose single Committee to be managed by it. Such evaluation can be based on the nature, scale and complexity of the proposed project. If, such provision does not seem necessary to be deleted.

The Phase-I of the Project comprises of the development phase wherein all the works such as Construction of Project Facility, complete site development, installation of necessary infrastructure and facilities for the Facility, interior works, etc. The Concessionaire shall be responsible for financing the project and shall execute the development work at its own cost. The works shall be executed as per the Design, Drawings, Specification and Estimate as prepared by the Concessionaire and approved by the Authority. Concessionaire shall obtain necessary sanctions from the competent authority prior to initiate/execute on site. The approximate cost for completion of Phase-I is estimated at _____ INR (Rupees _____ only). Broad scope of work for the Concessionaire under the Phase-I shall be as follows:

2.1.1 Project development and conceptual planning

Concessionaire shall be responsible to submit Project Development Plan along with Project feasibility report as per guidelines as follows:

- (a) The Concessionaire shall, within 30 (Thirty) days from the date of issuance of Letter of Acceptance (LoA), prepare and get approval from the Authority, on a plan for development of Project Facilities for implementation of the Project ("Project Development Plan") in conformity with the Bid submitted by the Concessionaire.
- (b) The Project Development Plan shall set out in detail the planning for carrying out the Project development activities and shall include necessary information under the following broad heads;
- (c) Approach & Methodology: This will include the plan for development of the Project and the method statement for the same. In case of phased development, the same shall be indicated for each of the phases envisaged.

2.1.2 Project Design and Planning (including Conceptual Drawings)

- (a) Site Plan including the layout plan, parking, driveways, walkways, entry and exit in accordance with the requirements as stipulated in Annexure 01 of Volume I of the RfP.
- (b) Architectural Drawings including all floor plans, key sections, elevations, 3D views.
- (c) Area statements for the above (and for each phase in case of phased development), FSI permissible and proposed to be utilised.
- (d) Design and details of services and utilities, security, emergency plans, plans for environment friendly solutions such as rain water harvesting, energy efficiency etc.
- (i) Implementation Plan and Method Statement: This will include the plan for implementation of the Project clearly indicating construction schedules of the Project (for each phase in case of phased development) and the method statement for the same, providing clearly ascertainable milestones which can be monitored at least quarterly relating to Project implementation schedule.
- (ii) Financial plan - The Concessionaire share statement about financing the Project through its own funding, debt funding and also to identify risk related to such

financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement.

(e) Procedure for approval of Project Development Plan:

- (i) The Authority may constitute a committee (the “**Co-ordination Committee**”) for review and approval of the Project Development Plan. Within 15 (Fifteen) days of receipt of the Project Development Plan, the Co-ordination Committee/the Authority shall, review the Project Development Plan for compliance and adequacy with respect to Project requirements defined in the RfP and either approve or convey its comments/observations, if any. Within 15 (Fifteen) days of receipt of such comments/observation from the Authority, if any, the Concessionaire shall finalize the Project Development Plan taking into account the comments and observation, if any, by the Authority. The Project Development Plan shall be finalised with mutual consent of the Parties (“**Approved Project Development Plan**”).
- (ii) If, within the period stipulated in the preceding Sub-Clause (i), if the Authority does not respond to the Project Development Plan submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Project Development Plan submitted by it to the Authority.
- (iii) Notwithstanding any review or failure to review by or the comments/observations of the Authority, the Concessionaire shall be solely responsible for the adequacy of the Project Development Plan and shall not be relieved or absolved in any manner whatsoever of any of its obligations as set forth in this Agreement.

2.1.3 Project's drawings and approval

(a) **Preparation of Drawings**

- (i) The Concessionaire shall prepare its own Drawings for providing the Project Facilities based on the Approved Project Development Plan, Design and Construction Requirements. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- (ii) All Drawings relating to the Project Facilities shall be subject to review by the Officer-in-Charge as hereinafter provided in the succeeding Sub-Clause (b).

(b) **Review of Drawings**

- (i) The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirement, submit a copy of each of the Drawings to the Officer-in-Charge and the Authority.
- (ii) By forwarding the Drawings to the Officer-in-Charge and the Authority pursuant to the preceding Sub-Clause (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Construction Requirement.

- (iii) Within 15 days of receipt of the Drawings, Officer-in-Charge shall review the same taking into account, inter-alia, comments of the Authority, if any, thereon, and convey its comments / observations to the Concessionaire on the conformity of Drawings with Construction Requirement. If the comments / observations of the Officer-in-Charge indicate that the Drawings are not in conformity with the Construction Requirement, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Officer-in-Charge for further review. The Officer-in-Charge shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
 - (iv) If, within the period stipulated in the preceding Sub-Clause (iii), the Officer-in-Charge does not respond to the Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Officer-in-Charge, and intimate the same to the Authority.
 - (v) Notwithstanding any review or failure to review by or the comments / observations of the Officer-in-Charge or the Authority, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Construction Requirement, and shall not be relieved or absolved in any manner whatsoever of any of its obligations hereunder.
 - (vi) The Concessionaire shall be responsible for delays in meeting the Construction Requirement caused by reason of any Drawings not being in conformity with the Construction Requirement, and shall not be entitled to seek any relief in that regard from the Authority.
 - (vii) The Concessionaire shall in consultation with the Officer-in-Charge finalise an implementation schedule for the Project in accordance with the Design and Construction Requirements.
 - (viii) The Concessionaire shall furnish to the Authority three copies of "as built" Drawings illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed.
- (c) Approval and permissions
- (i) The Concessionaire shall obtain all the necessary clearances and sanctions from competent statutory authorities for utilities, Fire N.O.C., Fire Fitness Certificate, Fire Compliance Certificate, electric connection/ sub-station etc. It is to be clearly understood that all such clearances are to be obtained by the Concessionaire at his own cost and Authority can only provide assistance, wherever possible, on best effort basis without any binding obligation.

2.1.4 Construction work/activities

- (i) Unless otherwise permitted by the Authority, no Construction Works shall begin until the Officer-in-Charge is in place and has assumed charge.
- (ii) The Concessionaire shall adhere to the Construction Requirements in accordance with the milestones set out under the Approved Project Development Plan and obtain Project Completion Certificate before the expiry of period granted for Construction Period. Except for reasons of a Force Majeure Event, the Concessionaire shall not be entitled to any extension of time in the Project Completion Period. If there is a delay in achieving the milestones set out under the Approved Project Development Plan ("Scheduled Project Milestone Date"), the Concessionaire shall pay to the Authority Penalty as defined in Clause **Error! Reference source not found.** of this Schedule for delay in fulfilling the specified obligations on or before a milestone date including a delay in obtaining the Project Completion Certificate. The Parties agree that the Penalty as provided are a genuine pre-estimate of the damages the Authority is likely to suffer. The Authority may, at its discretion recover such amount with respect to Penalty from the Performance Security.
- (iii) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Construction Requirements and O&M Requirements.
- (iv) The Concessionaire shall, before commencement of Construction Works, have requisite organisation and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Authority/Officer-in-Charge and to be responsible for all necessary exchange of information required pursuant to this Agreement and provide and maintain a reasonably furnished accommodation for the Officer-in-Charge/the Authority at the Project Site up to the Commercial Operation Date.
- (v) For the purposes of determining whether the Construction Works are being undertaken in accordance with the Construction Requirements and Approved Project Development Plan, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the Construction Requirements and Approved Project Development Plan under the supervision of the Officer-in-Charge/the Authority. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (vi) If the Tests are successful and it is ascertained that the Project Facilities can be safely and reliably opened for operation as the case may be, the Authority shall in consultation with the Officer-in-Charge issue the Project Completion Certificate, as the case may be.
- (vii) Officer-in-Charge/the Authority, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable

opinion the same is being carried on in a manner that is not in conformity with the Construction Requirements and Approved Project Development Plan.

- (viii) Project Completion Certificate shall be issued by Officer-in-Charge/the Authority upon successful completion of tests and it is ascertained by the Authority/Officer-in-Charge that the Project Facilities can be safely and reliably opened for operation and submission of Occupancy Certificate issued by the municipal authority concerned by the Concessionaire in respect to the Project Facilities.
- (ix) Construction of Project Facilities should be in accordance with the Construction Requirements and Approved Project Development Plan.
- (x) All the Drawings for Project Facilities shall be approved by the Authority.
- (xi) The Project Facility shall be deemed to be complete and ready for operations only when the Project Completion Certificate is issued by the Authority. Provided if the issue of the Project Completion Certificate is delayed beyond 90 days of the Project Completion Period of 02 (Two) years (24 months) from the Effective Date, the Authority shall, subject to the provisions of Clause 29.1, be entitled to terminate this Agreement and to appropriate the Performance Security.
- (xii) The Concessionaire shall remove at its cost from the Project Site in accordance with Good Industry Practice all surplus structures at, on, over or under the ground at the Project Site, construction machinery and materials, waste materials (including, without limitation, hazardous materials, all types of solid and liquid waste), rubbish and other debris and keep them in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.
- (xiii) To plan and install necessary infrastructure and facilities deemed fit required as per daily operations proposed to be carried out through the Project.
- (xiv) All the necessary approvals from concern authorities like environmental clearance, building permission, approval from fire-fighting department, Consent to Construction (CtC) and Consent to Operate (CtO) from State Pollution Control Board and permission for water supply connection, electrical connection, etc. shall be responsibility of Concessionaire and Authority considers that Concessionaire shall have understood importance of processing such permissions and approval on time during the Construction Period, and no grace period shall be granted by the Authority.

2.1.5 Intimation of completion of Phase-I

Upon completion of above Scope of Work, the Concessionaire shall inform Authority about the completion of work, in writing submitting all the approval/permissions from various competent authority. **No payment shall be made to the Concessionaire for the development work carried out in the Project.**

2.1.6 Inspection of Phase-I

After receipt of intimation of completion of Phase I, the work shall be inspected by the Officer-In-Charge duly appointed by Authority. The Work shall be inspected and verified in accordance with the conditions of this Agreement. The Concessionaire has to carry out rectifications, if any, as may be directed by the Officer-In-Charge, Authority. In case of any deviations or breach of conditions mentioned hereof, in such conditions Concessionaire shall be liable of penalty as mentioned under Clause **Error! Reference source not found.** of this Schedule.

2.1.7 Completion Certificate for Phase-I

Upon inspection and after observing the development works carried out by Concessionaire to be satisfactory, Authority shall issue letter notifying completion of the Phase-I work. Concessionaire shall then be allowed to proceed for carrying out business operations as stipulated and governed by conditions defined in next section of this Agreement.

2.2 Scope of Work - Operation Period (Phase-II)²²

[Primary and objective of scope of work under this Agreement for the Concessionaire shall mean, carrying out permissible business, operations and maintenance of complete Project including Project facilities.

The Concessionaire shall exercise its rights in accordance with granted Concessions as defined in this Agreement for use of Project to carry out its business operations during the Operational Phase of the Concession Period, and after issuance of intimation letter issued by the Authority; permitting start of business.]

²² This Section of the Schedule should be prepared by the Procuring Entity in accordance with the requirements from the Concessionaire through the Proposed Project.

Schedule C - Project facilities²³

[The Project facilities for this Project shall mean the facilities or infrastructure that is viewed critical by the Authority in the Project. Project facilities for this Project shall include but not be limited to:]

- I. Land of total 29.652 acres.
- II. Existing plant and machinery of 20KLPD.
- III. Existing building and Structure.
- IV. Furniture and Fixture as enclosed.

²³ This Section of the Schedule should be prepared by the Procuring Entity in accordance with the identified Facilities in the Proposed Project based on the Detailed Project Report prepared.

Schedule D - Applicable Permits and Approvals

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority.

The lists of applicable permits include (but not limited to):

- (a) Environmental Clearances;
- (b) Clearances from Factories and Labour Departments;
- (c) Registration under Central Goods and Services Tax Act, 2017 (GST Act, 2017);
- (d) Allotment of power connection by Electricity Board/Service Provider and permission required, if any, for installation of DG;
- (e) Consent to establish and operation under Water Act, 1974 and Air Act, 1981. NOC consent from pollution department;
- (f) Permit for installation of crusher from State Pollution Control Board;
- (g) Explosive license for storing Diesel;
- (h) All Trade Licenses as applicable;
- (i) Approval/permit from Fire Safety Authorities;
- (j) Building Layout and other permissions required from Urban Local Body;
- (k) Occupancy Certificate/ any other certificate issued by concerned authority permitting commercial operations in the facility;
- (l) Immigration clearance (in case of foreign personnel being engaged);
- (m) Liquor License, if required;
- (n) Permission for cutting of trees, if required;
- (o) Permit for extraction of boulder from quarry;
- (p) Permissions from Concerned department for shifting of services and utility lines;
- (q) If water has to be taken from river or reservoir, permission has to be obtained from the State Irrigation Department;
- (r) Permission for water connection if water supply is required from the Urban Local Body;
- (s) All other relevant statutory approvals/permits for construction, Operation and Management of Project Facilities.

[The aforementioned list will be finalized based on the Concessionaire's Project Implementation Plan, subject to compliance of the Terms and Conditions as mentioned in the Concession Agreement and guidance from the Authority and/ or Independent Engineer]

Schedule E - Performance Security Deposit

[Proforma to furnish PSD-I and PSD-II in form of Bank Guarantee]

[To be issued by any Nationalized Bank in India]

From:

[Name and Address of Bank/ Financial Institution]

Dy.General Manager (Pur.),
Rajasthan State Ganganagar Sugar Mills Ltd.
Head Office, 4th Floor, Nehru Sahkar Bhawan, Bhawani Singh Road Jaipur (RAJ.)

1. [Name of the Concessionaire] (the “**Concessionaire**”), has in response to a Request for Proposal (the “**RfP**”) issued by the [Designation of the Head of the Procuring Entity] submitted a proposal dated [date to be inserted] (the “**Proposal**”) for it to cause a company (the “**Developer**”) to “**ENHANCEMENT 100 KLPD AND ABOVE, OPERATION AND MAINTENANCE OF DISTILLERY OF PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN YEARS**” (the “**Project**”).
2. [Name of Bank/Financial Institution] (the “**Guarantor**”) with its registered office at, unconditionally guarantees to pay the [Name of the Procuring Entity] upon first written demand and without deduction the sum of INR (INR in words) (the “**Guaranteed Sum**”) subject to the conditions set out below.
3. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from the Authority, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make payment to the Authority. The written demand made shall specify the occurrence of one or more conditions set out in Clause 5 and such demand notice shall constitute prima facie conclusive evidence of the occurrence of such events or conditions.
4. No underlying dispute as between the Authority and the Concessionaire, nor any pending Proposal for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to the Authority by the Guarantor and the existence of any disputes or differences or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guaranteed Sum.
5. The Authority shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, upon the Authority’s notification that:
 - (a) upon the occurrence of any of the conditions for default as set out in the Concession Agreement.

- (b) there has been non-compliance of the conditions precedent as provided in the Concession Agreement, or as elsewhere referred to in the RfP documents/ Concession Agreement.
- (c) Certification by the Authority of the occurrence of such event, shall be conclusive and binding on the bank/financial institution.
6. This Guarantee shall be valid for a period of (.....) months from the date mentioned herein and shall have claim period up to
 7. The release of this Guarantee and its return will be exclusively notified by the Authority and in the event; the Authority requiring revalidation or extension of this Guarantee, the Guarantor has accepted and shall be obligated to make such extension in favour of the Authority for a further minimum term of six (6) months and the Concessionaire is deemed to have made the request for such extension upon the execution and furnishing of this Guarantee in the first instance. The Guarantor shall not refuse such extension nor shall the Concessionaire be eligible to file any proceedings for stay or return of Guarantee for any reason whatsoever.
 8. This Guarantee shall be valid and effective for enabling the Authority to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand if the claim is lodged within the claim validity period and the obligation to pay would be subject to normal limitation for payment of claims upon a guarantee. Time is of essence for payment and in the event of failure to make payment, the Guarantor shall be obligated to pay compound interest at Two Percent (2%) above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided would be no excuse for delayed payment or non-payment.
 9. No change in the constitution of the Concessionaire, Developer or of the Guarantor shall be a ground for release of the Guarantee and no variation in the RfP documents or the Concession Agreement made post selection of the Concessionaire, or post making of the Bid, shall constitute a variation, which would, subject to the terms and conditions of this Agreement, discharge the Guarantor. The Guarantor shall notwithstanding such change, be bound to make payment upon the Guarantee on demand.
 10. The Guarantor agrees that it will not assign its obligations under this Guarantee without the prior written consent of the Authority. The Authority will not unreasonably withhold its consent if the proposed assignee is of at least equal financial standing to the Guarantor and the assignee assumes in writing the obligations of the Guarantor under this Guarantee at the same time or before the assignment.
 11. This Guarantee binds the Guarantor, its successors and permitted assigns.

Seal of [Bank/Financial Institution]

Name of [Bank/Financial Institution]

Signature

.....

Name

Title

Date

Schedule F - Project Completion Schedule

1 Project Completion Schedule

1.1 During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur at completion of 8 (Eight) months from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have completed the construction at least 50% (built-up area) of the Facility.

3 Project Milestone-II

3.1 Project Milestone-II shall occur at completion of 20 (twenty) months from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have completed the construction of the complete Facility.

4 Scheduled Completion Date

4.1 The Scheduled Completion Date shall be 24 (twenty-four) months from the Appointed Date.

4.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

5 Extension of period

5.1 Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

[The aforementioned clauses may be finalized based on the Concessionaire's Project Implementation Plan, subject to compliance of the Terms and Conditions as mentioned in the Concession Agreement and guidance from the Authority and/or Independent Engineer]

Schedule G - Completion Certificate

(See Clause 14.2& 14.3)

1. I/We, (Name of the Authority), under and in accordance with the Concession Agreement dated (the **“Agreement”**), for the Project **“_____”** (the **“Project”**), through (Name of Concessionaire), hereby certify that the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement.

SIGNED, SEALED AND DELIVERED

For and on behalf of

the INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

Provisional Certificate

- 1 I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for the Project “_____” (the “**Project**”) through (Name of Concessionaire), hereby certify that the Tests specified in Schedule I of the Agreement have been undertaken for the Project Componentto determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Project Components of the Project that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire) I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Component of the Project, pending completion thereof.
- 3 In view of the foregoing, I/We am/are satisfied that the Project Components of the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Component of the Project is hereby provisionally declared fit for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED

AND DELIVERED

For and on behalf of

CONCESSIONAIRE by:

SIGNED, SEALED AND

DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

(Signature)

(Name and Designation)

(Address)

(Signature)

(Name and Designation)

(Address)

Schedule H - Maintenance Requirements

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule K (the “**Maintenance Requirements**”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in this Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annexure - I of this Schedule K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annexure - I of this Schedule K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 3.2 In respect of any defect or deficiency not specified in Annexure - I of this Schedule K, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.

4 Extension of time limit

- 4.1 Notwithstanding anything to the contrary specified in this Schedule K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Engineer and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule K if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the

Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Project and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Engineer at any time during office hours.

7 Divestment Requirements

All defects and deficiencies specified in this Schedule K shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

Annexure - I

(Schedule K)

Repair/Rectification of Defects and Deficiencies

[to be listed out based on the Project Plan of the Concessionaire in consultation with the Authority and the Independent Engineer]

Schedule I - Safety Requirements

1 Guiding principles

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

[to be listed out based on the Project Plan of the Concessionaire in consultation with the Authority and the Independent Engineer]

Schedule J - Substitution Agreement

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

AMONGST

1. The **Deputy General Manager (Purchase) , Rajasthan State Ganganagar Sugar Mills Ltd.**, established under, represented byand having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3.name and particulars of Lenders’ Representative and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (a) The Authority has entered into a Concession Agreement dated [Please insert date of execution of the Concession Agreement]..... with the Concessionaire (the “**Concession Agreement**”) for the Project of “.....” (the “**Project**”) on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (b) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (c) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (d) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and Agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 Definitions and Interpretation

1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or modification thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2.1, 1.2.2 ad 1.2.2 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

2 Assignment

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 Substitution of the Concessionaire

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 33 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.2.4 For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy-five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 Project Agreements

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place

and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 Termination of Concession Agreement

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 34 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 Duration of the Agreement

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 Indemnity

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third-Party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third Party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third Party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third Party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 Dispute Resolution

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Delhi and the language of arbitration shall be English.

9 Miscellaneous Provisions

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of Agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third-Party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective

upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three 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.

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

.....Department, GoAP by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Address)

(Name)

(Fax)

(Designation)

(e-mail address)

In the presence of:

1.

2.

Schedule K - Lease Agreement

[The Procuring Entity to insert the Lease Agreement format that they consider for leasing of the government lands/Properties for commercial use within their respective jurisdiction].

Schedule L - Payment schedule for Premium and Usage Fee

(i) Schedule of payment of Premium as per clause within Article 23 of this Agreement:²⁴

No. of Installment	Payment Milestone	Amount of Premium Installment	Status of Premium	Details of Bank Guarantee (as per Article 23)
1 st (First)	Within 30 days from the date of issuance of LoA	_____ INR		
2 nd (Second)	On or before 6 months from the Appointed Date	_____ INR		
3 rd (Third)	On or before 12 months from the Appointed Date	_____ INR		
4 th (Fourth)	On or before 18 months from the Appointed Date	_____ INR		
5 th (Fifth)	On or before 24 months from the Appointed Date	_____ INR		

(ii) Schedule of payment of Usage Fee as per clause within Article 23 of this Agreement:

Sr. No.	Year	Usage Fee (Amount in INR)
Construction Period – 02 (two) years		
1	1st year	Rent free period
2	2nd year	Rent free period
Operation Period – 28 (twenty eight) years		
3	1st year	_____ INR
4	2nd year	_____ INR
5	3rd year	_____ INR
6	4th year	_____ INR
7	5th year	_____ INR
8	6th year	_____ INR
9	7th year	_____ INR
10	8th year	_____ INR
11	9th year	_____ INR

²⁴ In case, if there is requirement of providing Grant to the Concessionaire for the Proposed Project; the Procuring Entity to add Schedule before this Schedule outlining the payment scheduled for Grant.

Sr. No.	Year	Usage Fee (Amount in INR)
12	10th year	_____ INR
13	11th year	_____ INR
14	12th year	_____ INR
15	13th year	_____ INR
16	14th year	_____ INR
17	15th year	_____ INR
18	16th year	_____ INR
19	17th year	_____ INR
20	18th year	_____ INR
21	19th year	_____ INR
22	20th year	_____ INR
23	21st year	_____ INR
24	22nd year	_____ INR
25	23rd year	_____ INR
26	24th year	_____ INR
27	25th year	_____ INR
28	26th year	_____ INR
29	27th year	_____ INR
30	28th year	_____ INR

Note

- Usage Fee shall be payable per year at the rate of 2% of the Premium quoted by the Successful Bidder.
- Concessionaire shall be liable to pay Premium (Premium and Usage Fee) plus applicable GST.

Schedule M - Business Operations Plan

[Copy of Business Operations Plan submitted by the Successful Bidder to be attached hereunder.]

Schedule N - Minimum Development Obligations

[The Schedule to be revised by the Procuring Entity with minimum and mandatory requirements from the Concessionaire with respect to the Proposed Project.]

Design guidelines and specifications of MDO

[As per the scope of the Project defined in Schedule B of this Agreement the Design Guidelines alongwith minimum and mandatory requirements to be ensured by the Concessionaire while developing the Project are;

-

Requirement	Details about Project Facilities related considerations
General Requirement	•
Specific Requirement	•

Schedule O - Panel of Chartered Accountants

1 Panel of Chartered Accountants

Pursuant to the provisions of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 05 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule T.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) The firm should have at least 05 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) The firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) The firm should have an office in the State or in an adjacent State with at least 02 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding 25,00,00,000 INR (rupees twenty-five crore only) whose annual accounts were audited by such firm in any of the preceding 05 (five) Accounting Years

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority and 01 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 05 (five) years shall be awarded 05 (five) points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 05 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalize and constitute a panel of 05 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

Schedule P - Vesting Certificate

1. The **Deputy General Manager (Purchase) , Rajasthan State Ganganagar Sugar Mills Ltd,** Rajasthan, India (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for “**ENHANCEMENT 100 KLPD AND ABOVE, OPERATION AND MAINTENANCE OF DISTILLERY OF PRESENT CAPACITY OF 30 KLPD WITH 1.2 MW BIOMASS BASED POWER PLANT AT CHAK 23F, TEH. SHRIKARANPUR, SRIGANGANAGAR CITY ON P.P.P. MODE FOR FIFTEEN YEARS**” (the “**Project**”).
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this..... day of....., 20..... At.....

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

for and on behalf of

CONCESSIONAIRE by:

AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

