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CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT (the “**Agreement**”) is entered into on this the _____ day of _____, 2020 at _____;

BETWEEN

Haryana State Co-operative Supply and Marketing Federation Limited, represented by HAFED, and having its principal office at HAFED Building, Sector 5, Panchkula, Haryana - 134108, acting through its _____ (hereinafter referred to as the “**Authority**”, which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **First Part**;

AND

M/s. -----[insert the name of the Concessionaire], a Company incorporated under the Companies Act, 2013, and having its registered office at -----[insert address of the registered office], acting through ----- its ----- [designation], duly authorized in this behalf by way of Power of Attorney dated ----- (hereinafter referred to as the “**Concessionaire**” which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **Second Part**,

hereinafter individually referred to as “**Party**” and together referred to as “**Parties**”.

RECITALS:

- A. WHEREAS** the Authority is the rightful owner of the Development, Operation & Maintenance of Mustard Oil Mill located at Rampura, Rewari, Haryana, India as marked in **Schedule I** (hereinafter referred to as “**Project Land**” or “**Project Site**” or “**Site**”) and intends to Develop, Operate and Maintain the aforesaid project in Rewari through PPP mode on Design-Build- Finance Operate- Transfer (“**DBFOT**”) basis (the “**Project**”);
- B. AND WHEREAS** with an objective to seek private sector participation in the development, operation and maintenance of the aforesaid Project, the Authority undertook the process of selection of a suitable concessionaire through competitive bidding, after issuing a Request for Proposal document (the “**RFP**”) dated _____ inviting Bids from prospective Bidders to implement the said Project, containing the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project. Upon detailed evaluation of the submitted Bids, the Authority had accepted the Financial Bid of the Selected Bidder (consortium/sole applicant as the case may be) and issued a Letter of Award (“**LoA**”) dated _____ to the Selected Bidder requiring *inter alia* the execution of this Agreement within 60 (sixty) days of issuance thereof.
- C. AND WHEREAS** pursuant to the issuance of LoA vide letter no. _____ dated _____, the Selected Bidder has incorporated and constituted a Special Purpose Vehicle (**Concessionaire**) created for the sole purpose of implementing this Project.
- D. AND WHEREAS** the Concessionaire/ Selected Bidder acknowledges and confirms that it has undertaken due diligence and audit of all aspects of the Project Site and the Project including

technical and financial viability and on the basis of its independent satisfaction hereby accepts the Concession granted and agrees and undertakes to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

E. AND WHEREAS the Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

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

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them:

1. **“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.
2. **“Act”** means Indian Companies Act, 1956/2013, read in context with the manner of its usage in this Agreement.
3. **“Adjusted Equity”** means the Equity funded in Indian Rupees and adjusted on the 1st (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 (the **“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; and
 - c. after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.3% (zero point three percent) 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;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for capacity augmentation. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Termination Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

4. **“Affected Party”** shall have the meaning set forth in Article 26.1.
5. **“Annual Concession Fee”** means the fee as defined in Article 5.1 of the Concession Agreement.
6. **“Applicable Laws”** means all laws which are applicable to the Project and/or the Concessionaire extending to the State of Haryana, having been enacted or brought into force by Government of

India or Government of Haryana including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.

7. **“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement and refer **Schedule V** of this Agreement.
8. **“Approvals”** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Authority, Secretariat for Industrial Assistance, Reserve Bank of India and any other regulatory authority, as may be applicable.
9. **“Appointed Date”** means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. 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.
10. **“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 as amended from time to time and the Rules there under as in force from time to time.
11. **“Associates”** 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 corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
12. **“Authority”** means Haryana State Co-operative Supply and Marketing Federation Limited HAFED.
13. **“Authority’s Event of Default”** shall have the meaning ascribed to it in Article 22.2.
14. **“Bank”** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crores (Rupees One Thousand Crore only) or any other bank acceptable to Senior Lenders but does not include a bank in which any Senior Lender has an interest.
15. **“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of Authority/HAFED and furnished by the Concessionaire to Authority for guaranteeing the due performance of the obligations of the Concessionaire under this Agreement.
16. **“Bank Rate”** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.

17. **“Bid”** means the documents in their entirety comprised in the bid submitted by the Concessionaire in response to the Request for Proposals in accordance with the provisions thereof.
18. **“Business Day”** means a day on which banks are generally open for business in the city of Panchkula, Haryana in India.
19. **“Change in Ownership”**

In case of Option 1:- 100% investment by the Private Player/Concessionaire the following point will be applicable.

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 (i) 100% (one hundred percent) for a period until the Effective Date (i.e. the date of execution of the Concession Agreement);and (ii) 51% (fifty one per cent) thereof until the 5th (fifth) anniversary of the COD; provided that the Consortium Members whose technical capacity and financial capacity was used to satisfy the eligibility shall subscribe and maintain a minimum equity shareholding of 26% (twenty six percent) each in the stipulated subscribed and paid up equity share capital of the Concessionaire at all time until the 5th (fifth) anniversary of the COD; provided further 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 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 Effective Date and/or 5th anniversary of the COD (as the case may be) of the Project, shall constitute Change in Ownership.

In case of Option 2:- Private Player to invest 26% of the equity. Remaining equity of 74% including land cost shall be contributed by HAFED.

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 26% for a period starting the Effective Date (i.e. the date of execution of the Concession Agreement);during the entire duration of the Concession Period provided that the Consortium Members whose technical capacity and financial capacity was used to satisfy the eligibility shall subscribe and maintain equity shareholding of 26% (twenty six percent) in the stipulated subscribed and paid up equity share capital of the SPV cumulatively at all times during the entire duration of the Concession Period.

20. **“Clearance(s)”** means, as on the date of execution of this Agreement, any and all consents, no-objections, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.
21. **“Change in Laws”** means the occurrence of any of the following after the date of Bid:
- a. the enactment of any new Indian law as applicable to the State;

- b. the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
 - c. the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid; and
 - d. a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or any change in the rates of any of the Taxes that have a direct effect on the Project.
22. **“Commercial Operation Date”** or **“COD”** means the date on which the Independent Engineer issues the Provisional Certificate or the Construction Completion Certificate, as the case may be, for the Project and the Project is ready for its commercial operations.
23. **“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Haryana or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession Agreement.
24. **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Authority or Concessionaire under Article 4.3.
25. **“Concession”** or **“Concession Agreement”** or **“Agreement”** means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, the “Letter of Award” issued by the Authority, the written clarification(s), addenda, amendments, etc. to the RFP Document issued to the Bidders and all other documents/papers attached as annexure).
26. **“Concessionaire”** means -----, a Company incorporated under the Companies Act, 2013 constituted by the Selected Bidder (consortium/sole applicant as the case may be) for the sole purpose of implementing this Project, , having its registered office at ----- and includes successors and permitted assigns.
27. **“Concessionaire's Equipment”** means all machinery, apparatus and other things (other than Temporary Works) required for the execution and completion of the Works and the remedying of any defects, and includes any equipment referred to as "Construction Equipment" but does not include plant and materials.
28. **“Concessionaire's Representative”** means the Person appointed by Concessionaire under Article 8.5.
29. **“Concession Period”** is the period of 30 (thirty) years, for which this Concession is granted, commencing from the Compliance Date.
30. **“Condition Precedent”** means the conditions set out in Article 4 hereof.
31. **“Consortium”** means the group of entities that have jointly submitted the Bid for the Project.
32. **“Consortium Members”** means -----, -----&-----.
33. **“Construction Completion Certificate”** means the Certificate issued Article 14.1.

34. **“Concession Agreement Completion Certificate”** means the certificate issued under Article 16.
35. **“Construction Documents”** means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and maintenance manuals, and other manuals and information of a similar nature prepared in relation to the Project.
36. **“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.
37. **“Construction Period”** or **“Time for Completion of Construction”** means construction of the project and works as specified in Schedule III of this agreement and Scope of work as set out under the RFP. The Construction Period is reckoned from the Compliance Date to the date of issue of Construction Completion Certificate in accordance with the Project Implementation Schedule as per Article 8.6.
38. **“Construction Completion Date”** means the date by which the overall development of the Project is completed in accordance with the provisions of this Agreement and when the Construction Completion Certificate is issued by the Independent Engineer as per Article 14.1.
39. **“Damages”** shall have the meaning set forth in Sub-article (n) of Article 1.2.
40. **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 (three hundred and sixty-five) days.
41. **“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 2 (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’s 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.

42. **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority or the Independent Engineer to the Concessionaire, and any modification, extension or replacement thereof from time to time in force.
43. **“Design Approval Committee”** means the committee as constituted by Authority for approving the design/concept plan of the Project, consisting of officials as stipulated in **Schedule VII** of the Agreement.
44. **“Dispute”** shall have the meaning set forth in Article 28.1.
45. **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 27.
46. **“Easementary Rights”** means all easements, reservations, right of way, utilities and other similar purposes, or zoning or other restrictions as to the use of the real property, which are necessary or appropriate for the conduct of activities of the Concessionaire related to the Project or which customarily exist on properties which are similarly situated and are engaged in similar activities.
47. **“Effective Date”** means the date of the signing of this Concession Agreement.
48. **“Encumbrances”** means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.
49. **“Event of Default”** means the Concessionaire Event of Default and/or Authority Event of Default, as the case may be.
50. **“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;
51. **“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, as the case may be shall be credited and debited, in accordance with the provisions of this Agreement, and includes the subaccounts of such Escrow Account;
52. **“Escrow Agreement”** shall have the meaning set forth in Article 25;

53. **“Escrow Bank”** shall have the meaning set forth in Article 25;
54. **“Escrow Default”** shall have the meaning set forth in **Schedule VIII**.
55. **“Financing Agreements”** or **“Financing Documents”** means the documents/ agreements executed by the Concessionaire in respect of Financial Assistance to be provided by the Senior Lenders to the Concessionaire by way of loans, guarantees, subscription to non- convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost and includes any amendments or modifications made to it;
56. **“Financial Close”** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case be not later than 90 (ninety) days from the Effective Date hereof, unless specifically extended.
57. **“Financial Model”** means the financial model adopted by Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
58. **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
59. **“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Lenders by way of loans, guarantees, subscription to nonconvertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
60. **“Financing Package”** or **“Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Lenders and as approved by the Lenders for the purposes of funding the Project.
61. **“Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 27.
62. **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Facilities in accordance with this

Concession Agreement, Applicable Laws, and Clearances, reliability, safety, environment protection, economy and efficiency.

63. **“GoH”** means the Government of Haryana, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Haryana and its administrators, successors and assigns.
64. **“Gol”** means the Government of India.
65. **“Government Instrumentality”** means any department, division or sub-division of the Gol or GoH and includes any commission, board, authority, agency or municipal and other local authority or statutory body including the Panchayat under the control of the Gol or the GoH, 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.
66. **“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 24.
67. **“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 24.
68. **“Independent Engineer”** means the engineer appointed under the provisions of Article 29.
69. **“Lender(s)”** shall mean the banks, financial institutions, international credit agencies that extend or agree to extend a credit facility to the Concessionaire in relation to the Project.
70. **“LoA”** means letter of award as per Clause 3.6 of RFP.
71. **“Maintenance Board”** shall have the meaning set forth in Article 30
72. **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
73. **“O&M Period”** is the period commencing from the Commercial Operations Date and ending at the Transfer Date.
74. **“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;
75. **“Performance Standards”** means the standards for the operation and maintenance of the Mustard Oil Mill, as set forth in **Schedule III** of the Concession Agreement;
76. **“Performance Security”** means the Security as set out in Article 5.3 from a scheduled bank approved by the Authority.

77. **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
78. **“Project”** means, subject to the provisions of this Concession Agreement, (i) the development, , operation and maintenance of the Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis in state of Haryana as per specifications and guidelines as mentioned in Annexure attached below and is issued from time to time at the Project Site including all activities incidental thereto at the Project Site such as engineering, testing, commissioning etc. (ii) insurance of the Project Facilities for the purposes of providing the services on a continuous basis; and (iii) transfer of the oil mill to the Authority at the end of the Concession Period or on prior termination of the Concession Agreement due to Concessionaire’s Event of Default or otherwise on **‘as is where is basis’**.
79. **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, sub-license agreements/arrangements, construction agreements and operation & maintenance agreements, in each case as amended, supplemented or otherwise modified from time to time and does not include the Escrow Agreement and Substitution Agreement.
80. **“Project Facilities”** or **“Facilities”** means the Project including facilities and amenities to be provided in the oil mill as per specifications and guidelines
81. **“Project Implementation Schedule”** means the Concessionaire’s Project implementation proposal and its time frame as accepted by the Authority in accordance with Article 8.6.
82. **“Project Insurance”** means the insurance taken out by or on behalf of the Concessionaire pursuant to Article 2 of this Concession Agreement.
83. **“Project Revenues”** means all sources of revenues from the Project as defined in Clause 2.3.1.
84. **“Project Site”** or **“Site”** means the land given by the Authority to the Concessionaire, on, under, in or through which the Facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the Works are to be executed, more particularly delineated in **Schedule I** and depicted in the layout plans.
85. **“Project Assets”** means all tangible and intangible assets relating to the Project including, but not limited to, (a) rights over the Project Site in the form of license, sub-license, right-of-way or otherwise; (b) tangible assets such as civil works and equipment including foundations, all buildings, pavements, substructures and superstructures, movement and parking areas, all internal and external services, drainage facilities, sign boards, airconditioning works, electrical works including sub-station, and telephone and communication equipment; (c) Project Facilities created on the Site; (d) all rights of the Concessionaire under the Project Agreements/Documents; (e) financial assets, such as receivables, security deposits, cash and investments;(f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project.
86. **“RFP”** means Request for Proposal document issued by the Authority. The term RFP and “Request for Proposal” are synonymous with “Tender Documents” and “Bidding Documents”.

87. **“Right of Way”** means the constructive possession of the Project Site on ‘**as is where is basis**’, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the redevelopment, operation and maintenance of the Project Facilities in accordance with this Agreement;
88. **“Rs.”** or **“Rupees”** refers to the lawful currency of the Republic of India.
89. **“Schedules”** mean the Schedules to this Concession Agreement.
90. **“Scheduled Construction Completion Date”** means date of the completion of the Construction Period, which shall be at the expiry of a period of 18 (eighteen) months from the Compliance Date.
91. **“Security Interest”** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.
92. **“Senior Lenders”** means financial institutions, banks and multilateral lending agencies including their successors and assigns, 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 *paripasu* charge on the assets, rights, title and interests of the Concessionaire.
93. **“Statutory Auditor”** means an independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as independent statutory auditor of the Concessionaire under the provisions of Act including any statutory modification or re-enactment or replacement thereof, for the time being in force.
94. **“Subcontractor”** means the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/ or building/ services or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts the Works in full or part.
95. **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Lenders for meeting the Total Project Cost but does not include any interest thereon.
96. **“Substitute Entity”** means the entity defined in the Substitution Agreement.
97. **“Substitution Agreement”** means the agreement set out in **Schedule XI**.
98. **“Tax”** means all forms of taxation whether direct or indirect and whether levied in reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or

deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it.

99. **“Technical Requirements”** means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the design, construction and implementation of the Project as set forth in the Schedules to this Concession Agreement and any alterations and modifications thereto.

100. **“Temporary Works”** means all temporary works of every kind (other than Concessionaire's Equipment) required for the construction, operation and maintenance of the Project, services, facilities and the remedying of any defects relating thereto.

101. **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.

102. **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.

103. **“Termination Payment”** means the amount payable by the Authority to the Concessionaire, upon Termination in pursuance of Article 22.3;

104. **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.

105. **“Tests”** means the tests to be carried out as set forth in Article 13 to this Concession Agreement.

106. **“Total Project Cost”** means the either of the following:

- a) The actual capital cost of the Project upon development and completion of the Project and mandatory Project Facilities.
- b) Total Project Cost as set forth in the Financing Documents.

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

107. **“Transfer Date”** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.

108. **“Vesting Certificate”** shall have the meaning set forth in Article 23.4.

109. **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Concessionaire.

110. **“Works”** means the design, construction, completion, testing and commissioning, operation and maintenance of facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.

111. **“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 WPI published for the period ending with the preceding month.

1.2 Principles of Interpretation

In this Concession Agreement, unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. Reference to laws of Government of Haryana (the **“GoH”**), laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Haryana;
- c. The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- d. Terms and words beginning with capital letters shall have the meaning as defined in this Agreement including the Schedules;
- e. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- f. Words importing the singular shall include the plural and vice-versa where the Concession requires.
- g. Any reference to day shall mean a reference to a calendar day;
- h. Any reference to month shall mean a reference to a calendar month;
- i. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- j. 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;
- k. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- l. 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 hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;

- 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 (the “**Business Day**”), then the period shall run until the end of next business day; and
- n. 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.

1.3 Measurements and Arithmetic Conventions

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

1.4 Ambiguities within Agreement

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

- a. Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;
- b. Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;
- c. Between the written description on the drawings and the specifications and standards, the latter shall prevail;
- d. Between the written description on the drawing and the specific written dimension, the latter shall prevail; and
- e. Between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Authority shall issue necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as following:

- i. This signed Concession Agreement (including its Schedules), along with any Addenda, if issued to RFP dated _____;
- ii. Instructions to Bidders (ITB) {Section 2 of the RFP document dated _____}, enclosed/ attached with this signed Concession Agreement; and
- iii. All other documents enclosed/ attached with this signed Concession Agreement.

1.6 General

Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority and/or the agency or person appointed by the Authority shall be provided free of cost and in 2 (two) copies, and if the Authority and/or the person appointed by the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

ARTICLE 2: SCOPE OF THE WORK

2.1 Scope of the Work

2.1.1. The Scope of the Project (the “**Scope of the Work**”) shall mean as specified in **Schedule III** and shall include during the Concession Period, development, completion, operation and maintenance of the Project during the Concession Period of 30 (thirty) years by carrying out the following works:

In case of Option 1:-100% investment by the Private Player/Concessionaire

- i. Development and Completion of the construction at the Project Site after approval of the design/ concept plan by the Design Approval Committee pursuant to the terms and conditions of the Concession Agreement and the Schedules hereof, in conformity with Applicable Laws including applicable building bye-laws and regulations of the State of Haryana.
- ii. Developing the Project consisting of all Facilities as mentioned in the Annexure attached with this agreement.
- iii. O&M of the project in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- iv. 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.
- v. For detailed scope of work, refer to **Schedule III** of this Agreement.

Note: -

- **The Authority shall be entitled to utilize the Project on priority as and when required. In such an event, the ACF shall be reduced proportionately. For example, if the financial quote of the bidder is an ACF amount of Rs 2 crore and HAFED utilizes 50% of the plant capacity in the particular year, the ACF amount to be paid by the private player/concessionaire shall be Rs 1 crore (i.e., 50% of Rs 2 Crore)**
- In case the Bidder is unable to utilize 100% of the Plant Capacity, the private player/concessionaire shall inform the same to the Authority. The Authority, at its sole discretion shall utilize the balance capacity for its own use. The ACF shall be reduced proportionately in line with the percentage capacity utilized by the Authority as mentioned above.
- The entire business model for operations including procurement and marketing shall be the responsibility of the Private Player /Concessionaire. Any support required for successful operation of the project can be mutually discussed during the operational phase between the Authority and the Private Player

In case the bidder chooses to bid under option 2 :- Private Player to invest 26% of the equity. Remaining equity of 74% including land cost shall be contributed by HAFED

- i. Development and Completion of the construction at the Project Site after approval of the design/ concept plan by the Design Approval Committee pursuant to the terms and conditions of the Concession Agreement and the Schedules hereof, in conformity with Applicable Laws including applicable building bye-laws and regulations of the State of Haryana.

- ii. Developing the Project consisting of all Facilities as mentioned in the Annexure attached with this agreement.
- iii. O&M of the project in accordance with the provisions of this Concession Agreement and the Schedules hereof.
- iv. 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.
- v. For detailed scope of work, refer to **Schedule III** of this Agreement.

Note: -

- Remaining Project Cost of 74% including land cost shall be contributed by the Authority
- The Private Player/Concessionaire will get a share equal to 26% in the Special Purpose Vehicle (SPV) to be created for the project
- 26% profit sharing by the Authority to the Private player
- The Private Player/Concessionaire shall also be allowed to utilize a maximum of 26% of the plant capacity for its own use. The procurement of mustard seeds in such a case shall be the responsibility of the Private player/Concessionaire
- **The Authority shall have the following broad responsibilities:**
 - i. Procurement of Mustard Seeds for manufacturing of the oil equivalent to the percentage share of the plant utilization by the authority.
 - ii. Payment of 'operational expenses to the private player/concessionaire for the manufacturing of oil

2.1.2 The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry.

2.1.3 Provide the necessities like drinking water, toilets, DG sets, firefighting facility, and security on the Project Site.

2.2 Bye - Laws & Norms

- a. While undertaking development of the Project, the Concessionaire shall adhere to all the Applicable Laws *inter alia* the latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Regulations, FAR limits, statutory requirements the principles of Good Industry Practices and any other norms as applicable from time to time.
- b. The Concessionaire shall be responsible for all the Applicable Permits and the Clearances as may be required for the development and operations of the Project. The Project shall be ready for operation after taking all the clearance(s), within 18 (eighteen) months of the Compliance Date.

2.3 Revenue Streams

In case of Option 1, the below Clause may be read as below:-

The Concessionaire will be able to recover its investment through selling of Oil & Oil cakes, (collectively to be called as **"Project Revenues"**).

In case of Option 2, the above Clause may be read as below:-

The Concessionaire shall be entitled to utilize the plant capacity equal to its equity contribution in the Project i.e 26%. The Concessionaire shall be able to recover its investment through selling of oil and oil cakes (output from 26% utilization of plant capacity) (collectively to be called as “**Project Revenues**”).

ARTICLE 3: CONCESSION

3.1 Grant of Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of **30 (thirty) years** (the “**Concession Period**”) commencing from the Compliance Date.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Concessionaire undertakes:

- a. to develop and implement the Project as per the Scope of Work as mentioned in Article 2 and Schedule III of the Concession Agreement;

- b. **In case of Option 1, the below Clause may be read as below:-**

to enjoy complete and uninterrupted access and Right of Way and right to use the Project Site in pursuance of the declaration of license granted in favour of the Concessionaire by the Authority;

In case of Option 2, the above Clause may be read as below:-

to enjoy complete and uninterrupted access and Right of Way and right to use the Project Site

- c. to have access and liberty to complete, maintain and operate the Project Facilities during the Concession Period in accordance with the provisions of this Concession Agreement & Schedules hereof. Any construction or development done by the Concessionaire in form of any structures or fixtures on the Project Site in respect of the Project shall be deemed to be the property of the Authority and the Concessionaire relinquishes all its rights in such property in favour of the Authority;
- d. to manage, operate and exercise rights over all or any part of the Project Assets without limitation or restriction other than those expressly set out in this Concession Agreement;
- e. to fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, subcontractors (the “**Subcontractor(s)**”), agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
- f. to arrange for all the Applicable Permits and Clearances from the Competent Authorities for the development of the Project and the Authority shall in no way be liable for the same. Responsibility of getting all necessary approvals pertaining to construction, demolition and reconstruction lies with the Concessionaire. Nevertheless, the Authority, without any binding obligation may provide any assistance upon written request from the Concessionaire on best effort basis;
- g. to arrange Clearances from the Competent Authorities for removal of existing trees, if any, from the Project Site to the extent necessary for the Project or any of its components;

- h. to exercise such other rights as the Authority may determine being necessary or desirable for the purposes incidental and necessary for completing, developing, operating, & maintaining the Project; and
- i. to bear and pay all expenses, costs and charges incurred for fulfillment of all the Concessionaire's obligations as set out under this Agreement.

Nothing contained hereinabove, including the act of granting permission to complete the Project at the designated Project Site shall vest or create any proprietary interest in the Project/Project Land or any part thereof including any permanent fixtures, fittings etc. installed in the Project in favor 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/Project Land in any manner whatsoever. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2 Actions in Support of the Concession

- a. The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- b. For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Senior Lenders its rights and interests in the Project Facilities under or pursuant to this Agreement, including, without limitation, its rights in and to (i) the Project Agreements and (ii) the cash flows generated from the Project Revenue and to create a security in such rights and interests in favour of the Senior Lenders. However, it is also clarified that the Concessionaire shall not be entitled to mortgage any immovable asset, which is a part of the Project Assets, and the Project Site unless specifically permitted by the Authority.
- c. The Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement.
- d. The Authority shall provide assistance and recommendations to the Competent Authorities, including GoI in support of the Concessionaire's applications for Clearances that may be needed from time to time for the implementation of the Project;

Provided that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

3.3 Concession Period

3.3.1. The Concession Period for the Project shall commence from the Compliance Date and shall extend for a period of **30 (thirty)** years from such date (the "**Concession Period**") during which the Concessionaire is authorized to implement the Project and operate and maintain the project accordance with the provisions hereof. For the avoidance of doubt, the Concession Period shall include the Construction Period.

3.3.2. It is hereby made clear that:

- a. In the event of the Concession Period being extended by the Authority beyond the said period in accordance with the provisions of this Concession Agreement, the Concession Period shall include the period/ aggregate period by which the Concession is so extended; and
- b. In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.

3.3.4 At the end of the Concession Period or early termination of this Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site with all the fixtures and other assets as associated with the project on '**as is where is basis**' shall revert to the Authority without any obligation of the Authority to pay or adjust any consideration or other payment to the Concessionaire.

3.4 Construction Period

- a. The "**Construction Period**" shall be a period of **18 (Eighteen)** months commencing from the Compliance Date for the Project. However, it is being clarified here that the Concessionaire shall, within the Construction Period:
 - i. Develop and complete the Project at the Project Site and make it fully operational in all respect;
 - ii. Obtain all the necessary applications at its cost and procure all necessary/ mandatory Clearances including environmental clearances that are required for commencing the construction and execution of the Works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such clearances are in full force and effect; and
 - iii. The Concessionaire is required to obtain the necessary approval from competent authority within 3 (three) months from the date of issuance of the Construction Completion Certificate or Provisional Certificate whichever is issued earlier.
- b. In the event that Construction Completion Date is not achieved for any reason other than Force Majeure or reasons attributable to the Authority or any Competent Authority, the Concessionaire shall pay to the Authority damages for delay beyond the Construction Completion Date an amount of **INR 10,500/-** (Rupees Ten Thousand Five Hundred Only) i.e 0.1% of the Performance Security per day for every day of delay or part thereof until Construction Completion Date is achieved. Provided that nothing contained in this sub article (b) shall be deemed or construed to authorize any delay by the Concessionaire in achieving Construction Completion Date. The Concessionaire shall be liable for replenishing/maintain the Performance Security to its original amount i.e. **INR 1,05,00,000/-**
- c. In the event that Construction Completion Date does not occur within 120 (one hundred and twenty) days from the Scheduled Construction Completion Date, the Authority shall be entitled to invoke the Performance Security and to terminate this Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 22 hereof. Provided that instead of terminating this Agreement, the Authority may at its sole option extend the time for achieving Construction Completion on such terms and conditions as it deems fit in its sole discretion.

ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary, limited aspects of the Construction Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of 90 (ninety) days from the Effective Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent (the “**Conditions Precedent**”) of the Concessionaire.

4.1 Conditions Precedent for the Authority

The Authority shall:

a. In case of Option 1, the below Clause may be read as below:-

executed the Declaration of License in favor of the Concessionaire in terms of Clause 6.1 provided that the Concessionaire shall have given a Bank Guarantee to the Authority as Performance Security in accordance with the terms hereof. It is however clarified that this Condition Precedent on the part of the Authority shall be fulfilled once all other Conditions Precedent of both the Parties have been met/fulfilled;

In case of Option 2, the above Clause may be read as below:-

Deleted

- b. constitute a Design Approval Committee, the constitution and function of which is specified in **Schedule VII**, for the approval of concept and design of the Project, to be completed by the Concessionaire;
- c. approve the concept and design of the project, as approved by the Design Approval Committee and also, give comments on the concept and design submitted by the Concessionaire, within a time period of 30(thirty) days from the date of submission of design by Concessionaire after getting approved by the Design Approval Committee; and
- d. appoint the Independent Engineer in accordance with the terms hereof.

4.2 Conditions Precedent for Concessionaire

The Concessionaire shall:

- a. provide to the Authority, no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional Bank Guarantee (the “**Performance Security**”) for the performance of its obligations
- b. incorporate the necessary suggestions/ amendments proposed by the Design Approval Committee/ Authority, within a period of 30 (thirty) days from the date of receipt of such suggestions from the Design Approval Committee;

- c. provide an undertaking that all of the Representations and Warranties of the Concessionaire set forth in Article 17 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- d. execute and procure execution of the Escrow Agreement;
- e. provide copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents of the Concessionaire.
- f. Provide copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- g. receive from the Indian Legal Counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;
- h. prepare in consultation with the Independent Engineer and submit a Project Implementation Schedule to the Concessionaire as specified in Article 8.6 (a);
- i. submit safety plans and procedures as per Article 8.15; and
- j. achieve Financial Close as per the provisions of Article 19.

Provided that upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.2.

4.3 Obligations to satisfy Condition Precedents

- a. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 90 (ninety) days of Effective Date which shall not extend beyond 180 (one hundred and eighty) days as mutually agreed between the Parties.
- b. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance (the “**Certificate of Compliance**”) with Conditions Precedent. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession shall commence and whereon the Authority shall issue the Certificate of Compliance to the Concessionaire.
- c. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Non-fulfillment of Conditions Precedent

- a. In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 90 (ninety) days of the signing of this Agreement and also, the Authority has not extended or waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and

Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.

- b. In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 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 of an amount equivalent to INR 10,500/- (Rupees Ten Thousand Five Hundred Only) i.e. 0.1 % of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of INR 10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only) i.e 10% of the Performance Security.
- c. In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Article 4.2 within a period of 90 (ninety) Days unless extended from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 4.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages of an amount equivalent to **INR 21,000/-** (Rupees Twenty One Thousand Only) i.e 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of **INR 21,00,000/-** (Rupees Twenty One Lakh only) i.e 20% of the Performance Security.
- d. In the event the Authority has terminated this Agreement under Article 4.4 (a) due to non-fulfillment of Conditions Precedent by the Concessionaire, the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Concessionaire.
- e. In the event that the Project Site has been delivered to the Concessionaire on the '**as is where is basis**' prior to the fulfillment in full of the Conditions Precedent on signing of Declaration of License , upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances on '**as is where is basis**', irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.

ARTICLE 5: CONSIDERATION TO THE AUTHORITY

5.1 In case of Option 1, the below Clause may be read as below: -

Annual Concession Fee (ACF)

- a. In consideration of the rights, privileges and interests granted by the Authority to the Concessionaire in terms of this Agreement, the Concessionaire shall pay to the Authority a fixed amount of Annual Concession Fee (the “**ACF**”) as quoted in its Financial Bid plus applicable taxes at the prevailing rates. The Annual Concession Fee shall be increased at the rate of 5% (five percent) every three years.
- b. The ACF shall be payable by the Concessionaire to the Authority on a yearly basis. This payment shall be made in advance every year through the escrow mechanism in the manner set forth in the Concession Agreement and more particularly in the Escrow Agreement. The first ACF shall be due and payable on a date falling on completion of 18 (Eighteen) months from the Compliance Date and accordingly, the Concessionaire shall deposit the ACF on or before the same date every year.

For Illustration, if the Compliance is 1st January 2021, the 1st (first) ACF shall be paid by the Concessionaire on 1st July, 2022 and accordingly ACF in subsequent years shall be paid on or before 1st of July every year during the Concession Period.

For avoidance of doubt, the ACF shall be payable from the due date as specified above irrespective of the extension Construction period beyond 18 months.

- c. In the event of delay up to 30 (thirty) days in payment of ACF by the Concessionaire, the Concessionaire shall be required to pay to the Authority an interest at the rate of 16% (sixteen percent) per annum on the due and unpaid amount of ACF for the period of delay. In the case of delay beyond 30 (thirty) days, it shall be considered as Concessionaire Event of Default.
- d. The time prescribed for making payment of the ACF shall be the essence of this Agreement. Non-Payment of the ACF shall be accounted as Concessionaire Event of Default and subsequently form a ground for termination of this Agreement.
- e. **The Authority shall be entitled to utilize the Project on priority as and when required and under this provision a capacity of upto 50% of the project shall be utilized by the Authority. In such an event, the ACF shall be reduced proportionately.**

In case of Option 2, the Above Clause may be read as below:-

Operating Expenses per MT of Oil Manufactured

- a. The Authority shall pay to the Concessionaire a fixed amount of Operational Expenses per MT of Oil Manufactured (the “**Operational Expenses**”) as quoted in its Financial Bid plus applicable taxes at the prevailing rates.
- b. The Operational Expenses shall be payable by the Authority to the Concessionaire on a monthly basis directly to its account
- c. The operational Expenses for a particular month shall be paid by the Authority within a time period of 20 (twenty days) starting from the day of submission of a valid invoice by the

Concessionaire to the Authority

- d. The time prescribed for making payment of the Operational Expenses shall be the essence of this Agreement. Non-Payment of the Operational Expenses shall be accounted as the Authority's Event of Default and subsequently form a ground for termination of this Agreement.
- e. In addition to the above, the Authority shall also pay an amount equivalent to 26% of profit share to the Concessionaire on yearly basis. The amount shall be paid directly in the Concessionaire's account

The Concessionaire shall be entitled to utilize the plant capacity equal to its equity contribution in the Project i.e 26%

5.2 In case of Option 1, the below Clause may be read as below:-

Adjustment of the Annual Concession Fee (ACF)

Excluding the pt.(e) mentioned above, the ACF shall not be adjusted for changes in the cost of labour, materials or other matters and there shall be no other implied adjustments for any other reasons whatsoever.

In case of Option 2, the above Clause may be read as below:-

Adjustment to the operating expenses per MT of oil manufactured

The operating expenses per MT of oil manufactured shall not be adjusted for changes in the cost of labour, materials or other matters and there shall be no other implied adjustments for any other reasons whatsoever.

5.3 Performance Security

5.3.1 The Concessionaire shall, for the performance of its obligations hereunder provide to the Authority, no later than 90 (ninety) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **INR 1,05,00,000** (Rupees One Crore Fifty Thousand only) in the form set forth in **Schedule-IV** (the "**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within the stipulated time period, the Authority may encash the Bid Security 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.

5.4. Appropriation of Performance Security

Upon occurrence of a Concessionaire Event of Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder

or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the applicable Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 22. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 22.

5.5 Release of Performance Security

The Performance Security shall remain in force and effect for the entire Concession Period. Upon completion of 6 (six) months after end of the Concession Period and thereby, request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements laid down in the Concession Agreement, the Authority shall release the Performance Security forthwith.

ARTICLE 6: RIGHTS AND TITLE OVER THE PROJECT SITE

6.1 Transfer of Project Site on License

In case of Option 1, the below Clause may be read as below:-

The Authority shall execute a “**Declaration of License**” in respect of the Project Site as delineated in Schedule I, in favour of the Concessionaire in the format prescribed in Schedule XII. Simultaneous with the execution of the Declaration of License, the Authority shall grant to the Concessionaire, access to the Project. The Declaration of License shall run co-terminus with this Agreement.

In case of Option 2, the above Clause may be read as below:-

Deleted

6.2 Use of the Project Site and Peaceful Possession

6.2.1 The Concessionaire, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site during the Concession Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. The Concessionaire shall not use the Project Site for any other purpose not intended herein.

6.2.2 The Concessionaire shall confine its operations to the Project Site. The Concessionaire shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighboring areas or otherwise cause any interference to the employees, representatives and agents of the Authority. The Concessionaire shall take utmost care in ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to occupiers of any building etc. (residential or otherwise) in the neighborhood or obstructs the passage in adjoining areas of the Project Site in any manner.

6.2.3 The Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Project Site premises granted to the Concessionaire.

6.3 Access rights of the Authority and others

6.3.1 The Concessionaire shall allow free access to the Project Site at all times for the authorized representatives of the Authority, 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 person's reasonable assistance necessary to carry out their respective duties and functions.

6.4 Property Tax

In case of Option 1, the below Clause may be read as below:-

The Concessionaire shall be liable to pay property taxes for the Project as required under the Applicable Laws.

In case of Option 2, the above Clause may be read as below:-

The Authority and the Concessionaire shall be liable to pay property taxes for the project equivalent to the percentage of the equity contribution.

ARTICLE 7: OBLIGATIONS OF THE AUTHORITY

7.1 General Obligations

It shall be the Authority's obligation to ensure that the following are made available or executed by the Authority:

- a. Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the completion, operation and maintenance of the project except as may be provided in this Concession Agreement.
- b. All litigation involving the Project Site, prior to the date of issue of Certificate of Compliance and wherein the actions have been filed against the Authority, shall be contested solely by the Authority. The Concessionaire shall in no way be held responsible or liable as a reason therefore. The Authority shall indemnify the Concessionaire and shall hold it free from any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding Project Site.

In case of Option 2, the below clause will be applicable

- c. To make the Concessionaire, a shareholder of 26% in the SPV created for the purpose of implementation of the project.
- d. To pay property taxes/charges applicable **(equivalent to the percentage equity contributed)** under local Municipal Act or as levied by the concerned Municipal Corporation from time to time

Any liability arising out of in providing the Project Site free of Encumbrances shall be borne solely by the Authority. The Authority shall indemnify the Concessionaire and shall hold it harmless from any claim or consequential cost that may arise as a result of any such transfer of the Project Site.

7.2 Obligations of Authority regarding Project Site

7.2.1 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a. the Authority shall provide Project Site free from all Encumbrances on **'as is where is basis'** to the Concessionaire.
- b. the Authority shall, upon written request of the Concessionaire, assist the Concessionaire in getting permissions and exemptions as may be required under Applicable Laws and regulating land use as applicable in State of Haryana so as to facilitate the Concessionaire in enjoying complete and uninterrupted Right of Way in respect of the Project Site on the **"as is where is basis"** and holding the area of land comprising of the Project Site.
- c. the Authority shall ensure that from the date of the Certificate of Compliance and till the completion of the Concession Period, the Concessionaire has access to the Project Site for the purpose of carrying out the Concessionaire's obligations under this Agreement.
- d. if the Concessionaire suffers delay or incurs cost as a direct result of failure on the part of the Authority to perform its obligation under Article 7.2 (c), the Concessionaire shall give notice of the same to the Authority. Upon receipt of such notice Authority shall proceed to take remedial measures and make compensatory adjustments in the Concession Period in accordance with Article 7.3.

- e. the Authority may grant to the Concessionaire right to advertise and set up and display hoardings, billboards and other information panels at the Project Site or to grant license to such rights against payments, provided that such rights shall be exercised in accordance with the Applicable Laws and orders, decrees.

7.3 Authority's Determination

- a. When Authority is required to determine value, additional cost or any adjustment (increase or decrease) to the Concession Period, it shall consult with the Concessionaire in an endeavor to reach an agreement within 30 (thirty) days of the receipt of notice wherein the Authority is required to determine such value, cost or adjustment to the Concession Period. The Authority's determination on value, cost and adjustment of the Concession Period shall be intimated to the Concessionaire within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- b. If the Concessionaire disputes Authority's determination of value, cost or adjustment to the Concession Period, the matter shall be referred to the Independent Engineer in accordance with the following provisions:
 - i. If the Concessionaire disagrees with the value, cost or adjustment determined by the Authority, it shall give a notice in writing of its intention to the Authority, as soon as may be reasonable and in any event within 15 (fifteen) days after receipt of notice of the value, cost or adjustment and thereafter within a further period of 7 (seven) days to notify the Independent Engineer of such dispute.
 - ii. The Independent Engineer upon receipt of a notice under this Article shall require the Authority to furnish to the Independent Engineer all the reasons, records and documents based upon which Authority had determined the value, cost or adjustment.
 - iii. The Concessionaire shall permit the Independent Engineer to inspect all records and shall supply him with copies thereof and with all such further information as and when the Independent Engineer shall so require.
- c. In the event of a dispute arising in the period beyond the tenure of the Independent Engineer under Article 29, the duties of the Independent Engineer (in respect of operation of this Article) shall be carried out by an expert appointed by the Maintenance Board.
- d. Except Termination Payment or else as expressly provided for in this Concession Agreement, any payments to the Concessionaire by the Authority shall be made only through the mechanism of adjustment to the Concession Period.

ARTICLE 8: OBLIGATIONS OF THE CONCESSIONAIRE

8.1 General Obligations

a. The Concessionaire shall observe, undertake, comply with and perform the following obligations, in addition to and not in derogation of its obligations elsewhere set out in this Concession:

1. Take over the possession of the Project Site from the Authority, provided it is being delivered in accordance with the provisions of Article 4.1 and safeguard and use the Project Site solely for the purpose of discharging its obligations under this Concession Agreement;
2. Obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority, for infrastructure facilities including power, water supply, drainage & sewerage, firefighting, telecommunications etc., as and when they may be required, for the Concessionaire and its employees to perform their obligations under this Concession Agreement;

3. **In case of Option 1, the below Clause may be read as below:-**

Pay charges as applicable under local Municipal Act or as levied by the concerned Municipal Corporation from time to time

In case of Option 2, the above Clause may be read as below:-

Pay property taxes/charges applicable (equivalent to the percentage equity contributed) under local Municipal Act or as levied by the concerned Municipal Corporation from time to time

4. Comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Subcontractors;
5. Make arrangements and procurement of firm commitment for financing the Project and achieve Financial Close and deliver complete evidence to the Authority that Financial Close has been accomplished, within a period of 90 (ninety) days from the Effective Date. As and when these documents are approved by the Lenders, with or without modifications, true notarized copies of the Financing Package, Financing Documents & the Financial Model shall be furnished by the Concessionaire to the Authority forthwith. The soft copy of the Financing Package, Financing Documents and the Financial Model shall also be provided;
6. carry out the Works strictly in accordance with the provisions of this Concession Agreement, the Technical Requirements, Performance Standards, the Project Implementation Schedule and the Schedules of this Concession Agreement, and all works not mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient construction and operation of the Works;
7. undertake to complete the construction within the specified Construction Period, provided that the Concessionaire shall not be in breach of this concession agreement if any such non-fulfillment or the delay of its obligation are caused by: (i) the occurrence of an event of

- Force Majeure or (ii) any other act or omission of the Authority in contravention of its obligations under this Agreement;
8. obtain for the project necessary approvals from the concerned department, within 3 (three) months from the date of issuance of the Construction Completion Certificate or Provisional Certificate whichever is earlier.
 9. ensure that the project shall be used for the intended purpose only as agreed between the Parties;
 10. ensure that the use of the Project Site is restricted to the Article 2 and Schedule III of this Agreement.
 11. carry out its obligations/duties with regard to the O&M of the Project in accordance with the Schedules to this Concession Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is implied by this Concession Agreement, or arises from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
 12. operate and maintain the Project and all its components, including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and shall remedy any defects within the Concession Period. The Concessionaire shall provide all superintendence, labour, plant, materials, equipment, and all such other things for such operation and maintenance (including remedying of defects);
 13. be responsible from the date of issuance of the Certificate of Compliance for all liabilities arising out of construction, design, operation and maintenance of the Project;
 14. take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of construction, operation and maintenance of the Project, irrespective of any approval or consent by the Authority;
 15. submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution;
 16. be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance with the local building byelaws;
 17. ensure that no structural damage is caused at the Project Site as a result of Concessionaire's activities or any of its agents, contractors, tenants etc.;
 18. pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, services tax, and any other legal documentation charges, if any, in respect of Project Site, as leviable;

19. duly supervise, monitor and control the activities of Contractors, subcontractors, their employees and agents under their respective Project Agreements as may be necessary;
20. ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
21. obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
22. take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;
23. not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any Encumbrances or security interest (the "**Security Interest**") over all or any part of Project Site or the Project Assets (the "**Project Assets**") or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;
24. ensure that such Project Site remains free from all Encumbrances, encroachments and trespass during the entire Concession Period;
25. provide all assistance to the Independent Engineer/ expert/ independent auditor/ arbitrator as it may require for the performance of their duties and services;
26. at all times, to afford access to the Project Site to the authorized representatives of Authority, Lenders, other persons duly authorized by any governmental agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice;
27. remain solely and primarily responsible to Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of the sub- licensees, their employees and agents and any person acting under or for and on behalf of the Concessionaire or the sub-licensees, the sub-contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees;
28. remain liable for and to indemnify, protect, defend and hold harmless Authority, Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article 8.1 and to comply with the provisions of Applicable Laws;
29. acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly;
30. remain at all times, responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Concessionaire from its obligations or liability hereunder;

31. the Concessionaire may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the scope of work as mentioned in this Agreement;
32. pay in a timely manner the Annual Concession Fee at all time during the Concession period;
33. timely furnish the Performance Security as per the terms of the Concession Agreement; and
34. make good the shortfall in the Performance Security in a timely manner.

8.2 Minimum Equity requirements

In case of Option 1, the below Clause may be read as below:-

- a. The aggregate shareholding of the Consortium Members along with their Associates (in case of Consortium) or Associate/s (in case of Individual Bidder) in the subscribed and paid up equity share capital of the Concessionaire shall be not less than:
 - i. 100% (one hundred percent) for a period until the Effective Date (i.e. the date of execution of the Concession Agreement).
 - ii. 51% (fifty-one percent) until the 5th (fifth) anniversary i.e. lock in period of the Commercial Operation Date of the Project.
- b. In case of Consortium, the Lead Member of the Consortium, Technical and O&M member or any other member whose experience has been evaluated for the purposes of the RFP shall subscribe and maintain a minimum equity shareholding of 26% (twenty six percent) each in the stipulated subscribed and paid up equity share capital of the Concessionaire as specified under Article 8.2(b) at all time during the Lock in Period i.e. until the 5th (fifth) anniversary of the Commercial Operation Date of the Project.

This holds for the single entity bidder also and hence no Bidder who has 100% (one hundred percent) equity in the Project can dilute it to a level below 100% (one hundred percent) at any time until the date of execution of the Agreement. Remaining stake can be diluted as per the provisions of Article 8.2(a)(i).

- c. At no stage during the Lock in Period shall any change in the shareholding pattern be made by the Consortium Members and/or by any of the Associates without obtaining prior approval from the Authority. On an application made for the purpose, Authority may permit the change of shareholding pattern, provided the Authority is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Authority. However, no such change in the shareholding pattern shall be permitted by the Authority, which would make the Consortium Members or Associates or the Concessionaire non-compliant with Articles 8.2(a) and 8.2(b) above.

In case any such change in composition of Consortium has been agreed upon, the modified Consortium would be required to submit a revised Memorandum of Understanding to the Authority.

In case of Option 2, the above Clause may be read as below:-

- a. The aggregate shareholding of the Consortium Members along with their Associates (in case of Consortium) or Associate/s (in case of Individual Bidder) in the subscribed and paid-up equity share capital of the Concessionaire shall be 26%
- b. In case of Consortium, the Lead Member of the Consortium, Technical and O&M member or any other member whose experience has been evaluated for the purposes of the RFP shall subscribe and maintain a equity shareholding of 26% (twenty six percent) each in the stipulated subscribed and paid up equity share capital of the SPV cumulatively as specified under Article 8.2(b) at all time during the Concession Period (the “ Lock in Period”)

8.3 Information Regarding Project Site

- a. The Concessionaire reaffirms and assumes responsibility for all the data and designs, including survey, soil and water test and projections and other data used in formulating its Bid.
- b. The Concessionaire shall be deemed to have inspected and examined the Project Site before submitting the Bid, as to:
 - i) The form and nature of the Project Site, including the Project Site levels conditions, adjoining water bodies, local habitats etc.;
 - ii) The extent and nature of the work and materials necessary for the execution and completion of the works and the remedying of any defects;
 - iii) The means of access to the Project Site and the accommodation required for labour camps, installation of equipment, etc.;
 - iv) Availability of building materials, water, power etc.;
 - v) The requirements of O&M; and
 - vi) Any other existing condition, which has a bearing on the working conditions during Concession Period.
- c. The Concessionaire shall, by submitting its Bid, be deemed to have carried out such due diligence, inspection, etc. and the Concessionaire assumes full responsibility for the data in its Bid and confirms that its designs reflect the representative nature of the data, applied with sound engineering judgment, consistent with Good Industry Practices. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Bid.

8.4 Sufficiency of Concession Period

The Concessionaire shall be deemed to have satisfied itself as to the correctness and sufficiency of the Concession Period. Unless otherwise stated in this Concession Agreement, the Concession

Period shall cover all its obligations under this Concession Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the construction and also the subsequent O&M Period of this Concession Agreement.

8.5 Concessionaire's Representative

- a. The Concessionaire's Representative shall be the person named under Article 37.11. If at some point of time the Concessionaire is unable to provide the services of the person named as under the Concessionaire's Representative, then it shall notify the Authority its reasons for this and thereafter, provide a substitute person who can be the Concessionaire's Representative.
- b. The person named as the Concessionaire's Representative under this Concession Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Concessionaire's Representative, the Concessionaire shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience and then obtain the written consent of the Authority to the appointment of the Concessionaire's Representative.
- c. The Concessionaire's Representative shall be exclusively employed or engaged by the Concessionaire to give his whole time to directing the preparation of the Construction Documents (the "**Construction Documents**"), the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in this Concession Agreement, the Concessionaire's Representative shall receive on behalf of the Concessionaire all notices, instructions, consents, approvals, certificates, determinations and other communications under this Concession Agreement. Whenever the Concessionaire's Representative is to remain absent from the Project Site for a continuous period in excess of 7 (seven) days, a suitable replacement Person shall be appointed with the Authority's consent.
- d. The Concessionaire's Representative may delegate, while retaining his prime responsibilities, any of his powers, functions and authorities to any competent Person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until the Authority has received prior notice signed by the Concessionaire's Representative, specifying the powers, functions and authorities being delegated or revoked. Concessionaire's Representative shall notify to the Authority the names, duties and scope of authority of such Persons. Any instructions given to any of them shall be deemed to have been given to the Concessionaire's Representative. Any such delegation shall not relieve the Concessionaire's Representative of its obligation and duties under this Agreement.

8.6 Work Programmes

- a. The Concessionaire shall prepare in consultation with the Independent Engineer and submit a Project Implementation Schedule to the Authority before the Compliance Date. The programme shall include the following:
 - i. The order in which the Concessionaire proposes to carry out the Works, internal and external services (including each stage of design, procurement, manufacture, delivery to Project Site, construction, erection, testing and commissioning).
 - ii. All major events and activities in the production of Construction Documents.

- iii. The particulars for the pre-construction reviews and for any other submissions, approvals and consents specified in this Concession Agreement.
- b. Any alternation/ revision by the Concessionaire in the Project Implementation Schedule shall be made in accordance with Article 12.3.

If the progress of the Works does not conform to the Project Implementation Schedule, the Independent Engineer may instruct the Concessionaire to revise the Project Implementation Schedule, showing the modifications necessary to achieve completion as per Project Implementation Schedule. The Independent Engineer shall record the reasons for such revision of Project Implementation Schedule.

- c. The Concessionaire shall, whenever required by the Authority, provide in writing, for information, a general description of the arrangements and methods, which the Concessionaire proposes to adopt for the execution of the Works.
- d. The Project Implementation Schedule shall be developed using PERT (Programme Evaluation and Review Techniques) charts showing critical activities and milestones.

For completion of all works and services within the stipulated time period and submitted to Independent Engineer and the Authority.

8.7 Total Quality Management

- a. During the Construction and O&M Period, the Concessionaire shall adhere to the Performance Standards and Technical Requirements as mentioned in the Schedules to this Concession Agreement. The Concessionaire shall maintain adherence to such Performance Standards and Technical Requirements throughout the O&M Period of the Project.
- b. The Concessionaire shall institute a quality assurance system that shall be followed during the Concession Period. The quality assurance system shall involve testing of materials, equipment and services to ensure compliance of laid down Performance Standards and Technical Requirements, the upkeep of suitable records, charts, samples, photographs, etc., as approved by Authority. Compliance with the quality assurance system shall not relieve the Concessionaire of its duties, obligations or responsibilities under this Agreement. The Authority reserves the right to inspect periodically or at random, the materials, works, records and documents, and to take measurements and tests. The Concessionaire shall offer full co-operation to such checks and inspections.
- c. During the Construction Period, details of all periodic tests, procedures and compliance documents shall be submitted to Independent Engineer for his information before each design and execution stage is commenced. When any document is issued to Independent Engineer, it shall be accompanied by the signed quality assurance statements for such document in a format approved by Independent Engineer. The Independent Engineer shall be entitled to audit any aspect of the system and recommend corrective action to be taken, if any.

8.8 Progress Reports

- a. During the period when the Concessionaire is undertaking Works, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report

and shall promptly give such other relevant information as may be required to the Independent Engineer. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. The reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the preceding month to which it relates. Reporting in terms of this Clause shall continue until the Concessionaire has completed the Works and the Construction Completion Certificate is issued pursuant thereto. Each monthly report shall essentially include:-

- i. An executive summary;
- ii. For the completion of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity, Concessionaire's inspections and tests;
- iii. Copies of quality assurance documents, test results and certificates of materials;
- iv. Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public in general;
- v. Comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion of construction in accordance with this Concession Agreement, and the measures being (or to be) adopted to overcome such aspects; and
- vi. details of unresolved disputes and claims, if any.

8.9 Coordination

- a. The Concessionaire shall be responsible for the co-ordination and proper execution of the Works and services, including co-ordination of any other Persons or Sub-contractors to the extent specified in this Concession Agreement. The Concessionaire shall, upon reasonable request by the Authority, cooperate in the co-ordination of the Works with the work of any other persons to whose systems the Facilities are to be connected, provided that such co-operation shall not unreasonably interfere with the carrying out of the Works. The Concessionaire shall afford all reasonable opportunities for carrying out their work to:
 - i) The workmen of the Authority;
 - ii) Any other persons employed by the Authority and their workmen; and
 - iii) The workmen of any legally constituted public authorities that may be employed in the execution on or near the Project Site of any work not included in this Concession Agreement, which the Authority may require.

8.10 Sub - contracting

The Concessionaire may subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to Construction including installation or development of Project Facilities, O&M of the project. Provided however, for all intents and purposes, the Concessionaire shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its Subcontractors, its agents

or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of its obligations and liabilities under this Concession Agreement.

8.11 Plant and Equipment

- a. The Concessionaire shall provide all machinery, plant and equipment necessary to complete the Works. All its Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works.
- b. The Concessionaire shall maintain an adequate inventory of consumable and spare parts and undertake periodic and preventive maintenance as required for the relevant equipment. The Concessionaire shall ensure continuous workflow as required under the program. Breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.

8.12 Access for Supervision

- a. The Concessionaire shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of complete and uninterrupted Right of Way in respect of the Project Site thereof to the representatives of or Persons duly authorized by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the Facilities thereon and to investigate any other matter within its authority and the Concessionaire shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.
- b. The persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to the Construction, O&M of the Project consistent with the purpose of the Person gaining such access.

8.13 Materials of Construction

- a. All materials used in construction shall confirm to the Technical Requirements & Performance Standards mentioned in **Schedule III**. However, the Concessionaire shall have freedom to choose best quality building materials of the standard desired for a Project.
- b. The Concessionaire shall at its own cost and responsibility arrange for the requisite construction materials, and any other materials and fixtures used in the works, as well as ancillary materials.

8.14 Supply of Power, Water and Other Consumables

- a. The Concessionaire shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the purposes of the Works, in the Project, for the Concession Period.

- b. The Authority shall, if requested by the Concessionaire, use all reasonable endeavors to assist the Concessionaire in obtaining the supply of such services, provided that the Concessionaire shall reimburse the Authority for the cost of providing the same and further provide that no such supply or assistance, or failure to do, by the Authority shall relieve the Concessionaire of its obligations under paragraph (a). The Authority shall notify the cost to the Concessionaire. The Concessionaire shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

8.15 Safety

Within 1 (one) month from the Effective Date, the Concessionaire shall provide to the Authority details of its safety plans and procedures for the Works, buildings, services and construction. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of Works on the Project Site until the expiration of this Concession Agreement or upon termination of this Agreement, provide fencing, lighting, guarding and watching of the Works and the Facilities. The Concessionaire shall be responsible in the operation of machinery and equipment, use of explosives and any other work and to take all precautions to ensure safety of the staff, laborers and public.

8.16 Environmental Measures

- a. The Concessionaire shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property in the vicinity resulting from construction operations.
- b. The Concessionaire shall dispose off the waste/garbage as per the Applicable Laws and ensure that the users do not litter in an around the Project Site.
- c. The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, its officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Concessionaire to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

8.17 Hazardous Materials

The Concessionaire shall be responsible for the removal of hazardous materials from the Project Site, and the works, in accordance with applicable Indian laws and directives and any other materials generated or released by the Concessionaire during its construction activities, which are toxic or similarly hazardous to the health or safety of persons.

8.18 Treasures/Fossils

In the event of discovery by the Concessionaire or its employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Concessionaire shall give immediate intimation of such treasure or things to the Authority and the same shall be a property of the Authority.

8.19 Project Site Clearance

- a. During the execution of the Works, the Concessionaire shall keep the Project Site free from all unnecessary obstruction and shall store its Equipment or surplus materials in a manner that causes least inconvenience or dispose of such Equipment or surplus materials.
- b. The Concessionaire shall clear away and remove from the Project Site any wreckage, rubbish or Temporary Works no longer required.
- c. Within 30 (thirty) days of issue of the Construction Completion Certificate, the Concessionaire shall clear away and remove, from the Project Site, all Concessionaire's Equipment surplus materials, wreckage, rubbish, other debris and temporary works. The Concessionaire shall leave such areas and works in a clean and safe condition to the satisfaction of Authority on '**as is where basis**'. Except that the Concessionaire shall be entitled to retain on any part of the Project Site, until the expiry of the Concession Period, such Concessionaire's Equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of the O&M of the Project.
- d. Within 30 (thirty) days of the expiry of the Concession Period, the Concessionaire shall clear away and remove, from the Project Site all the Concessionaire's Equipment, surplus material, wreckage, rubbish, other debris and Temporary Works. The Concessionaire shall leave the Project Site in a clean, functional and safe condition to the satisfaction of Authority. Provided that if the Concessionaire fails to remove, at the end of the 30 (thirty) day period, any remaining Concessionaire's Equipment, surplus material, wreckage, rubbish and Temporary Works, the Authority may sell or otherwise dispose of such items at risk and cost of Concessionaire. The Authority shall be entitled to retain, from the proceeds of such a sale, or from any other amounts due to the Concessionaire, a sum sufficient to meet the costs incurred in connection with such sale or disposal. If the amounts due to the Concessionaire are insufficient to meet the Authority's costs, the outstanding balance shall be recoverable from the Concessionaire by the Authority.

8.20 Project Site Security

The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, materials, Concessionaire's Equipment and other things required for the completion of the Works, services and operation and maintenance of the project Unless otherwise stated in this Concession Agreement:

- i) The Concessionaire shall be responsible for keeping unauthorized persons off the Project Site and prevent encroachment on the Project Site during the Construction Period.
- ii) Authorized persons during the Construction Period shall be limited to the employees of the Concessionaire, employees of its Sub-contractors and employees and persons authorized by the Authority.

8.21 Limitations

- a. The Concessionaire shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Concession Agreement.

- b. The Concessionaire shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

8.22 Mutual Obligations of Parties

Each Party shall:

- a. comply with and perform its respective obligations under this Concession and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party.
- b. agree to novation and modification of the Concession Agreement upon appointment of the Substitute Entity by Lender in accordance with the Substitution Agreement that will be executed between the Lenders, the Concessionaire and the Authority.
- c. carry out their respective obligations during the Construction Period and O&M Period.
- d. understand that the title to and ownership of the Project Site shall at all times vest in the Authority and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Concessionaire or Persons or any other Third Party claiming by, under or through the Concessionaire. The Project Assets, buildings, Works, services, utilities created by the Concessionaire shall be owned by the Concessionaire during the Concession Period and shall be transferred to the Authority upon the expiry or prior termination of the Concession Agreement.
- e. understand that the Concession granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Concession, upon the termination of this Concession Agreement for any reason whatsoever.

ARTICLE 9: CONSTRUCTION DOCUMENTS

9.1 Construction Documents

The Concessionaire shall prepare Construction Documents in sufficient detail to satisfy all regulatory approvals, to provide suppliers and Subcontractors sufficient instruction to execute the Works, and to describe the operation of the completed Works. The Independent Engineer and the Authority shall have the right to review and inspect the Construction Documents.

- a. Each of the Construction Documents shall, when considered ready for use, be submitted to the Independent Engineer and the Authority for preconstruction review. In this Article, “**Review Period**”, means the period required by Independent Engineer and the Authority, which unless otherwise stated shall not exceed 30 (thirty) days, calculated from the date on which the Independent Engineer receives the Construction Documents and the Concessionaire's notice that it is considered ready, both for a pre-construction review in accordance with this Article, and for its subsequent use. If the Independent Engineer, within such Review Period, notifies the Concessionaire that a Construction Document fails (to the extent stated) to comply with some Technical Requirements, it shall henceforth be rectified, resubmitted and reviewed in accordance with this Article, at the Concessionaire's cost.
- b. For each part of the Works, and except to the extent that the prior consent of Independent Engineer shall have been obtained:
 - i. Construction shall not commence prior to the expiry of Review Period for the Construction Documents, which are relevant to the design and construction of such part;
 - ii. Construction of Works, providing installation and laying down of services/development of the Project Facilities shall be in accordance with such Construction Documents; and
 - iii. If the Concessionaire wishes to modify any design or document, which has previously been submitted for such pre-construction review, the Concessionaire shall immediately notify Independent Engineer and shall subsequently submit revised documents to the Independent Engineer for pre-construction review.
- a. If Independent Engineer instructs that further Construction Documents are necessary for carrying out the Works, the Concessionaire shall, upon receiving Independent Engineer's instructions, prepare such Construction Documents.
- b. In case there are errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Construction Documents and the Works that have been identified in the defective Construction Documents shall be rectified by the Concessionaire at its own cost.
- c. No comment made by Independent Engineer in relation to or any failure to comment on the Construction Documents within the Review Period shall constitute approval of such Construction Documents.
- d. Review of the Construction Documents by Independent Engineer shall neither relieve the Concessionaire of its obligations, responsibilities and liabilities under this

Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner whatsoever.

9.2 Design Warranty

The Concessionaire warrants to the Authority that the Works and the Project Facilities will be designed, constructed, tested and commissioned as per Performance Standards and that it will otherwise perform its obligations under this Concession Agreement:

- i. Using all due skill, care and diligence expected of a Concessionaire in executing a work of this nature and magnitude;
- ii. In a proper workmanlike and careful manner with properly equipped facilities and non-hazardous materials and in accordance with Good Industry Practices;
- iii. So that the Works when completed shall be in accordance with Performance Standards and all relevant requirements of this Concession Agreement unless agreed otherwise in writing by the Authority;
- iv. So that the Works when completed shall be capable of being used, operated and maintained in accordance with the requirements of the Project and Good Industry Practices;
- v. So that the Works when completed shall comply with the provisions of any Applicable Laws in effect during the Concession Period; and
- vi. There shall be no design defects in the structure and serviceability of the Project for the duration of the Concession Period.

9.3 Technical Requirements/ Performance Standards

- a. The completed Works and services, the O&M shall comply with Technical Requirements, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components, Good Industry Practices and the minimum Performance Standards specified in the Schedules hereof and the Technical Requirements or as defined by Applicable Law. References in this Concession Agreement to Technical Requirements, building bye laws, construction and environmental regulations, regulations applicable to the Project or its components and Good Industry Practices shall be understood to be references to the edition applicable on the Effective Date, unless stated otherwise. If substantially changed or new applicable Technical Requirements or regulations come into force after the Effective Date, the Concessionaire shall submit amended proposals for compliance with such new standards/ requirements to the Independent Engineer. In the event that the Independent Engineer determines that such proposals are found necessary, expedient and warranted, it shall treat this as a Variation, and then intimate the Authority within 42 (forty-two) days of receipt of the amended proposals to initiate a Variation in accordance with Article 18.
- b. The Concessionaire shall be liable for and shall indemnify, protect and hold harmless at all times, the Authority, the Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs,

expenses, settlements and judgments arising out of the Concessionaire's failure to comply with the Applicable Laws in relation to execution of Works and Construction and O&M of the Project.

9.4 Test Certificates and Samples

The Concessionaire shall submit the following samples and relevant information to Independent Engineer and the Authority before its use in the Construction or O&M of the Project:

- i) Manufacturer's standard samples of Materials;
- ii) Samples (if any) specified in the Authority's and Independent Engineer's requirements;
- iii) Samples (if any) specified by the Concessionaire, to be of best quality;
- iv) Additional samples instructed by the Authority or the Independent Engineer;
- v) Each sample shall be labeled as to origin, make and manufacturer and its intended use; and
- vi) Test certificate or samples for building materials such as cement, steel, bituminous materials, or any other materials proposed to be used.

9.5 Execution Records

The Concessionaire shall prepare and keep up-to-date, a complete set of "Execution" records of the execution of each section of the Works, showing the exact locations, sizes and details of the Works, internal and estate services/ utilities/ infrastructure as executed with cross references to all relevant requirements and data sheets. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Article. The Concessionaire shall prepare and submit to the Authority and the Independent Engineer one copy each of the Execution records for inspection. The Concessionaire shall obtain the consent of Independent Engineer as to their size, the referencing system, and other pertinent details. However, it shall neither relieve the Concessionaire of its obligations and liabilities under this Agreement nor shall the Independent Engineer or the Authority be liable for the same, in any manner whatsoever.

9.6 Final Drawings

- a. The Concessionaire shall submit to the Authority and the Independent Engineer 1 (one) detailed and legible copy each of final records of the execution of each section of the Works, showing the exact final locations, sizes and details of the Work as executed and completed with cross references to all relevant requirements and data sheets.
- b. The Concessionaire shall ensure that the Authority has the right to use and protect the design from infringement and to further enforce such right against any person, in accordance with the terms of this Concession Agreement.

- c. This Article shall also be applicable if any new Works, strengthening, rehabilitation of any part of the project are carried out during the Operation and Maintenance Period. The Concessionaire shall keep one set of Final Drawings at Project Site for the entire Concession Period.

9.7 Patents/ Copyright

If the Concessionaire desires to use any designated device, materials or any process covered by letters of patents or copyrights, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Patent's owner or copyright owner. A copy of such agreement shall be filed with the Authority.

9.8 Levies

Except otherwise stated in this Concession Agreement, the Concessionaire shall pay all tonnage, levies, cess, royalties, rent and other payments or compensation, if any, for plant and machinery or other materials required for the Works.

ARTICLE 10: LABOUR

The Concessionaire shall be solely responsible for the liability, cost and responsibility for all the laws relating to labour employed by the Concessionaire and for their conditions under this Article.

10.1 Engagement

The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their payment, housing, feeding and transport.

10.2 Information on Labour and Equipment

The Concessionaire shall furnish, if required by the Authority or the Independent Engineer, a detailed return in such form and at such intervals as may be prescribed, showing the details of the labour, plant and equipment deployed on the Project Site by the Concessionaire.

10.3 Labour Laws

The Concessionaire shall ensure that all labour laws, rules and regulations will be followed and the Concessionaire shall be the primary employer of labour employed by it for the Project. The Authority or any of its officers, employees, and representative shall in no way be responsible for any of the obligations, whether statutory or otherwise, towards any of the employees hired by the Concessionaire in relation with the Project.

ARTICLE 11: MATERIALS AND WORKMANSHIP

11.1 Execution

All Works shall be executed in the manner set out in this Concession Agreement. Where the manner of execution is not set out in this Concession Agreement, the Works shall be executed under the instructions of the Independent Engineer during the Construction Period and the Authority during the Operation and Maintenance Period, in a proper, workmanlike and careful manner and as per Good Industry Practice, with properly equipped facilities and non-hazardous materials.

11.2 Inspection

- a. The Authority and Independent Engineer shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all Works under this Concession Agreement. The Concessionaire shall give the Authority and Independent Engineer full opportunity to inspect, examine, measure and test any Works on Project Site or wherever being carried out.
- b. The Concessionaire shall give due notice to the Authority and Independent Engineer whenever such Work is ready. The Independent Engineer and the Authority shall then respond to the Concessionaire with its intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Concessionaire fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good at Concessionaire's own cost.
- c. If the Independent Engineer or the Authority fails to respond to the Concessionaire's notice within 14 (fourteen) days of receiving the notice, it shall be deemed to imply that they do not consider it necessary to inspect the Works mentioned in the notice.

11.3 Testing during Construction Period

- a. If the Authority or the Independent Engineer requires Tests at any time during the Construction Period, the Concessionaire shall provide all documents and other information necessary for testing and other such assistance, labour, materials, electricity, fuel, stores, apparatus and instruments as are necessary to carry out such tests efficiently. The Concessionaire shall provide engineering support and technical know-how as the Authority or the Independent Engineer shall reasonably request for the purpose of the Tests.
- b. The Concessionaire shall provide sufficient and suitably qualified and experienced staff to carry out such Tests. The Independent Engineer and the Authority shall attend all such Tests.
- c. If Independent Engineer and Authority do not attend at the time and place agreed the Concessionaire may proceed with the Tests, unless the Independent Engineer or Authority instructs the Concessionaire otherwise. In such a situation, such Tests shall be deemed to have been made in the presence of the Authority and the Independent Engineer.
- d. The Concessionaire shall promptly forward to the Independent Engineer and the Authority duly certified reports of the Tests. If the Independent Engineer has not attended the Tests, he shall accept the readings as accurate. When the specified Tests have been passed, Independent

Engineer shall endorse the Concessionaire's Test certificate, or issue a confirmation to it to that effect and intimate Authority forthwith.

- e. The Authority is entitled to insist for the Concessionaire to carry out any Tests of any type, as it deems fit. If such Tests are not in accordance with general Good Industry Practices, then the Authority may carry out the tests and the Cost of which shall be borne by the Concessionaire.

11.4 Rejection

- a. If, as a result of inspection, examination or testing under Article 11.3, the Independent Engineer decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with this Concession Agreement, the Independent Engineer may reject such plant, materials, design or workmanship and shall notify the Concessionaire within 7 (seven) days recording clearly his reasons thereof.
- b. The Concessionaire shall then, within the time permitted by the Independent Engineer, make good the defect and ensure that the rejected item or work complies with this Concession Agreement. If Independent Engineer requires such plant, materials, design or workmanship to be re-tested, all such Tests shall be repeated under Articles 13.3 at the cost of the Concessionaire.

11.5 Ownership

Each item of Plant and Machinery and the Materials shall be the property of Concessionaire till the expiry of the Concession Period or upon the premature termination of this Concession Agreement. The Concessionaire shall assume full responsibility for the plant and machinery, materials and Works at the Project Site.

ARTICLE 12: COMMENCEMENT TIME AND DELAYS

12.1 Commencement

- a. The rights and obligations of the Parties under this Concession Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Concessionaire elects to carry out prior to the Effective Date including investigations, surveys, design, etc. shall be entirely at the risk and cost of the Concessionaire.
- b. The Concessionaire shall not be permitted to commence work on any part of the Project Site prior to the issuance of the Certificate of Compliance under Article 4 of this Concession Agreement.
- c. Any delay on the part of the Authority (unless such delay is contributed by the Concessionaire) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.

12.2 Time for Completion

The development of the project shall be in accordance with the Construction Period or the Time for Completion of Construction, provided that this period, as stated, may be extended by mutual agreement in writing between both the Parties. The Authority may reject the request for extension without assigning any reason thereof.

12.3 Progress

- a. If at any time, the Concessionaire's actual progress falls behind the Project Implementation Schedule referred to in Article 8.6, or it becomes apparent that it will so fall behind, the Concessionaire shall submit to the Authority and Independent Engineer a revised Project Implementation Schedule taking into account the prevailing circumstances. The Concessionaire shall, at the same time, notify the Authority and Independent Engineer of the steps being taken to expedite progress so as to achieve completion within the Construction Period or the Time for Completion of Construction as specified under Article 12.2.
- b. If the revision of the Project Implementation Schedule is necessitated due to any default, negligence or oversight of the Concessionaire, the Concessionaire shall be responsible, to take all further steps for the rectification and revision of the programme and the underlying Works at its cost.
- c. Notwithstanding anything to the contrary in this Article, a revision in the Project Implementation Schedule that results in the extension of the Construction Period or the Time for Completion of Construction shall become effective only after it has been approved in writing by the Authority.

12.4 Delay in Completion

- a. If the Concessionaire delays completion of Construction beyond the Construction Period or the Time for Completion of Construction and if in the opinion of the Independent Engineer, such delay is caused by any negligence, default, or failure of the Concessionaire, no extension of the Construction Period or the Time for Completion of Construction shall be given by the Authority. In such a case the duration of the Concession Period shall also not be adjusted and

the Concessionaire shall be solely responsible for the corresponding reduction of the period for which the Project Site is used and any reduction in revenue as a consequence thereof.

- b. In case the Concessionaire fails to complete the Works within the Time for Completion of Construction, the Authority shall issue a notice to the Concessionaire to complete the construction within such reasonable time as will be specified in the notice and shall also be asked to pay damages, as specified in Article 3.4. If the Concessionaire fails to complete construction of the Works within the time specified in the notice the Authority may proceed to terminate the Concession Agreement in accordance with Articles 22.

ARTICLE 13: COMPLETION TESTS

13.1 Notice to Test

As soon as construction of the Works is, in the opinion of the Concessionaire, substantially complete, the Concessionaire shall so notify the Authority and the Independent Engineer that the Concessionaire is ready to conduct Tests to demonstrate that the Works have been completed in accordance with the specifications and standards and provisions of this Concession Agreement.

13.2 Tests on Completion

- a. Before commencement of the Tests, the Concessionaire shall ensure that it has provided the Authority with all required documents under Articles 8.6, 8.7 and 8.8. The provisions of Article 11.3 shall be applicable *mutatis mutandis* to the carrying out of the Tests under this Article. The Concessionaire shall give to Authority and the Independent Engineer not less than 28 (twenty-eight) days ' notice of its intent to carry out the Tests. Unless otherwise agreed, such Tests shall be carried out within 14 (fourteen) days after this date, or on such day or days as the Independent Engineer shall instruct.
- b. The Tests shall include checking of construction records, documents and drawings, trial runs, checks of profiles and levels, or any other Tests that may be reasonably necessary to confirm that the Works meet the Technical Requirements/ standards. The Independent Engineer after consultation with the Authority, shall draw up a detailed list of Tests, along with the acceptable standards to be carried out by the Concessionaire and shall furnish the same to the Concessionaire within 14 (fourteen) days of the receipt of the Concessionaire's intention to carry out the Tests.
- c. The Independent Engineer and the Authority shall monitor the results of the Tests to determine the compliance of the Project with the standards and Technical Requirements. The Concessionaire shall provide the Independent Engineer and the Authority with the copies of all Test data and Test results.
- d. The results of the Tests on Completion shall be compiled and evaluated by the Independent Engineer. Upon the Independent Engineer determining the Tests to be successful, the Independent Engineer shall issue the Construction Completion Certificate in accordance with Article 14.1.
- e. The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion ("**Provisional Certificate**"), subject to the express approval of the Authority, if the Tests are successful and all parts of Project can be legally, safely and reliably opened for commercial operation and the commercial operations of the project may commence though certain minor and finishing works or things forming part thereof, which in the opinion of the Independent Engineer do not, in any manner whatsoever affect the safety of the Works, project or, in any material respect, the commercial operations thereof, are not yet complete. In such an event, such Provisional Certificate shall have appended thereto a list of outstanding Works items to be completed along with the duration for the completion of each activity ("**Check List**"), signed jointly by the Independent Engineer and the Concessionaire. All Check List items shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of such Provisional Certificate. Upon completion of all Check List items to the

satisfaction of the Independent Engineer, the Independent Engineer shall issue the Completion Certificate to the Concessionaire as per the provision of Article 14.

- f. If the Independent Engineer certifies that it is unable to issue the Construction Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- g. The Concessionaire shall bear all the expenses relating to Tests under this Agreement.
- h. All items in the Check List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security i.e an amount of Rs 15,000/- and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer for all the Project Site. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Check List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the Construction Completion Date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such Construction Completion Date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages.

13.3 Re-Testing

If the Independent Engineer or the Authority is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of such conclusion stating the reasons for such dissatisfaction. In such an event Article 11.4 shall apply and the Authority or the Independent Engineer may require such failed Tests and the Tests on Completion of any related work, to be repeated under the same terms and conditions.

13.4 Failure to Pass Tests

- a. If the Works or parts thereof, fail to pass the Tests on completion repeated under Article 13.3, the Independent Engineer shall be entitled to:
 - i) Order further repetition of Tests on completion under Article 13.3, in which case the Concessionaire shall be obliged to carry out such adjustments, repairs, replacements and/or modifications as may be required to ensure that the Works or part achieve the requirements; or
 - ii) Reject the Works or part (as the case may be), if the Construction Completion Certificate or the Provisional Certificate could not be issued within 90 (ninety) days from the date the Concessionaire had notified the Independent Engineer about the actual date of the first Test pursuant hereto for reasons attributable to the Concessionaire, in which event, the Authority shall have the same remedies against the Concessionaire as are provided under Article 22.1.

ARTICLE 14: COMPLETION OF CONSTRUCTION

14.1 Construction Completion Certificate

- a. The construction and development work in this Concession Agreement shall not be considered to be completed until the Construction Completion Certificate has been signed by the Independent Engineer and delivered to the Authority and the Concessionaire, stating that the Concessionaire has completed its construction obligations under the Concession Agreement to the Independent Engineer's satisfaction.
- b. The Construction Completion Certificate shall be given by the Independent Engineer within 28 (twenty-eight) days after:
 - (i) The Concessionaire has provided all the Construction Documents (including completion drawings) for the Works;
 - (ii) The Concessionaire has remedied any defects in the Works;
 - (iii) The Concessionaire has completed and tested all the Works, as specified by the Independent Engineer;
 - (iv) The Works as an integrated structure is in conformity with the Technical Requirements; and
 - (v) The Concessionaire has submitted "Structural Safety Certificate".
- c. The Independent Engineer would be required to issue the Construction Completion Certificate after the construction of the project has been completed in all respect and is ready to use. However, the required documents as stated in Article 14.1 (b) shall be submitted by the Concessionaire and also, comply with all the obligations, wherein mentioned in the Concession Agreement, required to be met before and after the issuance of the Construction Completion Certificate.

14.2 Construction Completion Certificate not a Cessation of Liability

The issuance of the Construction Completion Certificate under this Article shall not in any way but it shall be a milestone for reckoning the commencement of Commercial Operations and permit the Concessionaire to commence Commercial Operations of the project:

- i. Reduce or alter the liabilities of the Concessionaire;
- ii. Constitute a waiver of unfulfilled obligations;
- iii. Bar remedy and rectification of defects; and
- iv. Constitute an acceptance of the Works.

ARTICLE 15: OPERATIONS AND MAINTENANCE PERIOD

15.1 Commencement and Duration

The O&M Period of the Project shall commence from the date of issue of Construction Completion Certificate or Provisional Certificate whichever is issued earlier i.e. the Commercial Operations Date/COD and in its absence, from the date of Provisional Certificate issued in terms of Article 13.2(e) above and terminate at the Transfer Date.

15.2 Obligations of the Concessionaire during O&M Period

- a. During the O&M Period the Concessionaire shall be responsible for performing all the obligations and complying with the Performance Standards laid down in **Schedule III** of this Concession Agreement.
- b. In the event of failure to perform the obligations or comply with the Performance Standards and rectifying any defects within permissible time limits laid down in **Schedule III**, the Concessionaire shall be liable to a penalty which shall not exceed the 0.1% Performance Security for each day until rectification of such defect/damage subject to maximum of 10% of Performance Security for each lapse in compliance in the performance standards or MoT Guidelines. It is clarified that the penalty amount should not exceed the amount of Performance Security which in turn shall lead to Concessionaire Event of Default Article 22.1. The Concessionaire shall be liable for replenishing/maintain the Performance Security to its original amount i.e INR 1,05,00,000.
- c. The Concessionaire recognizes and acknowledges the fact that the Project is intended to provide a facility for Mustard Oil processing , and the Concessionaire shall have right to prevent, impede or obstruct any bona fide visitor from using the Project Facility, save and except for regulating such usage under the terms of this Concession Agreement. Under exceptional circumstances, if the Concessionaire apprehends any detriment to the Project Facility it shall seek instructions from the Authority, whose decision in this regard shall be final.
- d. The Concessionaire shall remove the defects or damage found by Maintenance Board at his own cost. And ensure the performance standards are maintained throughout.

The Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications during the O&M period to maintain the Works etc. the Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the project, then such request shall only be granted if the Concessionaire's request is reasonable under all the circumstances, having regard to the Concessionaire's obligations to keep the project operation .

15.3 Scope of Work during O&M Period

In addition to what is provided elsewhere in this Concession Agreement, the Concessionaire shall have the following obligations and responsibilities during the O&M Period: -

- a. The Concessionaire shall be responsible, at its own cost, for all the maintenance and repairs of the project and all its components, including roads, buildings, structures, all services and allied

- works. The Concessionaire shall also carry out rectification of any defects in the design or construction of any component of the Works as specified in 15.2 above.
- b. The Concessionaire shall with due diligence carry out all necessary and periodical tests in accordance with the Applicable Laws. The Concessionaire shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicative by the test results.
 - c. The Concessionaire shall be entitled at its own costs, expenses and consequences to perform the following:
 - I. Institution and supervision of operating policies, principles, systems and procedure for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
 - II. Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
 - III. To issue its receipts and invoice in its own name.
 - d. The Concessionaire shall, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.
 - e. The Concessionaire shall deploy adequate trained staff to manage complete operations of the project as per Performance Standards detailed in Schedules to this Agreement. The Concessionaire shall bear the entire responsibility and liability for operation of the Project.
 - f. The Concessionaire shall be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Concession Agreement.
 - g. Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the project otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Authority indemnified in this regard.
 - h. The Concessionaire shall at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Concessionaire.
 - i. The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations
 - j. The Concessionaire shall ensure general upkeep of the Project Area in accordance with the development envisaged in terms of this Agreement.

15.4 Reporting

- a. The Concessionaire shall in consultation with the Independent Engineer prepare and evolve, not later than 28 (twenty eight) days prior to the Scheduled Construction Completion Date, a draft Operation and Maintenance Manual ("**O&M Manual**") providing the detailed plan for regular and preventive maintenance. The Concessionaire shall at its cost, provide within 21 (twenty-one) days of its finalization, submit the draft of the O&M Manual to the Authority and Independent Engineer for its review. The O&M Manual will become final only after it has received the final approval of the Authority. Within a period of 30 (thirty) days from the date of receipt of the O&M Manual, the Authority shall revert to the Concessionaire with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of the Authority.
- b. Not later than 28 (twenty-eight) days prior to the start of each Financial Year, the Concessionaire shall provide to the Authority its proposed programme for maintenance ("**Maintenance Programme**") for the said Financial Year.
- c. The Maintenance Board as constituted under Article 29 of this Agreement shall undertake inspection of the project, at least once every month, to determine its condition including its compliance with the standards as set out in the Schedules to this Concession Agreement and the O&M Manual as submitted by the Concessionaire. On the basis of this inspection and the activities carried out during the month, the Concessionaire shall, at its cost, prepare and submit to the Authority and Maintenance Board, 2 (two) copies of the "**Monthly Project Report**" for any calendar month within 7 (seven) days of the next calendar month. The Monthly Project Report shall include the following:
 - i. any other variation which may have become due in accordance with this Concession Agreement;
 - ii. any other undisputed claims of the Concessionaire;
 - iv. a list of items requiring repair or maintenance and a maintenance plan for the next calendar month.
- d. The Concessionaire shall also provide the Authority with such reports which are required to comply with the instructions of Competent Authority or the standing procedures for any clearance, etc. The Concessionaire shall also submit to the Authority the following:
 - (i) Upon obtaining knowledge thereof, any of;
 - (a) Litigation, claims, disputes or actions, threatened or pending concerning the Project;
 - (b) Refusal to grant, renew or extend, or any action threatened or pending that might affect any Clearance;
 - (c) All penalties or notices of violation issued by any Competent Authority.
 - (d) Information concerning new or significant aspects of the Project, including any material complaint about the Facilities from any person.
 - (e) If the Authority, acting reasonably, requests a report or document about any information regarding the Facilities, the Concessionaire shall prepare a draft of such document within any reasonable time limit prescribed.
- e. The Authority may from time to time specify any changes in the formats or periodicity for any reports.

- f. The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless, the Authority, the Authority's officers, employees and agents from any liability, costs, expenses, settlements and judgments arising out of any failure to prepare and submit reports in accordance with the requirements of law, directive or clearance.

15.5 Books and Records

The Concessionaire shall, at its cost:

- i) Prepare and maintain, in a format approved by the Authority, and on generally accepted Indian accounting principles, proper, accurate and complete books, records and accounts of all transactions related to the Project.
- ii) Provide to the Authority or persons notified by it, access to such records and accounts;
- iii) Deliver to the Authority annual audited accounts of the Concessionaire for the Project within 180 (one hundred and eighty) days of close of each Financial Year.
- iv) Retain and store on the Project Site for a period of ten years all records relating to the Project, which shall be the property of the Authority.
- v) Provide support to the Authority to meet all the data requirements of all Competent Authorities.

15.9 Accidents

- a. In the event of an accident, the Concessionaire shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Concessionaire's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the above officials, as it shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Concessionaire shall preserve the Project Site of such accident intact, until completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of the wreckage or debris and for cleaning the Project Site. If any portion of the project suffers any damage, the Concessionaire shall, with the consent of Authority, arrange for the repair and rectification thereof.
- b. The Concessionaire shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Concessionaire in accordance with Article 7.3.
- c. Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

ARTICLE 16: CONCESSION COMPLETION CERTIFICATE

16.1 Concession Agreement Completion Certificate

- a. Subject to fulfilment of the requirements of the Transfer of the Project set out under Article 33 and upon a request made by the Concessionaire, within a period of 30 (thirty) days from such request, the Authority shall issue the **“Concession Agreement Completion Certificate”** to the Concessionaire, which concludes the Concessionaire’s liability under this Concession Agreement.
- b. Within 15(fifteen) days of the expiry of the Concession Period, the Concessionaire shall prepare a detailed inventory of all movable and immovable properties forming part of the project and submit the same to the Authority.
- c. The remaining Performance Security furnished by the Concessionaire shall be released only after the issuance of the Concession Agreement Completion Certificate in pursuance of this Article.

ARTICLE 17: REPRESENTATIONS AND WARRANTIES

17.1 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (i) The Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- (ii) The Authority has taken all necessary actions to authorize the execution, delivery and performance of this Concession Agreement;
- (iii) This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- (iv) The Authority is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- (v) The Authority has good and valid right to the Project Site, and has power and authority to grant a license in respect thereto to the Concessionaire;
- (vi) The Concessionaire shall have complete and uninterrupted Right of Way in respect of the Project Site in accordance with this Concession Agreement;
- (vii) There is no litigation, claim, demand or any proceeding pending before any authority in respect of the Authority's title to or possession of the land constituting the Project Site;
- (viii) All information provided by the Authority in the Bid Documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- (ix) The Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

17.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- i. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii. It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- iii. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Concession Agreement;
- iv. It has the financial standing and capacity to undertake the Project;

- v. This Concession constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi. It is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii. All the information furnished in the Concessionaire's Proposal is, and shall be, true and correct as on the Effective Date and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of the Financial Years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the Concessionaire;
- viii. It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Financial Year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- ix. The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- x. As on the date of the Agreement, there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;
- xi. As on the date of the Agreement, the Concessionaire 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 Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
- xii. The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
- xiii. The aggregate equity share holding of the Consortium Members and their Associates (in case of a Consortium) or equity share holding of the Associates (in case of individual Bidder) in the issued and paid up equity share capital of the Concessionaire are and shall remain in accordance with the requirements stipulated in Article 8.2;

- xiv. Each Consortium Member was and is duly organized and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- xv. All rights and interests of the Concessionaire 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 the part of the Concessionaire or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire 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 Concession Agreement;
- xvi. No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances 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; and
- xvii. The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Authority

17.3 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 18: VARIATIONS

18.1 Initiated by the Authority

- a. Variations may be initiated by the Authority at any time during the Concession Period, either by instruction or by a request for the Concessionaire to submit a proposal. The Concessionaire shall not make any alteration or modification of the Works, unless and until Authority instructs or approves a Variation. If the Construction Documents, Works or Operation and Maintenance Procedures are not in accordance with this Concession Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.
- b. If Authority requests a proposal, prior to instructing a Variation, the Concessionaire shall submit as soon as practicable:
 - i. A description of the proposed design or work to be performed and a programme for its execution.
 - ii. The Concessionaire's proposal for any necessary modifications to the Project Implementation Schedule according to Article 8.6; and
 - iii. The Concessionaire's proposal for adjustment to the Concession Period, Time for Completion of Construction and/ or modifications to this Concession Agreement.
- c. The Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments. If Authority instructs or approves a Variation, it shall proceed in accordance with Article 7.3 to agree or determine adjustments to the Concession Period.

18.2 Initiated by Concessionaire

- a. The Concessionaire may, at any time during the Concession Period, initiate a Variation, by submitting to Authority a written proposal which in the Concessionaire's opinion will reduce the cost of construction, maintaining or operating the Works, or improve the efficiency or value to the Authority of the completed Works, or otherwise be of benefit to the Authority or to rectify a divergence between any law or directive and the Technical Requirements. Any such proposal shall be prepared at the cost of the Concessionaire and shall include the items listed in Article 18.1 (b).

Authority shall, as soon as practicable after receipts of such proposals respond with approval, rejection or comments. If Authority approves a Variation, it shall proceed in accordance with Article 7.3 to agree or determine adjustments of the Concession Period.

ARTICLE 19: FINANCIAL CLOSE

19.1 Financial Close

- 19.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve the Financial Close within 90 (ninety) days from the Effective Date and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of damages to the Authority of an amount of **INR 10,500/-** (Rupees Ten Thousand Five Hundred Only) i.e 0.1% (zero point one percent) of the amount of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) 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 Article 4 or due to Force Majeure.
- 19.1.2 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 Financial Close, 3 (three) true copies of the Financial Package(the “**Financial Package**”) and the Financial Model, duly attested by a Director or authorized representative 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 Lenders.

19.2 Termination due to failure to achieve Financial Close

- 19.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 27, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 19.1.1, 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 concurrence of the Concessionaire, and the 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 that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of this Clause 19.2.1 shall not apply.
- 19.2.2 Upon termination under Clause 19.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.

ARTICLE 20: ACCOUNTS AND AUDIT

20.1 Appointment of Statutory Auditors

The Concessionaire after due consultation with the Authority and Lenders shall appoint a firm of Chartered Accountants out of a mutually agreed list of 10 (ten) independent and reputable firms of Chartered Accountants in India/Haryana as the Statutory Auditor to audit the accounts of the Concessionaire for the Project on a yearly basis. All fees and expenses of the Statutory Auditors will be borne by Concessionaire. The Parties agree that the Statutory Auditor so appointed shall have the status of an expert whose reports and decisions shall be final and binding on the Parties, save in the case of manifest error or fraud. The Concessionaire shall extend full co-operation to the Statutory Auditor. All contracts, books, records, documents and vouchers relating to the construction, operation and maintenance of the project shall be open to inspection by such Statutory Auditor, who may make such copies thereof or extracts there from as it may deem appropriate. Any information secured as a consequence of such examination shall be kept confidential by all concerned. The Concessionaire may terminate the appointment of its Statutory Auditor after a notice of 45 (forty five) days to the Authority, subject to the replacement of Statutory Auditor being appointed from the panel of Chartered Accountants.

20.2 Audited Accounts

In case of Option 1, the below Clause may be read as below:-

The Concessionaire shall maintain books of accounts recording all its receipts (including all realizable revenues derived/ collected by it from or on account of the Project and/ or its use), income, expenditure, payments (including the 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 Statement along with report by its Statutory Auditor, within 90 (ninety) days of the close of 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 the office hours and require copies of the relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority.

In case of Option 2, the above Clause may be read as below:-

The SPV shall maintain books of accounts recording all its receipts (including all realizable revenues derived/ collected by it from or on account of the Project and/ or its use), income, expenditure, payments (including the payments from the Escrow Account), assets and liabilities in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The SPV shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Statement along with report by its Statutory Auditor, within 90 (ninety) days of the close of 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 SPV during the office hours and require copies of the relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority.

20.3 Certification of claims by Statutory Auditors

In case of Option 1, the below Clause may be read as below:-

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. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

In case of Option 2, the above Clause may be read as below:-

Any claim or document provided by the SPV 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. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business

20.4 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Auditors, as the case may be, and the certification provided by the 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.

20.5 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 Article shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

ARTICLE 21: SUSPENSION

21.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect revenues pursuant hereto; and (ii) 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.

21.2 The Authority to act on behalf of Concessionaire

21.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenue from the Project 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 costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Article 24(a).

21.2.2 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 therein 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 Article 21.1 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.

21.3 Revocation of Suspension

21.3.1 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.

21.3.2 Upon the Concessionaire having cured the Concessionaire Event of 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.

21.4 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 Article 21.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

21.5 Termination

21.5.1 At any time during the period of Suspension under this Article 21, 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 Article 21.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 22.

21.5.2 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 Article 22.1, the 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 Event of Default.

ARTICLE 22: TERMINATION FOR DEFAULT

22.1 Concessionaire Event of Default

Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the Cure Period which shall be 60 (sixty) days from the date of notice of default (the “**Default Notice**”) from the Authority, shall be considered for the purpose of this Agreement as Event of Default of the Concessionaire (“**Concessionaire Event of Default**”):

1. The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Authority or the Project;
2. The Concessionaire fails to obtain necessary approvals from the concerned department within 3 (three) months from the date of issue Construction Completion Certificate or provisional certificate whichever is issued earlier
3. The Concessionaire fails to timely renew the license, the same is withdrawn at any time during the Concession Period.
4. The time prescribed for making payment of the Annual Concession Fee shall be the essence of this Agreement. Non-Payment of the Annual Concession Fee shall be accounted as Concessionaire Event of Default and subsequently form a ground for termination of this Agreement.
5. The Concessionaire is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
6. The Concessionaire fails to meet the progressive milestones set forth in the Project Implementation Schedule or amendments thereto as provided for in this Concession Agreement.
7. Change in Ownership has occurred in breach of the provisions of Article 8.2 of the Agreement.
8. The Concessionaire abandons the Project or any of its material obligations as provided under this Agreement.
9. The check list items have not been completed within the period set forth in this Agreement.
10. The Concessionaire has not furnished the Performance Security in accordance with Clause 5.4 and the Concessionaire fails to replenish or provide fresh Performance Security within a cure period of 30(thirty) days.
11. The Concessionaire does not comply with its Minimum Equity Requirements under Article 8.2.
12. The Concessionaire fails to undertake the O&M Obligations including compliance with the Maintenance Requirements as mentioned in this Agreement.

13. The Concessionaire fails to achieve Financial Close within the stipulated time period of 90 (ninety) days from the Effective Date, unless expressly extended by the Authority.
14. A Lender recalls its loan under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the Lender under the Financing Documents.
15. The Concessionaire creates any Encumbrances, charges or lien in respect of Project/Project Site or any part thereof in favor of any Person, save and except as otherwise expressly permitted in this Concession Agreement.
16. Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreement and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement.
17. A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire.
18. The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project.
19. The Concessionaire fails to comply with the provisions laid down in Article 8.1.
20. Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and Project Agreements, and provided that:
 - a. The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement and Project Agreements;
 - b. The amalgamated entity or reconstructed entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as on the Compliance Date; and
 - c. All the Project Agreements remain in full force and effect.
21. The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.

22. 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.
23. An Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 60 (sixty) days.

Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Event of 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.

22.1.2 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 22.1.3.

22.1.3 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 22.1.2 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 may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement as per Schedule XI:

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:

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.

22.2 Termination for Authority Event of Default

22.2.1 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 Event of 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:

- 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;
- b the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- c 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.

22.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Event of 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 15 (fifteen) days to Authority 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.

22.3 Termination Payment

22.3.1 Upon Termination on account of a Concessionaire Event of Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety percent) of the Debt Due (which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost) 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 (which shall in no case be more than 67% of the Total Project Cost). For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Event of Default occurring prior to COD.

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

- a. Debt Due (which shall in no case be more than 67% (Sixty Seven percent) of the Total Project Cost);
- b. 100% (one hundred per cent) of the Adjusted Equity; and
- c. Less: Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80%(eighty percent) of such unpaid claims shall be included in the computation of the Debt Due.

22.3.3 Termination Payment shall become due and payable to the Concessionaire within 90 (ninety) 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.

22.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 22 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.

22.3.5 As a consequence of Termination, irrespective of the reason for Termination, the Concessionaire shall transfer all movable and immovable assets forming part of the Project Assets to the Authority upon the Transfer Date.

22.4 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, and equipment, IT infrastructure including hardware and software on or about the Project Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project Site;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Article 23.1; 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 Subcontractors 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 Subcontractors 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 Subcontractors, 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.

22.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 22.3.4, 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.

22.6 Defect Liability

22.6.1 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 and Authority 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 Escrow Account.

22.6.2 Retention in Escrow Account

22.6.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of this Clause 22.6.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 25.

22.6.2.2 Without prejudice to the provisions of Clause 22.6.2.1, the Engineer shall carry out an inspection of the Project at any time between 120 (one hundred and twenty) days and 150 (one hundred and fifty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 22.6.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 90 (ninety) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

ARTICLE 23: DIVESTMENT OF RIGHTS AND INTEREST

23.1 Divestment Requirements

23.1.1 Upon Termination, the Concessionaire shall comply with and confirm 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 including Project Site, 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 approaches, pavements, structures, services and equipments 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, Construction O&M etc., including all programmes 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) on the Transfer Date the Declaration of License shall automatically terminate and the Concessionaire, its subcontractors, agents, employees and licensees shall vacate the Project Facility and the leave the possession of the Project Assets;
- (g) 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 and Project Site, including manufacturers’ warranties in respect of any services, 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
- (h) 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.

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

23.2 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 and Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and venue 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 22.6 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 23.

23.3 Cooperation and assistance on transfer of Project

- 23.3.1 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 Parties.
- 23.3.2 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.

23.4 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-X** (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.

23.5 Divestment costs etc.

- 23.5.1 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 in favour 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.

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

ARTICLE 24: LIABILITY AND INDEMNITY

24.1 General indemnity

The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, employees, agents and consultants against any and all suits, proceedings, actions, demands 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 any related Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Authority indemnified persons.

24.2 Liability of the Authority

The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third-party claims 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 Project Land given on Concession to the Concessionaire; 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, employees or agents, the same shall be the liability of the Concessionaire.

24.3 Indemnity by the Concessionaire

24.3.1 Without limiting the generality of Article 24.1 and 24.2, the Concessionaire shall fully indemnify, hold harmless and defend the Authority 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;
- (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 Sub-contractors; or
- (d) Breach by the Concessionaire of any of the obligations under this Agreement.

24.3.2 Without limiting the generality of the provisions of this Article 24, 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 non-infringing work or part or process, or modify the same so that it becomes non-infringing.

24.4 Notice and contest of claims

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 24 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 15 (fifteen) 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.

24.5 Defense of claims

24.5.1 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 24, the Indemnifying Party shall be entitled, at its option, to assume and control the defence 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 defence. 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.

24.5.2 If the Indemnifying Party has exercised its rights under Article 24.3, 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).

24.5.3 If the Indemnifying Party exercises its rights under Article 24.3, 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 authorised in writing by the Indemnifying Party; or
- (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 defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence 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:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 24.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence 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.

24.6 No consequential claims

Notwithstanding anything to the contrary contained in this Article 24, 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.

24.7 Survival on Termination

The provisions of this Article 24 shall survive Termination.

ARTICLE 25. ESCROW ACCOUNT

25.1 Escrow Account

In case of Option 1, the below Clause may be read as below:-

25.1.1 The Concessionaire shall, prior to Compliance Date of the Project, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

25.1.2 The nature and scope of the Escrow Account are fully described in the Escrow Agreement to be entered into amongst the Concessionaire, the Authority, and the Escrow Bank, which shall be substantially in the form set forth in **Schedule-VIII**.

In case of Option 2, the above Clause may be read as below:-

The Authority and the Concessionaire shall, prior to Compliance Date of the Project, open and establish an Escrow Account with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

25.2 Deposits into Escrow Account

In case of Option 1, the below Clause may be read as below:-

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders or by way of any Subordinated Debt and the Authority (if any);
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits or capital receipts;
- (d) all payments to the Authority, after deduction of any outstanding Annual Concession Fee;
- (e) all proceeds received pursuant to any insurance claims; and
- (f) Termination Payments.

In case of Option 2, the above Clause may be read as below:-

The SPV shall deposit or cause to deposit the following inflows and receipts into the Escrow Account:

- a. all monies received in relation to the Project from any source, including the Senior Lenders or by way of any Subordinated Debt and the Authority (if any);
- b. all funds received by the SPV from its shareholders, in any manner or form;
- c. all Fee and any other revenues from or in respect of the Project (**except the fee earned by**

the Concessionaire from the sale of oil & oil cakes post utilizing a certain percentage of the plant capacity from its entitled share of 26%) including the proceeds of any rentals, deposits or capital receipts;

d. Deleted

e. all proceeds received pursuant to any insurance claims; and Termination Payments

25.3 Withdrawals during Concession Period

In case of Option 1, the below Clause may be read as below:-

25.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. Annual Concession Fee due and payable to the Authority;
- c. all payments relating to Construction of Project;
- d. O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance with Good Industry Practice;
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. monthly proportionate provision of debt service payment due in an Accounting Year;
- g. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- h. balance, if any, in accordance with the instructions of the Concessionaire.

In case of Option 2, the above Clause may be read as below:-

The Authority and the Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order, or at intervals as necessary, and retained in the Escrow Account and paid out therefrom in the month when due:

- a. Deleted
- b. **Operating Expenses per MT of oil manufactured to be paid by the Authority to the Concessionaire**
- c. all payments relating to Construction of Project;
- d. O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance

- with Good Industry Practice;
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. monthly proportionate provision of debt service payment due in an Accounting Year;
- g. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and balance, if any, in accordance with the instructions of the Concessionaire
- h. **Amount equivalent to 26% of profit share to be paid by the Authority to the Concessionaire on yearly basis**

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of the Authority.

25.4 Withdrawals upon Termination

In case of Option 1, the below point may be read as below:-

25.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- i. all taxes due and payable by the Concessionaire for and in respect of the Project.
- ii. outstanding Annual Concession Fee.
- iii. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.
- iv. cost of repair and restoration of damages to the Project on account of a Non-Political Event;
- v. all outstanding debt and interest thereon;
- vi. retention and payments relating to the liability for defects and deficiencies set forth in Article 22.6.
- vii. incurred or accrued O&M Expenses.
- viii. any other payments required to be made under this Agreement; and
- ix. balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 23.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

In case of Option 1, the below point may be read as below:-

Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- i. Deleted
- ii. **outstanding Operating Expenses per MT of oil manufactured**
- iii. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.

- iv. cost of repair and restoration of damages to the Project on account of a Non- Political Event.
- v. all outstanding debt and interest thereon.
- vi. retention and payments relating to the liability for defects and deficiencies set forth in Article 22.6.
- vii. incurred or accrued O&M Expenses.
- viii. any other payments required to be made under this Agreement; and balance, if any, in accordance with the instructions of the Concessionaire

The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

ARTICLE 26 INSURANCE

26.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the O&M Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice the “**Insurance Cover**”). 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 to the insurance company through Escrow Account and provide a photocopy of the receipt to the Authority. 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.

26.2 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the O&M 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. 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.

26.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 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 premia 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.

26.4 Remedy for failure to insure

If the Concessionaire shall fail 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 premia 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.

26.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 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.

26.6 Concessionaire's waiver

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.

26.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, apply such proceeds for any necessary repair, re-construction, reinstatement, replacement, improvement, delivery or installation 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.

ARTICLE 27: FORCE MAJEURE

27.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Article 27.2, 27.3 and 27.4 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 (i) is beyond the reasonable control of the Affected Party; and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (iii) has Material Adverse Effect on the Affected Party.

27.2 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 ionising 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 Article 27.3;
- c. any failure or delay of a Subcontractor 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 Subcontractor;
- 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.

27.3 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. 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;
- c. any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- d. any failure or delay of a Subcontractor 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 Subcontractor;
- e. any Indirect Political Event that causes a Non-Political Event; or
- f. any event or circumstances of a nature analogous to any of the foregoing.

27.4 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 34 and its effect, in financial terms, exceeds the sum specified in Article 35.1;
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Subcontractors;
- c. unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Subcontractors 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 Subcontractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- d. any failure or delay of a Subcontractor 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 Subcontractor; or

- e. any event or circumstance of a nature analogous to any of the foregoing.

27.5 Duty to report Force Majeure Event

27.5.1 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 27 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.

27.5.2 The Affected Party shall not be entitled to any relief 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.

27.5.3 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 27.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

27.6 Effect of Force Majeure Event on the Concession

27.6.1 Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the period set forth in Article 19 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

27.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- a. before COD of the Project, the Concession Period and the dates set forth in the Project Implementation Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- b. after COD of the Project, 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.

27.7 Allocation of costs arising out of Force Majeure

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

27.7.2 Upon occurrence of a Force Majeure Event after the Compliance Date, the costs incurred and attributable to such event and directly relating to the Project i.e. 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, 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 loss of Concessionaire's share of project revenues 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.

27.7.3 Save and except as expressly provided in this Article 27, 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.

27.8 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 27, 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.

27.9 Termination Payment for Force Majeure Event

27.9.1 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 (which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost) less Insurance Cover.

27.9.2 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 (which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost) 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 (which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost); and
- (b) 100% (one hundred per cent) of the Adjusted Equity.

27.9.3 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 Article 27.9 i.e Authority's Event of Default.

27.10 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.

27.11 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 28: DISPUTE RESOLUTION

28.1 Dispute Resolution

28.1.1 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.

28.1.2 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.

28.2 Arbitration

28.2.1 Any Dispute which is not resolved amicably, as provided in Article 28.1, shall be finally decided by reference to arbitration by a Arbitral Tribunal appointed in accordance with Clause 28.2.2. 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 the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the city of Panchkula, and the language of arbitration proceedings shall be English.

28.2.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

28.2.3 The arbitral tribunal shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 38 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.

28.2.4 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.

28.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any adjudication proceedings hereunder

28.3 Costs associated with Dispute Resolution

28.3.1 The cost incurred on adjudication including *inter alia* the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.

28.3.2 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 27.

28.4 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 28. The provision of this Dispute Resolution Procedure shall be binding upon the successors; assigns and any trustee or receivers of either the Authority or the Concessionaire.

ARTICLE 29: INDEPENDENT ENGINEER

29.1 Appointment

- a. The Independent Engineer shall either be a panel of engineers nominated by GoH supported by independent quality control & monitoring experts or a reputed firm of engineers having adequate experience in similar projects, who shall monitor the Project for the purposes of determining and ensuring compliance with Technical Requirements, the Performance Standards and costs of the Project.
- b. The procedure for the selection and appointment of the Independent Engineer shall be finalized by the Authority in consultation with the Concessionaire.
- c. The cost for the Independent Engineer will be shared equally between the Authority & the Concessionaire. The Concessionaire shall submit its share of payment to the Authority and thereafter, the entire payment for the Independent Engineer shall be made by the Authority.
- d. The Authority shall ensure that the Person appointed as Independent Engineer signs a deed of adherence to this Concession Agreement, thereby binding itself *mutatis mutandis* to the terms of this Concession Agreement.

29.2 Inspection

- a. During the Construction Period, the Independent Engineer shall, at all reasonable times and upon reasonable notice, have access to the Project Site for the purpose of discharging its duties under this Concession Agreement.
- b. The Independent Engineer shall undertake inspections of the Project Site, regularly and at such times as it deems appropriate, to determine the progress in the construction of the project and the extent of compliance with Technical Requirements/ Performance Standards stipulated for the construction of project and notify the Authority and the Concessionaire of any deviations there from within 7 (seven) days of such inspections.

29.3 Certificates

The Independent Engineer shall decide upon, issue and sign all certificates required at various stages in this Concession Agreement in accordance with the provisions of this Concession Agreement.

29.4 Authorized signatories

The Independent Engineer shall designate and notify to the Authority and the Concessionaire one/two representatives to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated representatives by any other person.

29.5 Role as Expert

The Independent Engineer shall function in the capacity of an expert (and not as an Arbitrator). If the Authority disputes the Concessionaire's statement in connection with, or arising out of, this Concession Agreement or the execution of the Works, including any dispute as to any opinion, instruction, determination, certification or valuation of Authority, the Authority shall refer such matter to the Independent Engineer. The Parties have agreed that the findings of the Independent Engineer under this Article shall be final and binding upon the Parties for all matters relating to:

- i) Measurements;
- ii) Technical Requirements and the interpretation thereof;
- iii) Performance Standards and interpretation thereof; and
- iv) Performance Standards and interpretation thereof.

29.6 Tenure

The tenure of the Independent Engineer, under this Concession Agreement, shall be from the Compliance Date to the date of issue of the Construction Completion Certificate.

For more information, refer to **Schedule VI** of this Agreement i.e. TOR of an Independent Engineer.

ARTICLE 30 : MAINTENANCE BOARD

30.1 Appointment

- a. Prior to the Commercial Operations Date, the Authority shall appoint a Maintenance Board. The Maintenance Board shall consist of representatives of the following members:
 - (i) Two representatives of Authority,
 - (ii) Two representatives of Concessionaire,
 - (iii) Any other member duly nominated by the Authority,
- b. The representative of the Authority shall act as the Chairman of the Maintenance Board and one of the representatives of the Authority shall be the Convener. Wherever possible, the Maintenance Board shall act by consensus. If consensus is not reached, it shall take vote, and if there is a tie in such vote, the representative of the Authority shall have the casting vote.

30.2 Powers and Duties

- a. The Maintenance Board shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development, operation and maintenance of the Project, including, (without limitation):
 - i. Compliance to the O&M Manual as submitted by Concessionaire;
 - ii. Review the Concessionaire's monthly project reports;
 - iii. Review and verify the implementation of Variations;
 - iv. Recommend for approval by the Authority any improvements or modifications (that are not Variations) proposed by any of the members of the Maintenance Board;
 - v. Review compliance Performance Standard requirements;
 - vi. Recommend for approval by Authority any modifications or capacity addition to the Project as per by laws, proposed by the Concessionaire;
 - vii. Recommend for approval by Authority any other matter which it deems necessary for operation, development and maintenance of project facility;
 - viii. Recommend the Authority to impose penalties on the Concessionaire as stipulated in Article 15.2 (b).
 - ix. Review matters arising out of complaint register. The Board may defer the matter for consideration and approval to the Authority.
- b. The Maintenance Board shall have the power to appoint Expert or specialist Person in any area required, for a review of the operation, maintenance and planning of the Project. Such persons shall act as an Expert (the “**Expert**”), whose expert professional opinion, once confirmed by the Maintenance Board, shall be binding on the Parties and the Maintenance Board.
- c. The Maintenance Board shall, either through in-house capability or by appointing any Expert/ specialist, carry out structural safety audit after every 10 (ten) years, throughout the Concession Period.
- d. Without limitation to the generality of the foregoing Articles, the Maintenance Board shall have the power to appoint a valuer as an Expert to undertake and determine the cost of repairs required as well as for the valuation of any other Works.

- e. The Concessionaire and the Authority shall extend full co-operation to the Maintenance Board and to any Expert appointed by the Maintenance Board. All the expenses of the Maintenance Board shall be borne equally between the Parties.
- f. The Maintenance Board shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the convener and notified to all the members of the Maintenance Board at least 14 (fourteen) days before the date of the meeting.

ARTICLE 31: DELETED

ARTICLE 32: DISCLOSURE

32.1 Disclosure of Specified Documents

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

32.2 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 and Project Site, 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.

32.3 Notwithstanding the provisions of Articles 32.1 and 32.2, 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 Articles.

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Articles 32.1 and 32.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 33: - DELETED

ARTICLE 34: TRANSFER OF THE PROJECT

- (a) On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/ Project Assets and the Project/Project Land on '**as is where basis**'. The Concessionaire shall also deliver to the Authority or its nominated agency on such date such operating manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Authority or its nominated agency to enable it to continue the operation of the project either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of the Project Assets and the project shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority or its nominated agency.
- (b) The Concessionaire shall to the extent possible assign to the Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.
- (c) The Concessionaire shall, to the extent possible at the time of transfer, assign to the Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- (d) The transfer of the project shall be treated as a transfer on a going concern basis. The transfer of immovable property comprising the Project shall be deemed to be a termination of all sub-license agreement/arrangements in relation to the Project Site and the title to all such immovable property shall automatically revert to the Authority or its nominated agency. The movable property comprising Project Assets shall be deemed to be transferred to the Authority or its nominated agency by constructive delivery and possession.
- (e) At the time of transfer, the project shall be in such condition as is reasonable under all the circumstances taking into account their age, the design, materials used and maintenance carried out.
- (f) 6 (six) months prior to the Transfer Date, the Authority shall be entitled to appoint any consulting engineer to assess the condition of the project. Such consulting engineer shall be entitled to have free access to the Project Site to inspect the project, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the project.
- (g) Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the project, unless such loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Agreement.
- (h) The Concessionaire shall provide fair and just compensation to its employees as required under the Applicable Laws or under this Agreement and shall indemnify the Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The

Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.

- (i) On the Transfer Date, all the sub-license agreements/arrangements shall be terminated. The Concessionaire shall hand over the Project Site and Project Assets to the Authority or

its nominated agency at zero cost and the Concessionaire, its Subcontractors, agents, employees and sublicenses shall vacate the Project Site and Project Assets.

- (j) From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Authority and the Authority or its nominated agency shall take over the project and the Project Assets and their operation and maintenance and any other rights or obligations arising out of this Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Agreement and provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Agreement.

On the Transfer Date, the Concessionaire shall transfer and assign to the Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/Project Assets and the Project/Project Land. Any delay in vacating the Project Site and transferring the Project in accordance with the provisions of Article 34 to the Authority by the Concessionaire beyond the Transfer Date shall lead to imposition of penalty on the Concessionaire. In such a case, the Concessionaire shall be liable to pay the Authority, for each day of delay beyond the transfer date, an amount computed as per the following formula:

However, upon request in writing by the Concessionaire, the Authority may, at its sole discretion and in writing, waive fully or partially the penalty imposed on the Concessionaire, provided the Authority is convinced of the reasons stated by the Concessionaire for not vacating the Project Site and transferring the Project on the Transfer Date.

- (k) On completion of the transfer by the Concessionaire to the Authority of all rights, titles and interests in the Project Site and Project Assets, the Authority shall issue a Concession Agreement Completion Certificate to the Concessionaire. The Concession Agreement Completion Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the Project Site / Project Assets by the Concessionaire and their vesting in the Authority hereto.
- (l) After taking over the Project from the Concessionaire, the Authority may bid the Project as running concern for its O&M through an open and competitive bidding process by giving the Concessionaire a first right of refusal on such terms and conditions as specified by the Authority and which are mutually agreed between the Parties.
- (m) The Concessionaire at all times during the Concession Period shall maintain an Asset/Inventory Register containing the list of all movable and immovable assets as associated with the Project. The Concessionaire shall handover the associated assets to the Authority at the time of transfer of the Project.

ARTICLE 35: CHANGE IN LAWS

35.1 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. 50,00,000/- (Rupees Fifty Lakhs only) and 0.5% (zero point five percent) of the Concessionaire's share and/ or commercial charges 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 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 Article 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.2 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. 50,00,000/- (Rupees Fifty Lakhs only) and 0.5% (zero point five percent) of the revenue being collected by the Concessionaire 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 with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 35 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Articles 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Laws 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 Laws had occurred.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 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 2 (two) years from the close of such Accounting Year.

35.5 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 36: DISCLAIMER

36.1 Disclaimer

- 36.1.1 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 Request for Proposals, Scope of the Project, specifications and standards, Project Site, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 36.1.2 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 36.1.1 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.
- 36.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 36.1.1 above shall not vitiate this Agreement, or render it voidable.
- 36.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 36.1.1 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 36.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 36.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 36.1.5 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.

ARTICLE 37: MISCELLANEOUS PROVISIONS

37.1 Governing Law and Jurisdiction

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

37.2 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provisions 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 authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner. 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.

37.3 Exclusion of implied warranties

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

37.4 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Concession or otherwise.

37.5 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions of the 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.

37.6 Custody of Documents

The Construction Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this Agreement, the Concessionaire shall provide 2 (two) copies for the use of the Authority.

37.7 Copyright

The Concessionaire, as beneficial owner, hereby transfers to the Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the

Concessionaire, in relation to the Construction Documents made or to be made by or on behalf of the Concessionaire, during the Concession Period for which such copyright subsists in such works. The Authority hereby grants to the Concessionaire non-exclusive royalty-free license to use such documents and drawings solely for the purpose of complying with its obligations under this Concession Agreement.

37.8 Use of the Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Authority to the Concessionaire shall (as between the Parties) remain the property of the Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Agreement.

37.9 Compliance with Applicable Laws

- a. The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Applicable Laws of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the plant and machinery and materials and required for completion of the Works. The Authority and the Concessionaire shall comply with all the laws as applicable.
- b. In the performance of this Agreement, the Concessionaire shall ascertain and comply with all Applicable Laws. The Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Applicable Laws.
- c. The Concessionaire shall indemnify the Authority, the Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire, any Subcontractor or their respective agents or employees to comply with Applicable Laws in respect to the construction, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.
- d. If the Concessionaire or the Authority finds any divergence between any Applicable Law and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with Article 14.

37.10 Joint and Several Liability

If the Concessionaire is a consortium of two or more Persons, all such Persons shall be jointly and severally liable to the Authority for the fulfillment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as Lead Member with Authority to bind the consortium and each of its members. The composition or the constitution of the consortium shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Agreement.

37.11 Notifications

- a. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- b. All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- c. In the case of the Concessionaire, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Authority by the Concessionaire from time to time.

Name of Concessionaire's Representative:

Address for communication:

- d. In the case of the Authority, all communication shall be addressed to the:

37.12 Language

The language of this Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for construction, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

37.13 Counterparts

This Concession may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS whereof the Parties have executed and delivered this Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of

The Authority by:

_____ (Signature)
_____ (Name)
_____ (Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of

The Concessionaire by:

_____ (Signature)
_____ (Name)
_____ (Designation)

In the presence of

1. _____ (Signature) _____ (Name)
_____ (Designation)
2. _____ (Signature) _____ (Name)
_____ (Designation)

LIST OF SCHEDULES: -

(Concession Agreement – Development, Completion, Operation & Maintenance of Mustard Oil Mill at Rampur, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis in the State of Haryana)

Schedule I: - Project Site description

Schedule II: - Project facilities

Schedule III: - Scope of work, Technical Requirements & Performance Standards

Schedule IV: - Format of Performance Security

Schedule V: - List of Applicable Permits

Schedule VI: - Terms of Reference of Independent Engineer

Schedule VII: - Design Approval Committee

Schedule VIII: - Escrow Agreement

Schedule IX: - Completion and Provisional Certificate

Schedule X: - Vesting Certificate

Schedule XI: - Substitution Agreement

Schedule XII: - Declaration of License

SCHEDULE- I PROJECT SITE DESCRIPTION

- **Location:**

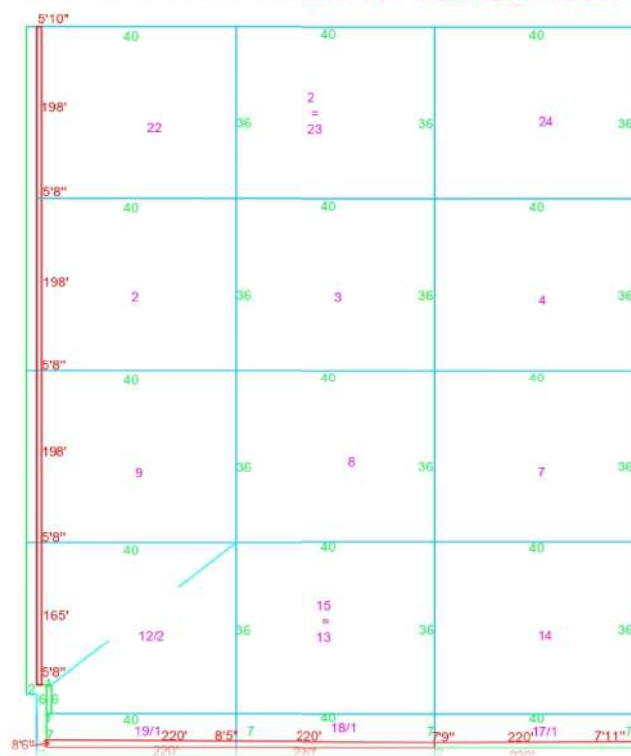
The site is located at Rampur is a vacant plot of 12 acres located approximately 7 kms from Rewari and it is the proposed site for Mustard Oil Milling unit. The Project Site enjoys good connectivity with the key transport hubs and tourist locations of the city as mentioned in Table 1 below.

Figure 1: Project Location and Connectivity



Figure 2: Project Site Layout

DEMARICATION MAP OF LAND SITE AS PER SHOWN BY
REVENUE DEPARTMENT AT VILLAGE:- RAMPURA (H R)



The distance of the Project Site from key locations in Rewari is given below:

Table 1: Distance of the site from Key Location

Key Location	Distance (in Km)
National Highway NH11	8.2 KM
State Highway SH24	45.9 KM
Railway	3.1 KM
Nearest Airport	63.87

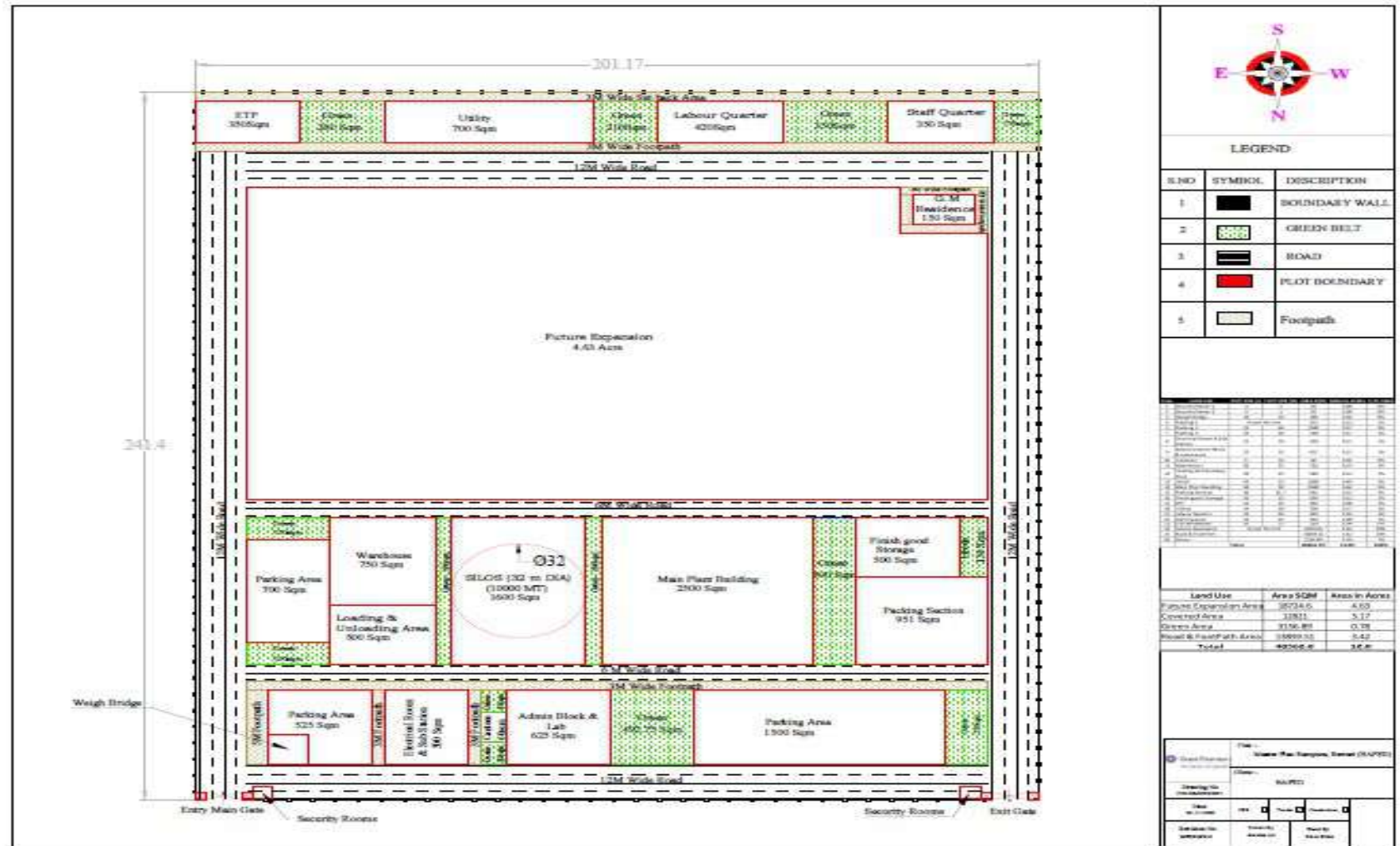
- **Master Layout Plan**

- The layout plan for proposed Rewari plant has been prepared in an area of 12 acres. Out of 12 acres, an area of 4.63 acres is marked for open space for future expansion of plant.

Table 2: Area Usage

1	Warehouse	750	2%
2	Loading & unloading area	500	1%
3	Silos	1600	3%
4	Main plant building	2500	5%
5	Packing section	951	2%
6	Finish good storage	500	1%
7	ETP	350	1%
8	Utility	700	1%
9	Electrical Room & Substation	500	1%
10	Weighbridge	100	0.2%
11	Administrative Block & Laboratory	625	1%
12	Canteen	60	0.1%
13	Labour Quarters	420	1%
14	Staff Quarters	350	1%
15	GM Residence	150	0.3%
16	Security Room -1	20	0.04%
17	Security Room -2	20	0.04%
18	Parking -1	525	1%
19	Parking -2	1500	3%
20	Parking -3	700	1%
21	Road Network Length	13859.51	29%
22	Green Belt	3156.89	7%
23	Future Expansion	18724.60	39%
	Total	48561.97	100%

Figure 3: Draft Master Layout Plan



SCHEDULE- II PROJECT FACILITIES

- 1. Project Facilities:** The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement as defined in Schedule III of this agreement.
- 2. Mandatory Project Facilities:** The Concessionaire shall construct the Mandatory Project Facilities required to adequately and efficiently support the Project and shall include but not be limited to adequate:
 - i water supply and distribution;
 - ii electricity supply and distribution with generator sets;
 - iii sewage and sanitation facilities with zero waste management system;
 - iv changing rooms (separate for ladies and gents);
 - v toilets (separate for ladies and gents);
 - vi tree plantation and green areas;
 - vii Canteens
 - viii Labour Quarters
 - ix parking facilities; and
 - x such other facilities as may be necessary and required to establish and operate and the Project in accordance with the specifications and standards.

SCHEDULE- III SCOPE OF WORK, TECHNICAL REQUIREMENTS & PERFORMANCE STANDARDS

1.1. Broad Scope of Work

The scope of work includes but not limited to

1. Taking over of the site on “**as is where is basis**” and Plan, Design, Finance and establish the facility, including Construction & completion of remaining work including civil works, water, electricity work, sanitation work, air conditioning and firefighting provisions, etc., provision of relevant assets, equipment, faculty, Clearances/approvals, ancillary services and amenities related to the Project conforming to Building Bye-Laws, Municipal Corporation Act and regulations and as per terms of the Agreement and Schedules hereof.
2. Site clearance and cordoning off the site; providing and deputing of Security including Dismantling of existing structures if required, removal of debris (shall be property of Concessionaire) etc.
3. Completion as per the concept and plan approved by the Design Approval Committee and in conformity to the standards set forth in this schedule including, providing installation of all internal and external services.
4. Furnishing of project facility and using premium quality of material for the same so that to match the industry standard
5. Use of premium quality materials for Civil/ Electrical/ Public Health works, internal and external works, plant & machinery and all related equipments to be in accordance with the industry standard.
6. Meet the requirements laid down by the Competent Authorities.
7. Follow Eco-Friendly Practices for Sewage treatment Plant, Rainwater Harvesting, Waste Management and Pollution Control.
8. Performance and fulfillment of all obligations in accordance with the provisions of the Agreement and Schedules thereof and matters incidental thereto or necessary for the performance of any or all of the obligations under the Agreement.
9. Follow the standards and guidelines laid down by respective relevant authorities.

1.2. Design & Erection

The following general considerations have to be kept in view for all items for selection and procurement of equipment & auxiliary components:

- i. System Design, Fabrication Quality and Reliability in service
- ii. Compliance with national and international codes and standards as well as the statutory regulations in existence for the system and components of supply.
- iii. Ease of operation and maintenance including any necessary measures for ensuring safety of personnel and equipment.
- iv. Standardization of components wherever feasible.

1.3. Technical Aspects

1. Codes and standards to be followed for equipment fabrication shall meet the requirements of Food Safety and Standards Authority of India (FSSAI)/ Bureau of Indian Standards
2. Latest Utility / Energy saving/conservation systems should be incorporated
3. Have at least IP54 and upwards protection for electrical controls and drive systems
4. All gearboxes and chains to have food grade lubes and grease only.
5. All individual equipment and controls shall be provided with automatic isolation valves as well as manual valves in the bypass lines
6. All individual equipment and control panels shall be provided with emergency shut-off switches.

2 SPECIFICATIONS FOR DESIGN, ENGINEERING AND CONSTRUCTION WORKS

2.1 MINIMUM BUILDING SPECIFICATIONS

The main processing building consisting of Cleaning Area, Processing Area, Filtration Area, Oil Cake Packaging Area shall be constructed with civil works for foundation up to plinth level and remaining super structure would be based on PEB. The pre-engineered building shall be constructed using MS structure as primary structure. All the civil and structural works mentioned should be completed as per specifications and requirement. All the requirements and execution should be as per latest industry standards, following the official guidelines, norms and relevant IS codes.

2.2 MINIMUM CONSTRUCTION SPECIFICATIONS:

Premium quality building material, sanitary fixtures, electrical fixtures, proper health standards etc. shall be used.

2.3 Utilities

2.3.1 TECHNICAL SPECIFICATIONS FOR PLUMBING WORKS

All vitreous sanitary appliances (Vitreous China) shall conform to IS 2556 (Part-I) general requirements.

2.3.2 TECHNICAL SPECIFICATIONS FOR ELECTRICAL WORKS

The entire electrical installation shall be carried out in accordance with latest Indian Electricity Code and relevant IS Standards up to date. The work shall also comply with all statutory regulations of supply agencies, state inspection authorities and fire regulations. You shall be responsible for obtaining all necessary statutory approvals, clearances, sanctions, drawing approvals and getting actual connections. Definition of terms pertaining to all technical requirements as per IEC / IS: 732 - 1989 shall apply. Standby DG Set of adequate capacity shall be provided to meet the emergency

load requirements or for backup during power outages along with the secondary backup for the minimum operation.

2.3.3 TECHNICAL SEPCIFICATIONS FOR FIRE FIGHTING WORKS

The entire works shall comprise of supply, installation, testing & commissioning of External & Internal Hydrant system & Hose reel Sprinkler System with Alarm Valve System Pipes with all fittings & flanges, valves, hangers, supports, Isolation valves Portable Fire Extinguishers Fire Pumps & Accessories of plant. The scope includes all the related things like testing at manufacturers' works, packaging, transportation, shipping, unloading at port, transportation to site, unloading, storage, insurance, transportation from stores to erection site etc. System Design Requirements. Adequate underground/overhead water storage shall be provided to cater for a day requirement of domestic flushing and firefighting purpose.

2.3.4 OTHERS ITEMS

- i. Adequate Boiler shall be provided for processing.
- ii. Adequate Air Compressor shall be provided for packaging unit.
- iii. Any other items required should be considered.

3 SPECIFICATIONS FOR PLANT & MACHINERY

The principal of the Hafed Mustard Oil processing is to make sure the mustard oil extraction will be 100% natural and no additives will be added in the oil. Based on these principals the concessionaire has to manufacture 2 different categories of mustard oil first True Kachi Ghani oil which will be only 15 to 18 % of the mustard Seed weight and the remaining of 18 to 22% will be by Oil expeller technique.

The concessionaire should follow the guidelines of FSSI, APEDA, F.A.O., CPCB, HPCB, while making the project and do not make any process which will void these guidelines. The tentative capacities of the proposed project should be as follows: -

S. No	Particulars	Units	Capacity
1.	Silos	MT	10000
2.	Processing Plant	MTPD	150
3.	Expeller	MTPD	150
4.	Filtration Unit	MTPD	150
5.	Pet Blow Moulding & Packaging Unit		1L, 2L, 5L & 15L
6.	Pet Blow Moulding Machine for 1 Liter & 2 Liter	BPH	100
7.	1 Liter & 2 Liter – Filling Line	TPH	2
8.	5 Liter & 15 Liter – Filling Line	TPH	1
9.	Oil Cake Packaging Unit	MTPD	35

All machines will be in AISI 304 following all safety norms and quality control norms while processing & packaging the oil.

Note: - The machine list and capacities mentioned above are tentative. Any other equipments required for installation and commissioning of the project will be considered the part of this RFP

A small lab should be maintained for the regular interval of quality control check of mustard seed and oil both so that the quality of the Oil should be maintained.

To maintain hygiene inside the plants the worker entry should be made with proper arrangement for worker entry and dress change as per Norms and Guidelines of HACCP.

4. Major Maintenance Work

The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the Project and all its components. The work shall conform to norms as laid out in PWD specifications/IS codes/NBC codes for functional requirements of buildings etc. The performance standards shall match the service standard of comparable international practice for buildings.

SCHEDULE IV: FORMAT OF PERFORMANCE SECURITY

Bank Guarantee No.

Issuer of Bank Guarantee

(Name of Bank)

(Hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee

Details of the Bank of the Beneficiary

Bank: <>

Branch:<>

IFSC Code:<>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Concession Agreement (hereinafter referred to as the "Concession") to be executed amongst HAFED [Hereinafter referred to as the "Concessions Authority"] and _____ (name of the Selected Bidder) [hereinafter referred to as the "Concessionaire"] for the Development, Operations and Maintenance of Mustard Oil Mill located at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) Basis [hereinafter referred to as the "**Project**"], provided, however, such context of the Bank Guarantee or reference to the Concession in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e "Performance Security" shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Concessionaire.

As per the terms of the Concession Agreement, the Concessionaire is required to furnish to The Authority, an unconditional and irrevocable bank guarantee for an amount of Rs _____ (Rupees _____ Crores only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement for the Concession Period.

Operative part of the Bank Guarantee

1. At the request of the Concessionaire, we _____ (name and address of the bank), hereinafter referred to as the ("Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the guarantor and are responsible to the Authority i.e the beneficiary

- on behalf of the Bidder , upto a total sum of Rs _____Crores (Rupees _____ Crores only), such sum being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Concessionaire and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Concessionaire or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs ____ Crores (Rupees _____ Crores only).
 3. We hereby waive the necessity of the Authority to demand the said amount from the Concessionaire first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
 4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Concessionaire, which are recoverable by the Authority by invocation of this Guarantee.
 5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Concessionaire. We undertake that to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Authority.
 6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _____ Crores (Rupees _____ Crores only) notwithstanding any dispute or disputes raised by the Concessionaire or anyone else in any suit or proceedings before any dispute review Independent Engineer, arbitrator, court, tribunal or other Authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Concessionaire shall have no claim against us for making such payment.
 7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till_____.
 8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable/negotiable at the Bank's branch at Panchkula having address at_____.

Notwithstanding anytime contained herein:

1. Our liability under this Bank Guarantee shall not exceed Rs _____Crores (Rupees _____ Crores only).
2. The unconditional and irrevocable Bank Guarantee shall be valid w.e.f _____ to _____.
3. We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a written claim or demand on or before_____.

SCHEDULE-V LIST OF APPLICABLE PERMITS

The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the appointed date, save and except to the waiver granted by the Authority in accordance with this Agreement.

S.No.	Indicative Compliances List	Departments	Stages
1.	Consent to Establish	Pollution Control Board	Pre-Construction
2.	Master/Building Plan Approval	Department of Housing & Urban Development Authority	Pre-Construction
3.	Water Extraction (Boring of Tube well)	Central Ground Water Authority (CGWA)	Pre-Construction
4.	Electricity Connection	State Power Connection Limited	Pre- Construction
5.	Approval of construction activity and building plan	a. Town and Country Planning b. Municipal & local Authorities c. Chief Inspector of Factories d. Pollution Control Board e. Electricity Board	Pre-Construction
6.	Water & Sewer Connection	Municipal Corporation /Local Government	Construction
7.	Building Stability Certificate	Directorate of Factories	Post Construction
8.	Consent to Operate	Pollution Control Board	Operation
9.	Fire Safety Certificate	Department of Fire Services	Operation
10.	Weights & Measures	Inspector of Weights and Measures	Operation
11.	Plastic Waste Management	Pollution Control Board	Operation
12.	Solid Waste Management	Municipal Corporation	Operation
13.	Labour certificate incase more than 20 workers working at the site	Labour Department	Operation
14.	FSSAI	Chief Medical Officer, Food Inspector	Operation
15.	Electricity load certificate before start final operation	Chief electrical Inspector,	Operation
16.	ISI certificate	Regional office of the Bureau of Indian Standards (BIS)	Operation
17.	Quality Marking Certificate	Quality Marking Centre of the State Government	Operation

SCHEDULE VI: TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1. Role and functions of the Independent Engineer

1.1 The role and functions of the Engineer shall include the following:

- (i) review of the Drawings and Documents;
- (ii) review, inspection and monitoring of Construction Works;
- (iii) conducting Test on completion of construction and issuing completion/ Provisional certificate;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of Disputes; and
- (vii) undertaking all other duties and functions in accordance with the Agreement.

1.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

2. Development and Construction Period

2.1 During the Development and Construction Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and specifications and standards.

2.1 The Independent Engineer shall review any modified Drawings or supporting documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents. The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

2.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report. The Independent Engineer shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the specifications and standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer

shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 2.3 The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 2.4 For determining that the Construction Works conform to specifications and standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner and shall monitor and review the results thereof.
- 2.5 The sample size of the tests shall comprise 20% (twenty percent) of the quantity or number of tests prescribed for each category or type of tests in Quality Control manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten percent) for certain categories or types of tests.
- 2.6 The timing of tests and the criteria for acceptance/ rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 2.7 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the specifications and standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 2.8 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved.

Upon receipt of a report from the Concessionaire forthwith, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.

- 2.9 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 2.10 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the

Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.

- 2.11 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 2.12 The Independent Engineer shall carry out or cause to be carried out all the Tests specified in Schedule-III and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 2.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 13.
- 2.13 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 2.14 The Independent Engineer shall aid and advise the Concessionaire in preparing the O&M Manual.

3 Termination

3.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount; it shall recommend appropriation of the same from the Performance Security.

3.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

4 Determination of costs and time

- 4.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 4.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

5 Assistance in Dispute resolution

- 5.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 5.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

6 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

7 Miscellaneous

- 7.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 7.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 7.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 7.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 7.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

SCHEDULE- VII DESIGN APPROVAL COMMITTEE

For the approval of the design of the “Project”, the Authority shall constitute a Committee with following members:

- a. General Manager, HAFED.
- b. Plant Head, HAFED
- c. Consultant Appointed by HAFED.
- d. Engineering Team, HAFED
- e. Any other members as nominated by HAFED.

The members of the Committee shall be responsible for approving the design submitted by the Concessionaire and give suggestions for the Project. The constitution of committee may change at the discretion of the “Authority”.

SCHEDULE- VIII: ESCROW AGREEMENT

THIS ESCROW AGREEMENT (hereinafter referred to as the “**Agreement**”) is entered into on this the day of 20.....

AMONGST

- I. 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, permitted assigns and substitutes);

And

- II. (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);

And

- III. (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

And

- IV. **Haryana State Co-operative Supply and Marketing Federation Limited**, having its office at HAFED Building, Sector 5, Panchkula, Haryana - 134108 acting through/ represented by **HAFED**, (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

- V. *Collectively referred to as “**Parties**”, and individually as “**Party**”.*

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for the Development, Operation and Maintenance of Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis in the State of Haryana, 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) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

- a. 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:
 “Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;
- b. **“Concession Agreement”** means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;
- c. **“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority to the Concessionaire asking the latter to cure the breach or default specified in such notice;
- d. **“Escrow Account”** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;
- e. **“Escrow Default”** shall have the meaning ascribed thereto in Clause 6.1;
- f. **“Lenders’ Representative”** means the person referred to as the Lenders’ Representative in the foregoing Recitals;
- g. **“Parties”** means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually;
- h. **“Payment Date”** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and
- i. **“Sub-Accounts”** means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

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 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.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Compliance date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire after consultation with the Lenders' Representative, shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account. **Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

In case of Option 1, the below Clause may be read as below:-

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders or by way of any Subordinated Debt and the Authority (if any);
- (b) all funds received by the Concessionaire from its shareholders, in any manner or form;
- (c) all Fee and other revenues from or in respect of the Project, including the proceeds of any rentals, deposits or capital receipts; and
- (d) all payments by the Authority, after deduction of any outstanding Annual Concession Fee;
- (e) all proceeds received pursuant to any insurance claims; and
- (f) Termination Payments.

In case of Option 2, the above Clause may be read as below:-

The SPV shall deposit or cause to deposit the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders or by way of any Subordinated Debt and the Authority (if any);
- (b) all funds received by the SPV from its shareholders, in any manner or form;
- (c) all Fee and any other revenues from or in respect of the Project (**except the fee earned by the Concessionaire from the sale of oil & oil cakes post utilizing a certain percentage of the plant capacity from its entitled share of 26%**) including the proceeds of any rentals, deposits or capital receipts;

(d) Deleted

(e) all proceeds received pursuant to any insurance claims; and Termination Payments

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) any fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (b) Termination Payments.

3.3 Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Annual Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.
Deposits by Senior Lenders.

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Subcontractors under and in accordance with the express provisions contained in this behalf in the Financing Agreements

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

In case of Option 1, the below Clause may be read as below:-

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. Annual Concession Fee due and payable to the Authority;
- c. all payments relating to Construction of Project;

- d. O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance with Good Industry Practice;
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. monthly proportionate provision of debt service payment due in an Accounting Year;
- g. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and
- h. balance, if any, in accordance with the instructions of the Concessionaire.

In case of Option 2, the above Clause may be read as below:-

At the beginning of every month, or at such intervals as the Lenders' Representative, the SPV may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a. Deleted
- b. Operating Expenses per MT to be paid by the Authority to the Concessionaire
- c. all payments relating to Construction of Project;
- d. O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance with Good Industry Practice.
- e. O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. monthly proportionate provision of debt service payment due in an Accounting Year;
- g. balance, if any, in accordance with the instructions of the Concessionaire.
- h. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire; and

Amount equivalent to 26% of profit share to be paid by the Authority to the Concessionaire on yearly basis

The amounts specified in Clause 4.1.1 (a) to (h) constitute the permitted payments. For each Year, a performa would be separately provided by the Concessionaire to the Escrow Bank, with the permission of Lenders Representative, not later than 60 (sixty) days prior to the first day of each Year.

- 4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Authority and the Lenders' Representative if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a. all taxes due and payable by the Concessionaire for and in respect of the Project;
- b. outstanding Annual Concession Fee;

- c. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- d. cost of repair and restoration of damages to the Project on account of a Non-Political Event;
- e. all outstanding debt and interest thereon;
- f. retention and payments relating to the liability for defects and deficiencies set forth in Article 22.6;
- g. incurred or accrued O&M Expenses;
- h. any other payments required to be made under this Agreement; and
- i. balance, if any, in accordance with the instructions of the Concessionaire.

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

In case of Option 2, the above point may be read as below:-

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- i. Deleted
- ii. outstanding Operating Expenses per MT of oil manufactured**
- iii. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire.
- iv. cost of repair and restoration of damages to the Project on account of a Non- Political Event.
- v. all outstanding debt and interest thereon.
- vi. retention and payments relating to the liability for defects and deficiencies set forth in Article 22.6.
- vii. incurred or accrued O&M Expenses.
- viii. any other payments required to be made under this Agreement; and
balance, if any, in accordance with the instructions of the Concessionaire

The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or

installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this Agreement.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 21 of the Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (Seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire to the relevant Payment Dates), the Escrow Bank shall notify the Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative and the Authority of any notice or document received by the Escrow Bank in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or

liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement. **Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representatives terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative and the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.2 Closure of Escrow Account

The Escrow Account shall be operated and maintained till the date of Termination of the Concession Agreement and thereafter, the Concessionaire shall be entitled to discontinue the same and terminate the Escrow Agreement.

Subject to the above, the Escrow Bank shall, at the request of the Concessionaire made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

Any lender providing financial assistance for the Project and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation matters not covered under this Agreement such as the rights and obligations of lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority and Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense 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.
- 9.1.2 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 fulfill 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.
- 9.1.3 The Escrow Bank 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 Escrow Bank to fulfill 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 Escrow Bank, its officers, servants and agents.

9.2 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 9.1 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, which approval shall not 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.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with provisions of Arbitration and Conciliation Act, 1996 or any modification or amendment thereof any such rules as may be mutually agreed by the Parties for conducting the to the arbitration proceedings under this Clause 10.1.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Chandigarh and the language of the arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 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 Chandigarh shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 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

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).

11.3 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.

11.4 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 authorized representatives of the Parties.

11.5 Waiver

11.5.1 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 authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any 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 any 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.

11.6 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.

11.7 Survival

11.7.1 **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.

11.7.2 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.

11.8 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 10.1 of this Agreement or otherwise.

11.9 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.

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and 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 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 a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business 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.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized 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 authorized representative by similar notice.

11.13 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.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

2.

SIGNED, SEALED AND DELIVERED

For and on behalf of
SENIOR LENDERS by the
Lenders' Representative:

(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)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SCHEDULE- IX

COMPLETION CERTIFICATE

- 1 I,(Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated(the “**Agreement**”), for Development, Operation and Maintenance of Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer in the State of Haryana (the “**Project**”) through(Name of Concessionaire), hereby certify that the Tests specified in Article 13 of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works and services forming part of development of Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this theday of20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of 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 Development, Operation and Maintenance of Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis in the State of Haryana (the “**Project**”) through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
2. The Construction and development Works 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 am 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, pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project is

hereby provisionally declared fit for entry into commercial operation on this theday of
.....20....

ACCEPTED, SIGNED, SEALED AND DELIVERED

For and on Behalf of CONCESSIONAIRE by:

(Signature)

(Name and Designation)

(Address)

SIGNED, SELAED AND DELIVERED

For and on behalf INDEPENDENT ENGINEER by:

(Signature)

(Name and Designation)

(Address)

SCHEDULE X VESTING CERTIFICATE

- 1 Haryana State Co-operative Supply and Marketing Federation Limited, (“**the Authority**”) refers to the Concession Agreement dated..... (the “**Agreement**”) entered into with the(the “**Concessionaire**”) for Development, Operation and Maintenance of Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis ” (the “**Project**”)
- 2 The Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Article 23.1 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

For and on behalf of

CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

The Authority by:

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

SCHEDULE– XI SUBSTITUTION AGREEMENT

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

AMONGST

1. Haryana State Co-operative Supply and Marketing Federation Limited, having its principal office at HAFED Building, Sector 5, Panchkula, Haryana - 134108 (hereinafter referred to as the Authority which expression shall, unless the context otherwise requires, include its successors and assigns); and
2. [*******Limited**], a company incorporated under the provisions of the Companies Act, 1956/2013 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); and
3. ****[NAME AND PARTICULARS of Lenders Representative] and having its registered office at ****, acting for and on behalf of the Lenders as their duly authorized 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 ***with the Concessionaire (the “**Concession Agreement**”) on Design, Build, Finance, Operate and Transfer (DBFOT) basis the completion of Mustard Oil Mill at Rampura, Rewari, Haryana (Project), 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 planning, designing, engineering 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 IT IS HEREBY AGREED 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/ 2013, selected by the Lenders’ Representative, on behalf of 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 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, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favor 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 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 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 issuance 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 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.

3.3 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.

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 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 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 fulfill the eligibility criteria that were laid down by the Authority for short listing 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 thereupon shall transfer and endorse the Concession within 7 (seven) 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.

3.5 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 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 Agreement

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 22 and 23 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 Realization 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.

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, or is outstanding to the 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 fulfill 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 fulfill 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 Alternate 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 venue of arbitration shall be Panchkula 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 Chandigarh 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 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).

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 authorized 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 authorized 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. The address for service of each Party and its facsimile number 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 5.00 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. 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 Substitution Agreement shall be in English.

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized 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 authorized representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which were executed and delivered shall constitute an original of this Agreement. **IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED
For and on behalf of CONCESSIONAIRE

[**] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of AUTHORITY by the Authority's Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

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SCHEDULE XII DECLARATION OF LICENSE

(refer Article 6.1)

DECLARATION OF LICENSE

This is to declare that the license rights in terms of the Concession Agreement dated _____ in respect of all the land (along with the Project Assets, infrastructure, movable and immovable property thereon, if any, belonging to the “Authority” comprising the Project Site which is described, delineated and shown in Schedule I of the Concession Agreement dated _____ including the possession thereof are hereby granted by to the HAFED, Government of Haryana (i.e. the Authority/ Licensor) in favour of M/s _____ (i.e. the Concessionaire) for a period co-terminus with the term of the Concession Agreement, specifically for the purpose of Development, Operation and Maintenance of Mustard Oil Mill at Rampura, Rewari through PPP mode on Design, Build, Finance, Operate and Transfer (DBFOT) basis in the State of Haryana (the “**Project**”)

It is further confirmed that the Authority has represented and confirmed to the Concessionaire that the Authority is legally authorized and fully empowered to convey the aforesaid license rights in respect of the Project Site in favour of the Concessionaire and the same has been done by the Authority in compliance with the all Applicable Laws. The Project Site is to be used by the Concessionaire strictly in accordance with the provisions of the Concession Agreement dated _____ and for the purposes permitted under the said Concession Agreement and for no other purpose whatsoever.

Dated :

_____,
For and on behalf of AUTHORITY by the Authority’s Representative