

REQUEST FOR PROPOSAL

Operation and Maintenance of 45 MTPD capacity Integrated Tamarind Processing Unit in the State of Chhattisgarh

Volume 2: Operation and Maintenance Agreement

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DRAFT OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT ('Agreement') is entered into on this the [•] day of [•] 20 ;

BETWEEN

- 1) **Chhattisgarh Minor Forest Produce (T&D) Cooperative Federation Ltd**, established under [•], represented by its _____ and having its Registered Office at (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- 2) [•] Limited, (Selected Bidder) incorporated under the provisions of the Companies Act, 1956 / 2013 and having its registered office at [•]., (hereinafter referred to as the "Operator" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other part

WHEREAS:

- A. The Authority has resolved to establish an Integrated Tamarind Processing Unit (ITPU) of minimum 45 MT capacity on its own and intends to appoint an operator for the Operation and Maintenance of this Integrated Tamarind Processing Unit to be established across land admeasuring ____ Acres in District _____ with private sector participation on operate and maintain (the "O&M") basis (the "**Project**") in accordance with the terms and conditions to be set forth in a O&M Agreement to be entered into.
- B. Accordingly, the Authority had prescribed the technical and commercial terms and conditions and invited bids (the "Request for Proposal" or the "RFP") for undertaking the Project from interested Bidders vide Request for Proposal dated [•].
- C. After evaluation of the bids received, the Authority had accepted the bid of M/s [•] and issued the letter of award numbered [•] dated [•] (hereinafter called the "LOA") to M/s [•] requiring, inter alia, the execution of this Agreement within [•] ([•]) days of the date of issue thereof.
- D. Selected Bidder has promoted and incorporated the Operator as a Special Vehicle Company under the Companies Act, 2013 and has requested the Authority to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder under the LOA}, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.
- F. By its letter dated [•], the Operator has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Operator has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.

G. The Authority has agreed to the said request of the Operator and has accordingly agreed to enter into this Agreement with the Operator for implementation of the Project, subject to and on the terms and conditions set forth hereinafter.

H. Authority acknowledges that as on this day, the Operator has submitted the following to the Authority:

a) Performance Guarantee

I. The Operator represents and warrants that it has duly fulfilled all the terms and condition necessary for the execution of this Agreement as per the terms and condition in bid documents and are in a position to execute this Agreement and implement the Project as envisaged in the Bid and this Agreement.

In light of compliance by the Operator of the pre-conditions to the execution of the Agreement, the Authority has agreed to enter into this Agreement vesting the rights for the implementation of the Project with the Operator on the terms, conditions and covenants hereinafter set forth in this Agreement.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

“Affected Party” shall have the meaning as set forth in Article 14.1.1;

“Agreement” or **“O&M Agreement”** means this agreement, including the Recitals, Schedules, and documents appended hereto, as amended, supplemented, or modified from time to time in accordance with the provisions hereof;

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

“Appointed Date” means the date on which every Condition Precedent is either satisfied by the Operator or waived by the Authority, as the case may be, in accordance with the provisions of this Agreement;

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

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

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

“COD” or “Commercial Operation Date” shall mean the scheduled COD or such other date as may be approved in writing by the Authority;

“Change in Law” means the occurrence of any of the following after the Bid Date:

- a. the enactment of any new Indian law;
- b. the repeal, modification or re-enactment of any existing Indian law;
- c. the commencement of any Indian law which has not entered into effect until the Bid Date;

- d. a change in the interpretation or application of any Indian law by a judgement 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 Bid Date.

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

“Condition Precedents” shall have the meaning as set forth in Article 4.1.1;

“CP Completion” means the fulfilment of all conditions precedent;

“Construction and Commissioning Period” means the duration required for completing civil infrastructure development work and installation of the plant and machineries for the Project, the Construction and Commissioning Period will be of 12 months;

“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 Operator requires any reasonable action by the Operator that must be approved by the Authority, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval.

“Damages” shall have the meaning as set forth in Sub-article (w) of Article 1.2.1;

“Dispute” shall have the meaning as set forth in Article 23.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 23;

“Divestment Requirements” means the obligations of the Operator for and in respect of Termination as set forth in Article 18.1;

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

“Effective date” shall mean the date on which the Agreement has been executed by the Parties;

“Encumbrances” means in relation to the Project, any encumbrances such as a mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, or restriction and shall include physical or legal obstructions or encroachments on the whole or any part of the Project Site or Third Party claims or rights of any kind attaching to the whole or any part of the Project Site

or any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

“Estimated Project Cost” shall mean an amount of Rs. [•];

“Extended Term” shall have the meaning as set forth in Article 3.1.1;

"Financial 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 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 signing of this Agreement to the immediately following 31st March. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date;

“Force Majeure Event” shall have the meaning ascribed to it in Article 14.1;

“GOI” means the Government of India;

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and applicable permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient Project Facilities;

"Government Authority" or "Government" means GoI, or any State Government or Governmental department, Commission, Board, Body, Bureau, Agency, Authority, instrumentality, Court or other Judicial or Administrative Body, Central, State, or local, having jurisdiction over the Operator, the Project, the Project Assets and the Works or any part thereof or the performance of all or any of the services, obligations or covenants of Operator under or pursuant to this Agreement or any portion thereof;

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

“Handover Date” means the date on which project is handed over to the operator after completion of Construction and Commissioning period and this date will be marked as the date of commencement of O&M agreement period of initial term of 10 years. The Annual O&M fee would be applicable (to be paid by the Operator to the Authority) from this date.

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 21.4;

“Indemnifying Party” means the Party obligated to indemnify the other party pursuant to Article 21.4;

“Initial Term” shall have the meaning as set forth in Article 3.1.1;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 12, and includes all insurances required to be taken out by the Operator under Article 12 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“LOA” or “Letter of Award” means the letter of award referred in Recital (C);

“Lock-in Period” shall have the meaning set forth in Article 3.10.1 (a);

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

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;

“Month” shall have 30 days in a month;

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

“Operator Event of Default” shall have the meaning as set forth in Article 17.1.1;

“Operator's Representative” means the Person appointed by Operator under Article 3.9.1;

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

“Person” means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, Government or Governmental Authority or agency or any other legal entity;

“Performance Security” shall mean the bank guarantee required to be submitted by the Operator in accordance with the Bid Documents as security /guarantee against any payment default in timely payment of consideration, other dues to the Authority and fulfilment of other obligations as per the Agreement including timely completion of the Project;

“Project” shall have the meaning set forth in Recital (A) above;

“Project Assets” shall mean and comprise of all tangible and intangible assets relating to the Project/Project Facilities, as the case may be, excluding land but including and not limited to,

- a. rights over the Site in the form of license, right-of-way or otherwise,
- b. each of tangible assets comprising the Project Facilities such as Plant & Machinery, apparatus, equipment, foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, electrical, mechanical, civil, sanitation and other works, telephone, other communication equipment, laboratories with equipment, other equipment, technology at the Site/relating to the Project;
- c. financial assets of the Project such as receivables, cash and investments, security deposits for utilities, etc.;
- d. rights of the Operator under the agreements relating to the Project entered into by the Operator,
- e. proceeds from insurance policies taken by the Operator in relation to the Project Facilities
- f. all applicable permits, affiliations and authorizations relating to or in respect of the project
- g. movable assets of the Project/project facilities, movable property, things and goods like equipment, machinery, fittings, and fixtures etc.

“Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule-C and will also include any other facilities developed during the O&M Period at the Site;

“Project Revenue” herein includes all revenue receipts from sale of any product produced or moved out from the boundary of the Project Site.

“Project Site” or “Site” shall have the meaning as set forth in Schedule A;

“Proposal” or “Bid” means the entire set of technical, financial, qualifying and other documents in their entirety comprised in the proposal or bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof, and accepted by the Authority;

“RBI” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“Re.”, “Rs.” Or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

“**Schedule**” means any of the schedules in the RFP;

“**Selected Bidder**” shall mean the entity which is declared as such by the Authority on quoting the highest percentage of Project Revenue as Revenue Share;

“**State**” means the State or the Union Territory, as the case may be, in which the Project is situate and “**State Government**” means the government of that State or Union Territory;

“**Sub contractor**” means and shall include contractors, Subcontractors, manufacturers, suppliers, vendors of goods and services engaged by the Operator in relation to the Project;

“**Supervision Consultant**” means the person appointed by the Authority for discharging the functions as per the terms of this Agreement;

“**Taxes**” means any Indian taxes including excise duties, customs duties, GST, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Term**” shall mean either the Initial Term or the Extended Term or both, as the case may behave the meaning as set forth in Article 3.1.1;

“**Termination**” means the expiry or termination of this Agreement;

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

“**Third Party**” means any Person, real or legal, or entity other than the Parties to this Agreement;

“**Transfer Date**” shall refer to the date when the transfer as per Article 25 is completed in reasonable opinion of the Authority;

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires:

- a. references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b. references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

- c. references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- d. the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. Terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.
- f. the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- g. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- h. any reference to day shall mean a reference to a calendar day;
- i. Any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- j. references to a “business day” shall be construed as reference to a day (other than a Sunday) on which banks in Raipur are generally open for business;
- k. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- l. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a Business Day, then the period shall run until the end of the next Business Day;
- m. words importing singular shall include plural and vice versa;
- n. references to any gender shall include the other and the neutral gender;
- o. “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- p. “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- q. references to the “winding-up”, “dissolution”, “insolvency”, or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re- organization, dissolution, arrangement, protection or relief of debtors;
- r. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- s. provided that this Sub-article(s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- t. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- u. the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v. references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement, references to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs, and references to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- w. the damages payable by either Party to the other, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre- estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”);
- x. time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- y. wherever in this Agreement provision is made for the giving or issuing of any notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination by any Party, unless otherwise specified, such notice, endorsement, consent, approval, certificate, agreement, authorization, communication, information or report or determination shall be in writing under the hand of duly authorized representative of such Party.

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

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

1.3 **Measurements and Arithmetic Conventions**

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

1.4 Priority of agreements and clauses

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

- a. this Agreement; and
- b. all other agreements and documents / RFP forming part hereof or referred to herein;

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

1.4.2 Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a. between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- b. between the Articles of this Agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c. between any two Schedules, the Schedule relevant to the issue shall prevail;
- d. between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The broad scope of engagement of the Operator during the Term as per the terms of this Agreement shall mean and include the following:

- 2.1.1 Support/assist the Authority and Engineer appointed by Authority and offer necessary advice as required for finalisation of the Design guidelines and specifications for the Project in consultation with the Authority.
- 2.1.2 The Operator shall advice/assist in the process to finalise designs and good for construction drawings of the Project.
- 2.1.2 The Operator shall assist Authority and the appointed Engineer to ensure compliance of the development/ construction/ installation of the Project/ Project Facilities, as specified in Schedule B and Schedule C on the Site set forth in Schedule A;
- 2.1.3 operating, maintaining and transfer of the Project as per the terms of this Agreement; and
- 2.1.4 performance and fulfilment of all other obligations of the Operator 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 Operator under this Agreement.

ARTICLE 3: GRANT OF RIGHTS

3.1 Operation and Maintenance Rights

3.1.1 (A) Pre-construction:

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Operator and the Operator hereby accepts the grant of rights to support and assist the Authority and Engineer appointed by Authority and offer necessary advice as required for finalisation of the design guidelines of civil infrastructure, BOQ and specifications and requirement with regards to the Plant and Machinery for the Project in consultation with the Engineer for the construction of the Project

(B) Post - Construction

- i. Operate and maintain the Project and exercise these rights as per the terms of this Agreement for the term commencing from the “Handover Date” for a period of 10 (ten) years (the “**Initial Term**”) with a provision of one time first right of refusal for an additional period of 10 years (the “**Extended Term**”). It is agreed that the grant of rights under this Agreement and engagement of the Operator by the Authority is in the nature of a service contract between two independent principals and neither party shall be considered as a partner, employee, principal or agent of the other. The Operator shall, in no manner, be deemed to be the agent or employee of the Authority and shall, notwithstanding anything contained herein, have any rights, interest or entitlement to bind the Authority in any arrangement, agreement or obligation favouring a third party and shall not in any manner act on behalf of the Authority unless specifically approved in writing by the Authority. Nothing contained in this Agreement or any other document executed pursuant to it shall be deemed to give any such rights to the Operator;

Provided that, at any time not earlier than 9th (ninth) anniversary of the Appointed Date (Handover Date), the Operator shall submit a confirmation that it is agreeable to participate in the competitive bidding process for the determination of the Annual O&M Fee for an additional period as determined by the Authority, in the form and manner, as may be prescribed by the Authority, at such time, and in any such case of competitive bidding:

- a. the Operator shall have a right to match the highest bid, if its bid is within 10.00% of the highest bid that may be offered at that time in accordance with the terms and conditions of the bidding documents issued at such time,
- b. the Affiliate(s) of the Operator shall not be qualified, either directly or indirectly, participating in any such bidding process; and
- c. it is clarified the Operator shall be deemed to be qualified to submit the financial bid without being required to participate in the pre-qualification process and shall not be required to submit any documents for pre-qualification.

Provided further that, in the event the Operator has been in material default of the provisions of this Agreement, then, the Authority shall not be under any obligation to

provide the right to match the highest bid to the Operator in accordance with this Clause 3.1.1. In any event, at all times, any decision concerning the extension of the O&M Period shall vest with the Authority.

- ii. The Operator shall work with the Engineer appointed for the approval of design and construction supervision of the Project in finalising design guidelines and specifications of the Project at the design stage of the Project.
- iii. The Operator shall fully co-operate with the Engineer and the Contractor appointed for designing and construction of the Project and offer the necessary advice as required in finalisation of the Design guidelines and specifications of the Project. Operator shall also provide its consent to the final design and good for construction drawings of the Project. The operator shall also give its consent/approval to the actual construction works forming part of the Project during the respective construction milestones in accordance with agreement for designing and construction of the Project.
- iv. It is hereby clarified that the handing over of the Project to the Operator shall happen only post completion of construction of Project and other facilities in every respect and aspect and completion of all necessary tests acceptable to the Authority. (**Handover Date**) . Handover Date shall be a specific date on which Project Site is transferred to the Operator after the completion of construction and commissioning of machinery which will include completion of following activities:
 - a. Upon receiving a written communication from Authority with regards to completion of construction and ready status for commissioning of Project, O&M operator will conduct final inspection of the facility and give acceptance/ provide comments/ inputs in writing to “the Authority”. If any minor alterations are required to be made at the facility, the Operator shall inform Authority through a written communication within 7 days from the date of receipt of the written communication received from the Authority.
 - b. The Authority, upon receiving the comments/ inputs submitted by O&M Operator, shall have 15 days’ time to fix the gaps (if any) from the date of submission of comments/ inputs provided by the O&M operator vide a written communication to the Authority.
 - c. The Authority will then issue construction completion and commissioning certificate (having the details such as, civil work, plant and machinery installed, water and power connection, and other infrastructure required for commercial commencement of the unit operations)
 - d. O&M partner will then provide a letter of acceptance to the Authority within 7 days of issue of the construction completion and commissioning certificate. The date on which the acceptance has been provided by the O&M operator in the form of a written communication shall be the “Handover Date”.
 - e. The Operator shall be liable to pay Annual O&M fee from this date i.e Handover Date.

- 3.1.2 As regards to the Site, Project, land lying underneath and constructed portion and any appurtenant thereto including trees, plantation and all other things attached to it, the Operator shall be deemed to be a licensee to use such properties in the capacity of a licensee only and specifically for the purposes of this Agreement and nothing contained herein or elsewhere shall have the effect of handing over legal, constructive, actual or physical possession thereof to the Operator by the Authority. For the removal of doubt, the legal, constructive, actual or physical possession Site, Project, land lying underneath and constructed portion and any appurtenant thereto including trees, plantation and all other things attached to it shall exclusively vest in the Authority;
- 3.1.3 Subject to and in accordance with the terms and conditions set forth in this Agreement, the rights hereby granted shall entitle the Operator to enjoy and oblige the Operator to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the applicable permits and its own cost and consequences:
- a. right of way, access and license to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - b. to market, manage, administer, operate and maintain the Project during the Term;
 - c. to manage, operate & maintain the Project and regulate the use thereof by third parties.
 - d. to determine, levy and collect Project Revenues, as generated pursuant to the operation of the Project.
 - e. perform and fulfil all of the Operator's obligations under this Agreement.
 - f. pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement.
 - g. neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the rights hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.
 - h. license/ enter into agreements or arrangement with the Subcontractors which shall be co-terminus with this Agreement through a transparent mechanism on terms and conditions decided on an arm's length basis and subject to the provisions of this Agreement; provided however that: (i) Operator shall not part with, create any Encumbrance or third party rights on the whole or any part of the Site or Project, to or in favour of any person in any form or under any arrangement, device or method, the breach of which shall constitute an Operator Default that shall entitle the Authority to terminate this Agreement.
 - i. the Operator has no right to sell or mortgage the title of the Site, and/or Project Assets or any of the whole or part thereof and it shall, on the Transfer Date, transfer and hand over the Site along with the Project Facilities and Project Assets to the Authority or its nominated agency in accordance with the provisions hereof.
 - j. Any part of the O&M Rights (but not the whole of rights) may be sub-contracted by the Operator subject to prior consent of the Authority, which shall not be unreasonably withheld, provided always that notwithstanding the same, the Operator retains overall management, responsibility, obligation and liability in relation to the Subcontracted rights. Any such subcontracting shall not relieve the Operator from any of its obligations in respect of the performance of its obligations under this Agreement. It is clarified that Operator shall remain liable and

responsible for any acts, omissions or defaults of any subcontractor, and shall indemnify the Authority in respect thereof.

- k. taking action at law, except in the name of the Authority, which the Operator shall deem necessary and proper in connection with the operation of the Project.
- l. to make such routine repairs and maintenance of the ITPU carrying out renovations / refurbishments / improvements at the ITPU the Operator may deem reasonably necessary, at its own cost. It being agreed that any repair, maintenance requiring construction or reconstruction of the ITPU or part thereof including construction of additional facilities, structural repairs within the Site shall be undertaken by the Operator only with the prior approval of the Authority and under Applicable Laws. It is, however, clarified that except as stated hereinabove, no construction in or reconstruction of the ITPU, including without limitation addition of any new component, shall be undertaken by the Operator but only after obtaining written approval of the Authority
- m. generally to perform all obligations and duties necessary in connection with the operation of the Project in an efficient and proper manner.
- n. make, or cause to be made, necessary applications to the relevant authority or instrumentalities with such particulars and details, as may be required for obtaining applicable permits and obtain and keep in force and effect such applicable permits in conformity with the Applicable Laws;
- o. perform its obligations under this Agreement and notify to the Authority forthwith the occurrence of CP Completion;
- p. obtain and maintain in force on and from the Appointed Date/ Handover Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- q. maintain standards of Finished product(s) as prescribed in Good Manufacturing Practices defined by World Health Organization (WHO-GMP) to make them eligible to be exported for sale in International markets including European countries and United States.
- r. comply with all applicable permits and Applicable Laws in the performance of the Operator's obligations under this Agreement including those being performed by any of the Subcontractors;
- s. take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance and emergency medical aid to accident victims;
- t. indemnify the Authority against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Operator in connection with the performance of its obligations under this Agreement;
- u. hand over the Project to the Authority upon Termination of the Agreement;
- v. not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
- w. Notwithstanding anything to the contrary contained in this Agreement, the Operator shall not assign or in any manner create an Encumbrance on any Project Asset(s) without prior written approval of the Authority.
- x. permitting safe, smooth and uninterrupted use of Project during normal operating conditions;

- y. minimizing disruption in the event of accidents or other incidents-affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- z. carrying out periodic preventive maintenance of the Project as per Schedule H;
- aa. undertaking routine maintenance including prompt repairs of cracks, joints, drains, markings, lighting, signs and other control devices as per Schedule H;
- bb. preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- cc. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- dd. protection of the environment and provision of equipment and materials therefor;
- ee. remove promptly from the Project Site all surplus construction (if any)/maintenance machinery and materials, waste materials (including hazardous materials and waste water), rubbish, debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with Applicable Laws, applicable permits and Good Industry Practice;
- ff. in the event that the Project or any part thereof suffers any loss or damage during the Term from any cause whatsoever, the Operator shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement;
- gg. shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Good Industry Practice and Applicable Laws or as may be permitted in writing by the Authority;
- hh. make additional investment for enhancement/upgradation of technology during the term of this Agreement, without recourse to the Authority, and the assets created through additional investment will become part of the project facility;
- ii. assist the Supervision Consultant in undertaking and discharging its functions and obligations under this Agreement and provide all necessary details, data, records and other information as required/demanded by the Supervision Consultant; and
- jj. The operator shall procure all requisite clearances, licences, permits, approvals for undertaking its obligations under this Agreement and for operation and maintenance of the project, and shall comply with all applicable laws, rules, regulations etc. in this respect thereof; including but not limited to:
 - a. FSSAI: Food Safety & Standard Authority of India at State and well as Central Level
 - b. FSSAI packaging and Labelling registration
 - c. License to be obtained for using preservatives, binding agents, compounded Asafetida, etc.
 - d. BIS: Bureau of Indian Standard, standardization, marking and quality certification
 - e. ISO Certification
 - f. Food and Agriculture (FAD)

- 3.2 The Operator shall in no instance interfere or deny access to the Site to the authorised representatives of the Authority and to the persons duly authorised by any governmental agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Project Site.
- 3.3 The Operator shall ensure that sufficient financial and other resources are available at its disposal for performance of its obligations and duties under this Agreement, the agreements executed with Subcontractors. Operator covenants that the financial resources shall be procured or arranged by it subject to the terms of this Agreement and in doing so, it shall neither create any third party rights or Encumbrances on the Site or Project nor shall it dilute its shareholding beyond what is expressly permitted under this Agreement and/or the bid documents.
- 3.4 It is also agreed that nothing contained in this Agreement shall be construed to mean that the Authority shall be liable in any manner whatsoever for any financial obligation or covenant of the Operator, that it has provided or shall provide any assistance, assurance or guarantee to the Operator or to any third party for the benefit of the Operator and the Operator shall ensure that the Operator does indemnify and hold the Authority harmless against any claims made by any third party in this regard.
- 3.5 Employment of foreign nationals

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its contractors and their Sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of its contractors or Sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement.

3.6 Employment of trained personnel

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

3.7 Sole purpose of the Operator

The Operator has been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, i.e., the implementation, operation and maintenance of the Project. The Operator, being an SPV formed for the sole purpose of implementing the Project, hereby agrees not to have any shareholding interest or otherwise in any entity, or any other form of arrangement with any person, which may allow it to undertake or perform any other business activity. The

Operator hereby agrees not to have any subsidiary, except with the previous written consent of the Authority, or be or become directly or indirectly engaged, concerned or interested in any business in relation to this Project.

3.8.1 Branding of the Project

- 3.8.1 The Project or any part thereof may be branded by the Operator under its own brand name. The Operator's Representative shall be the person so designated by the Operator ("Operator's Representative"). If at some point of time, the Operator is unable to provide the services of the person named the Operator's Representative, and then it shall notify the Authority its reasons for this, and thereafter, provide a substitute person who can be the Operator's Representative.
- 3.8.2 The person named as the Operator's Representative under this Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project.
- 3.8.3 The Operator's Representative shall be exclusively employed or engaged by the Operator to give his whole time to direct the preparation of the operation and maintenance of the Project. Except as otherwise stated in the Agreement, the Operator's Representative shall receive on behalf of the Operator all notices, instructions, consents, approvals, certificates, determinations and other communications under this Agreement.
- 3.8.4 The Operator'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 written notice signed by the Operator's Representative, specifying the powers, functions and authorities being delegated or revoked. Operator's Representative shall notify in writing 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 Operator's Representative. Any such delegation shall not relieve the Operator's Representative of its obligation and duties under this Agreement.
- 3.8.5 "The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Operator or its shareholders. The Operator undertakes that it shall not, in any manner, use the name or identity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders. For the avoidance of doubt, it is agreed that the Operator may display its own name at the spots where other public notices are displayed for the users after obtaining No Objection Certificate (NOC) from the Authority."

3.9 Procurement of Raw Material

- 3.9.1 The Operator shall mandatorily procure 75% of its annual requirement (Financial Year) of raw material pulp/seed) for ITPU from within the State of Chhattisgarh. The Operator shall be free to procure the remaining 25% of raw material from open market from anywhere even from other states.
- 3.9.2 The Supervision Consultant will ensure and certify that the 75% of total annual raw material requirement (Financial Year) has been procured from within the State of Chhattisgarh (by checking the procurement bills and other supporting documents)
- 3.9.3 The ITPU has the installed capacity to process 45 MTPD of raw tamarind – Seed/Pulp. The Operator may process quantity lesser than that of the installed capacity. However, this would not have any impact on the Annual O&M fees which is to be paid to the Authority by the Operator.

3.10 Procurement of Finished Products by the Authority

- 3.10.1 The Authority will have the right, but not the obligation, to procure finished products from the Operator. The Authority may place order for the required finished product(s) in writing to the Operator at least one (1) quarter prior to the agreed date of delivery.
- 3.10.2 Upon the receipt of order placed by Authority in writing, the Operator will send an acceptance letter to the Authority within 7 working days of the receipt of the purchase order along with the expected date of delivery of the finished product(s).
- 3.10.3 The Operator shall supply finished products to the Authority on at least 10% discount on the average selling price of the product(s) for which Authority has placed order with the Operator.
- 3.10.4 The average selling price of the product(s) would be determined based on the price at which the particular finished product(s) were sold to the buyer in the previous one quarter from the date when demand/order was placed by the Authority. Average selling price would be determined based on the rate at which is finished product(s) has moved out of the ITPU.

3.11 Obligations related to Project Assets

- 3.11.1 The Operator will obtain NOC (No Objection Certificate) from the Authority and mandatorily procure AMC (Annual Maintenance Contract) from third party on behalf of Authority for proper maintenance of Plant and Machinery for all the items, wherever such AMC can be procured. The Operator shall procure such AMC in due consultation with the Supervision Consultant/ Authority.
- 3.11.2 The Operator will enter into third party AMC agreement for maintenance of plant and machinery from third party and the cost of such AMC will be borne by the Operator
- 3.11.3 Civil infrastructure at the project site shall be maintained by the Operator during the Term and the Project will be monitored by the Supervision Consultant appointed by the Authority.
- 3.11.4 If the plant and machinery is required to be replaced (for any reason whatsoever) during the Term, the Operator shall replace such plant and machinery by a new machinery of the same specification at its own cost and without recourse to the Authority.

3.11.5 At the end of Term by efflux of time or Termination of this Agreement, the Project Assets will be handed over to the Authority in good working condition after completing due maintenance works duly certified by the Supervision Consultant at no cost to the Authority.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in this Agreement, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the “Conditions Precedent”) save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Article 4.1.2 below.

4.1.2 The Conditions Precedent required to be satisfied by the Operator prior to the Appointed Date shall be deemed to have been fulfilled when:

- a. Operator shall have obtained requisite applicable permits and such applicable permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;
- b. The Authority shall have received from the Operator copies (certified as true copies by an authorised officer of the Operator) of the constitutional documents of the Operator having provisions as per Article 3.9;
- c. The Authority shall have received copies (certified as true copies by a director of the Operator) of all resolutions adopted by the board of directors of the Operator authorizing the execution, delivery and performance by the Operator of this Agreement;
- d. Performance Guarantee shall have been furnished to the Authority;
- e. Any of the conditions precedent set forth in this Article 4.1.2, save and except condition of (c) thereof, may be waived fully or partially by the Authority at any time in its sole discretion.

4.1.3 Obligations to satisfy Condition Precedents

- a. The Operator and the Authority shall make all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out in Article 4.1.2 above. The Operator shall bear its respective cost and expense of satisfying Conditions Precedent.
- 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 with the Conditions Precedent (the “Certificate of Compliance”).

4.2 Deemed Termination upon Delay

- 4.2.1 In the event that (i) the Operator does not procure fulfilment of any or all of the Conditions Precedent set forth in Article 4.1.2 within a period of ninety (90) days from the "Handing Over Date, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Article 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Operator shall pay to the Authority, Damages equivalent to an amount calculated at the rate of State Bank of India Prime Lending Rate (SBI PLR) plus 2 % of the Minimum Annual Guarantee for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to Performance Security and upon reaching such maximum, the Authority may, in its sole discretion, terminate this Agreement.
- 4.2.2 Without prejudice to the provisions of Article 4.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within ninety days from the Handing Over Date or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Operator under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Operator, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Operator, the Performance Security of the Operator shall be encashed and appropriated by the Authority as Damages thereof in addition to any other right or remedy that the Authority may have under law or equity.
- 4.2.3 Without prejudice to and notwithstanding anything to the contrary set out in the foregoing, the Parties may by mutual agreement in writing, instead decide to extend the time for fulfilling the Conditions Precedent.

ARTICLE 5: REPRESENTATIONS AND WARRANTIES

5.1 Representations and warranties of the Operator

The Operator represents and warrants to the Authority that:

- 5.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- 5.1.2 It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein;
- 5.1.3 It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement and to validly exercise its rights and perform its obligations under this agreement;
- 5.1.4 Along with its Associates, it has the financial standing and capacity to undertake the Project;
- 5.1.5 the obligations of the Operator under this Agreement will be legally valid, binding and enforceable against it in accordance with the terms hereof;
- 5.1.6 It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- 5.1.7 All the information furnished in the Bid is, and shall be true and correct as on the Appointed Date and true, correct and accurate in all respects;
- 5.1.8 The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the memorandum and articles of Association of the Operator or any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- 5.1.9 There are no actions, suits, proceedings, or investigations pending or, to the Operator'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 Operator under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- 5.1.10 It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any governmental agency which may result in any Material Adverse Effect or impairment of the Operator's ability to perform its obligations and duties under this Agreement;
- 5.1.11 It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- 5.1.12 The Operator have the financial standing and resources necessary for undertaking and implementing the Project in accordance with this Agreement;

- 5.1.13 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 validly consented to and requested the Authority to enter into this Agreement with the Operator pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- 5.1.14 All rights and interests of the Operator in and to the Project shall pass to and vest in the Authority on the Transfer/ Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Operator or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Operator subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
- 5.1.15 No representation or warranty by the Operator contained herein or in any other document furnished by it to the Authority, or to any Governmental agency in relation to applicable permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty misleading;
- 5.1.16 It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Operator, to any person by way of fees, commission or otherwise for rights granted herein or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.
- 5.1.17 all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- 5.1.18 all undertakings and obligations of the Operator arising from the Request for Proposal or otherwise shall be binding on the Operator as if they form part of this Agreement.

5.2 Representations and warranties of the Authority

Authority represents and warrants to the Operator that:

- 5.2.1 Authority is duly organized and validly existing under the laws of India;
- 5.2.2 Authority has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- 5.2.3 Authority has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- 5.2.4 This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- 5.2.5 it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- 5.2.6 To the best of the Authority 's knowledge and belief, Project Site is free from all Encumbrances and the Project has been constructed in accordance with the Applicable Laws;
- 5.2.7 To the best of the Authority 's knowledge and belief, there are no actions, suits, proceedings or investigations pending against it, at law or in equity, before any court or governmental agency, the outcome of which may result in the breach of or constitute a default of the Authority under this Agreement, or constitute a default of the Authority under this Agreement or result in impairment of the Authority 's ability to perform its obligations and duties under this Agreement;
- 5.2.8 it has complied with Applicable Laws in all material respects; and
- 5.2.9 it has the right, power and authority to manage and operate the Project up to the Appointed Date and has power and authority to grant a license in respect thereto to the Operator.

ARTICLE 6: DISCLAIMER

6.1 Acceptance of Project Site

6.1.1 The Operator acknowledges that it has undertaken a due diligence over the Project Site, and all aspects of the Project. For the purposes of this Agreement, Operator shall be deemed to have:-

- a. inspected Project Site and all buildings thereat and its surroundings;
- b. satisfied itself as to the climatic conditions, noise level, hydrological and general physical conditions of Project Site, the nature of the ground and subsoil, the proposed form and nature of the Project, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement.
- c. satisfied itself as to the means of communication, access to and accommodation at Project Site, it may require or as may be otherwise necessary for the performance of its obligations under this Agreement;
- d. obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement;
- e. has determined the nature and extent of the difficulties, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and for undertaking the Project.
- f. understood and evaluated all the risks related to the Project

6.2 Operator further acknowledges that it, or any entity claiming under it, shall have no recourse against the Authority if it is, at a later date, found that the Project Site is deficient in any manner whatsoever, and in the event of any mistake made or misapprehension harboured by the Operator in relation to any of the foregoing provisions of Article 6. If a deficiency is found, Operator acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.

6.3 Operator acknowledges and hereby accepts the difficulties, inputs, costs, time, resources, risks and hazards associated with the performance of its obligations hereunder and hereby agree that the Authority shall not be liable for the same in any manner whatsoever to Operator, other than as expressly provided in this Agreement.

6.4 It is clarified that all fossils, antiquities, structures and/or other remains or things either of archaeological or of particular geological interest discovered at Project Site or in the course of carrying out any work shall not be the property of Operator and Operator shall have no right or interest in such fossils, antiquities and structures.

6.5 Deemed Knowledge and Disclaimer

6.5.1 Subject to the provisions of this Agreement, the Operator shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the maintenance, operation, management and development of the Project and all its other rights and obligations under or pursuant to this Agreement regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered

(foreseen or not foreseen) and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Operator shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Authority and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

ARTICLE 7: PERFORMANCE GUARANTEE/ SECURITY

- 7.1 The Operation and Maintenance Performance Security:** The Successful Bidder shall, at the time of issuance of Letter of Award from the Authority, has to submit the O&M Performance Security in form of the Bank Guarantee. The O&M performance security shall be for an amount of Rs. 1.25 crores (Rs One Crore and Twenty-Five Lakhs) for an initial period as defined in this section. It is hereby clarified that the Operator will supplement/enhance the O&M Performance Security at the time of Handover Date of the Project if the actual project cost (as determined and informed by the Authority to the Operator) exceeds the Estimated Project Cost so that the O&M Performance Security is at least 5% of the actual project cost. The Performance Security will be 5% of the actual project cost or 1.25 crores (whichever is higher) for the initial 6.5 (Six and a Half) years from date of issuance of Letter of Award from the Authority and the same will be reduced to 2% of the actual project cost or 50 Lakhs (whichever is higher) for remaining period of the Term. Once the Operator submits Performance Security of 2% of the actual project cost before the completion of 6.5 years of period, the initial Performance Security of 5% will be released back to the Operator by the Authority. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Operator.
- 7.2 In the event the Authority draws on the Performance Security, in part or in full, liquidated damages/ losses, payable/recoverable in accordance with the Agreement, the Operator shall forthwith restore the value of the Performance Guarantee to such value which existed prior to such drawl by the Authority. In the event the Operator fails to restore the Performance Security, the Authority shall be entitled to encash the same and the Operator shall, within the time so granted at the sole discretion of the Authority, shall have to submit a fresh Performance Guarantee.
- 7.3 In the event, the Operator is in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period of ninety days as set out in this Agreement, the Authority shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security as damages for such default. Upon such encashment and appropriation of the Performance Guarantee, the Authority shall grant such time in its sole discretion to the Operator to replenish the said Performance Security.
- 7.4 In the event the Operator fails to replenish or submit a fresh Performance Security to the Authority within the time as aforementioned, the Authority shall be entitled to terminate this Agreement in accordance with the provisions mentioned hereunder.
- 7.5 Upon expiry or earlier termination of this Agreement, if there are any dues payable by the Operator, or in the event of default of payment of any sums determined by the Authority, the Authority shall have the right to encash and apportion such amount due from the Performance Security before returning the same.
- 7.6 In case this Agreement is terminated due to Operator's default, the Authority shall have the right to invoke the Performance Security. Provided if the Agreement is terminated due to any event other than the Operator's Event of Default or any other reason in which, as per terms hereof, the Performance Security may be invoked, the Performance Security, subject to the Authority's right to receive amounts, if any, due from the Operator under this Agreement, shall be refunded to the Operator.

ARTICLE 8: FINANCIAL PARAMETERS

- 8.1 Annual O&M Fee as quoted by the Operator for the first year of operation shall undergo escalation/ de-escalation as per Article 8.3
- 8.2 The fee as calculated from Article 8.1 shall be the Annual O&M Fee (the "**Annual O&M Fee**") for first year of operation.

1. Annual O&M Fee for first year of operation (Due from Handover Date) =

Annual O&M Fee as quoted by the bidder in the financial proposal and has undergone revision as per Article 8.1 for 45 MT capacity plant

2. Annual O&M Fee for subsequent years (from second year of operation to last year of operation) =

The Annual O&M fee for all the subsequent years (**from second year of operation to last year of operation**) shall undergo annual escalation over the last year (year preceding to the year for which Annual O&M fee is to be calculated) Annual O&M fee. The Annual O&M for second year onwards would be as calculated below:

Annual O&M fee for last year (year preceding to the year for which O&M fee is calculated) of operation as escalated with annual escalation factor as defined below.

- a. The annual escalation factor for increase in Annual O&M Fee from second year of Operation is

✓ 5% per annum

Or

- ✓ Increase in WPI factor to reflect the increase between the WPI for last Financial Year (ending on 31st March) and the WPI for the previous financial year (ending on 31st March) (whichever is higher)

The revised Annual O&M Fee after including annual escalation factor would be applicable from second year of operation and shall undergo revision every year as defined in this Article

- b. The Annual O&M fee to be paid to the Authority as calculated in Article 8.3, would increase basis increase in intake of raw material
- i. The Annual O&M Fee as calculated in Article 8.3 would undergo increase based upon actual intake of raw material as following:

Increase in Annual O&M Fee for respective Accounting Year

- ✓ For every additional 675 MT intake as raw material (pulp/seed) Per Accounting Year, over and above 13500 MT as raw material Per Accounting Year), the Annual O&M Fee shall be increased by 4% (four percent).
 - ✓ For every additional 675 as raw material (pulp/seed) Per Accounting Year production of all products over and above 15000 MT as raw material Per Accounting Year, the Annual O&M Fee shall be increased by 3% (four percent).
- c. The Annual O&M Fee as applicable for respective year of operation would be paid in four instalments on a quarterly basis.
- ✓ Quarterly O&M Fee to be paid every quarter would be = (Annual O&M Fee as applicable for respective financial year/ 4)
- 8.2.1 In consideration of the rights, privileges and interests granted by the Authority to the Operator in terms of this Agreement, the Operator shall pay the Annual O&M Fee to the Authority, commencing from Handover Date as follows:
- ✓ Annual O&M Fee shall be due and payable, in four installments on quarterly basis, latest by the seventh day of the succeeding month, starting from Handover Date.
- 8.2.2 The Operator shall not be granted any waiver in the O&M Fee during any circumstances including change in the taxes.
- 8.2.3 For the avoidance of doubt, GST or any other tax applicable shall be borne by the Operator over and above the Annual O&M Fee as per clause 8.1.
- 8.2.4 In the event of delay up to 7 days from the due date in the payment of the Annual O&M Fee, the Operator shall be liable to pay to the Authority, interest on the due amount at the rate of SBI PLR plus 2 % (two percent) per annum, for the period from the due date until the date of actual payment.
- 8.2.5 In consideration of the Grant, the Operator hereby agrees to make payment of O&M Fee for the Initial Term and Extended Term (if any) accordance with clause 8.1 & 8.2
- 8.2.6 The operator shall be liable to pay damages for any delay in payments of Annual O&M fee to the Authority calculated at the rate of SBI PLR + 2 % per annum for the period from due date until the date of actual payment.
- 8.3 Change in Annual O&M Fee for first year of Operation due to change in actual Project cost**

The Annual O&M Fee quoted by the successful bidder for the first year of operation would be escalated/ de-escalated if the Actual Project Cost, which has been spent by the Authority for the ITPU is more/ less than 10% than the Estimated Project Cost as mentioned in the RFP document.

In that case, if the difference in the Actual Project Cost spent by the Authority and the Estimated Project Cost is more/ less than 10%, then the increase/ decrease in Annual O&M fee for first year of Operation would be in the same proportion, calculated as

Escalated/De-escalated Annual O&M Fee = Annual O&M Fee as quoted by the Operator x (Actual Project Cost / Estimated Project Cost)

However, such increase/ decrease in the Annual O&M Fee is capped at 25% increase/ decrease in the Estimated Project Cost as mentioned in the RFQ document. (If the total spending by the Authority is more/ less than 25% of the estimated project cost, the proportionate increase/ decrease in the Annual O&M fee will be capped to be increased/ decreased by 25% only)

Illustration

For escalated O&M Fee

| S. No | Estimated Project Cost (As per RFQ) | Actual Project Cost (Spent by Authority) | Percentage Increase in Estimated Project Cost | Annual O&M Fee (Quoted by successful bidder) | Escalated Annual O&M Fee |
|-------|-------------------------------------|--|---|--|--|
| 1 | 1 Cr | 1 Cr | NIL | 10 Lakhs | 10 Lakhs |
| 2 | 1 Cr | 1.05 Cr | Up to 10% | 10 Lakhs | 10 Lakhs |
| 3 | 1 Cr | 1.20 Cr | More than 10% and up to 25% | 10 Lakhs | 12 Lakhs =(10x(1.2/1)) |
| 4 | 1 Cr | 1.30 Cr | More than 25% | 10 Lakhs | 12.5 Lakhs =(10x(1.25/1)) (Capped at 25%) |

For de-escalated O&M Fee

| S. No | Estimated Project Cost (As per RFQ) | Actual Project Cost (Spent by Authority) | Percentage Decrease in Estimated Project Cost | Annual O&M Fee (Quoted by successful bidder) | De-escalated Annual O&M Fee |
|-------|-------------------------------------|--|---|--|---|
| 1 | 1 Cr | 1 Cr | NIL | 10 Lakhs | 10 Lakhs |
| 2 | 1 Cr | 0.95 Cr | Up to 10% | 10 Lakhs | 10 Lakhs |
| 3 | 1 Cr | 0.90 Cr | More than 10% and up to 25% | 10 Lakhs | 9 Lakhs =(10x(0.9/1)) |
| 4 | 1 Cr | 0.70 Cr | More than 25% | 10 Lakhs | 7.5 Lakhs =(10x(0.75/1)) (Capped at 25%) |

ARTICLE 9: PROJECT REVENUE

9.1 Collection and appropriation of revenue by the Operator

- 9.1.1 With effect from the Handover Date till the Transfer Date, the Operator shall have the sole and exclusive right to demand, collect, revise and appropriate revenues from the sale of products (the “**Project Revenue**”) in accordance with Good Industry Practice and more particularly in terms set out under this Agreement.
- 9.1.2 The Operator shall be free to decide on the sale price for the products produced from the Project subject to applicable laws.
- 9.1.3 The Operator shall be and remain solely liable and responsible for the collection of revenues from the Project in accordance with this Agreement.

9.2 Appropriation of Project Revenue

On and from the Handover Date and during the operations period, the Operator or its agents or employees shall levy, demand and collect the revenues in respect of the Project.

9.3 Collection & Handling

- 9.3.1 The Operator shall be liable for the loss of any revenue collected by it or its agents or servants whether by fraud, misappropriation, theft, accident, event of Force Majeure or any other event or circumstance whatsoever.
- 9.3.2 The Operator shall put in place, prior to the receipt of any of the revenue, security measures necessary for handling, deposit and protection of revenue from loss, theft or destruction. Notwithstanding such security measures,
 - a. all money being held by the Operator shall at all times be insured against loss due to but no limited to theft, loss, fire and natural disasters, and
 - b. the Operator shall remain liable for timely payment of Annual O&M Fee to the Authority in accordance with the terms of this Agreement.

ARTICLE 10:

---DELETED---

ARTICLE 11: SUPERVISION CONSULTANT

11.1 The Authority shall appoint a Supervision Consultant before the Handover Date, to oversee the Project.

The fee for the Supervision Consultant would be shared by the Authority and the Operator equally. The Operator shall reimburse its share of 50% (fifty percent) fee of the Supervision Consultant to the Authority within 90 (ninety) days of such demand, as and when presented by the Authority in writing. The functions of the Supervision Consultant would include but not limited to:

- 11.1.1 The Supervision Consultant will seek information from the Operator with regards to the rate at which the finished goods were billed to wholesaler/distributor/supplier along with the pertinent supporting documents such as GST returns for sales or any other documentary evidence, which the Operator is bound to provide, and the Supervision Consultant will submit a report on monthly basis to Authority in order to ensure transparency in the pricing mechanism.
- 11.1.2 The Supervision Consultant shall prepare and provide the operation and maintenance schedule (monthly/ quarterly/ annual) for both civil work (as per Bureau of Indian Standards/ National Building Code/ CPWD Works Manual) and plant & machinery (separate for each machinery as per catalogue and standard practices);
- 11.1.3 The Supervision Consultant will ensure that the plant and machinery are in working condition and service records are complete and shared periodically with the Authority;
- 11.1.4 The Supervision Consultant shall be responsible to ensure proper maintenance of civil structure and plant and machinery installed at ITPU as per the schedule proposed by the Supervision Consultant;
- 11.1.5 The Supervision Consultant will record and report actual annual raw material requirement of the project, and shall confirm procurement of 75% of the annual raw material (Pulp/Seed) requirement within the State by checking the procurement bills and other relevant supporting documents, and consumption of the ITPU along with the annual production of finished products;
- 11.1.6 The Supervision Consultant will monitor to ensure the quality of finished product supplied to Authority and other buyers is of same/ similar quality;
- 11.1.7 The Supervision Consultant will ensure that at the end of Term, the Project Assets and civil infrastructure will be handed over to the Authority in good working condition after completing due maintenance works and with proper recorded documentation, which will be certified by the Supervision Consultant.
- 11.1.8 The Supervision Consultant shall support the Authority in calculation of Annual O&M fee as per the provisions of Article 8
- 11.1.9 The supervision consultant shall undertake such other activities and discharge such other functions as directed by the Authority from time to time

ARTICLE 12: INSURANCE

12.1 Insurance

12.1.1 The Operator shall effect and maintain at its own cost such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice or may be desired as feasible by the Authority. The Operator 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 Operator during the Term. The Operator shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Operator's Account.

1.1.2 Insurance during Operation Period

Prior to the Handover Date, the Operator shall obtain and maintain at no cost to the Authority in respect of the Project/ITPU and its operations such insurance as may be required under the Applicable Laws and such insurance as the Operator may reasonably consider necessary or desirable in accordance with Good Industry Practice or may be desired as feasible by the Authority. The Operator shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Operator's Account. For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Operator pursuant to this Article 12 are herein referred to as the "Insurance Cover".

12.2 Insurance Cover

The Operator shall, during the Term, procure and maintain Insurance Cover including but not limited to the following:

- 12.2.1 loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Operator, at replacement value, cash handling;
- 12.2.2 comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;
- 12.2.3 the Operator's general liability arising out of this Agreement;
- 12.2.4 liability to third parties for goods or property damage;
- 12.2.5 workmen's compensation insurance; and
- 12.2.6 any other insurance that may be necessary to protect the Operator and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in 12.2.1 to 12.2.5 above or as may be required by the Authority.

12.3 Evidence of Insurance Cover

All insurances obtained by the Operator in accordance with this Article 12 shall be maintained with insurers on terms consistent with Good Industry Practice. The Operator shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration.

12.4 Remedy for failure to insure

If the Operator fails to effect and keep in force all insurances for which it is responsible pursuant hereto, entire responsibility shall be that of the Operator in case of any consequence. Authority shall have the option to either keep in force any such insurance, and pay such premium and recover the costs thereof from the Operator as an acknowledged debt.

12.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Operator 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.

12.6 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator by credit to the Operator's Account and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the ITPU.

ARTICLE 13: ACCOUNTS AND AUDIT

13.1 Audited accounts

13.1.1 The Operator shall maintain separate books of accounts with respect to the Project in compliance with generally applicable accounting principles in India, which books of accounts shall be duly audited by a statutory auditor in accordance with the requirements of Applicable Law. Copies of such books of accounts shall be provided to the Authority upon written request from the Authority and shall also be available for audit as and when required.

13.2 Appointment of auditors

13.2.1 The Operator shall appoint, and have during the subsistence of this Agreement as its statutory auditors, a firm chosen by it from the mutually agreed reputable firms of chartered accountants. All fees and expenses of the statutory auditors shall be borne by the Operator.

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

13.3 Certification of claims by Statutory Auditors

13.3.1 Any claim or document provided by the Operator 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.

ARTICLE 14: FORCE MAJEURE

14.1 Force Majeure Event:

14.1.1 The Operator or the Authority, as the case may be, shall be entitled to initially suspend the performance of its respective obligations under the Agreement to the extent that the Operator or the Authority (“Affected Party”), as the case may be, is unable to render such performance due to a force majeure event.

14.1.2 In the Agreement, no event or circumstance and/or no combination of events and circumstances shall be treated as a Force Majeure Event unless it satisfies all the following conditions:

- a. materially and adversely affects the performance of an obligation;
- b. are beyond the reasonable control of the Affected Party;
- c. such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- d. do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- e. which, by itself or consequently, has an effect described in Article 14.1.1.

14.1.3 Force majeure event (“Force Majeure Event”) includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Article 14.1.2:

- a. war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the Site;
- b. revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within the Site or near vicinity;
- c. nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Site and/or the Project Assets, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Site by the Operator or any affiliate of the Operator or any Subcontractor of the Operator or any of their respective employees, servants or agents;
- d. strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Site;
- e. any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within the Site or near vicinity;
- f. explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Site or near vicinity;
- g. epidemic, pandemic or plague within the Site or near vicinity; and
- h. Any event or circumstances of a nature analogous to any events set forth in a. to f. above, within the Site or near vicinity.

14.2 Procedure for Force Majeure:

- 14.2.1 If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail: (i) the Force Majeure Event(s) that has occurred; (ii) the obligation(s) affected as described in this Article 14 (iii) the dates of commencement and estimated cessation of such event of Force Majeure; and (iv) the manner in which the Force Majeure Event(s) affect the Party's ability to perform its obligation(s) under the Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above. The Parties expressly agree that payment of Annual Revenue Share shall not be suspended during the pendency of Force Majeure Event and/or its effect.
- 14.2.2 The Affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 14.2.1 above, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with Article 14.2.1 above. The Affected Party, to the extent rendered unable to perform its obligations or part thereof under the Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- 14.2.3 The time for performance by the Affected Party of any obligation or compliance by the Affected Party with any time limit affected by Force Majeure Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the Affected Party to achieve the level of activity prevailing before the event of Force Majeure Event.
- 14.2.4 Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- 1.1.5 The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of Dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 14.2.

14.3 Mitigation of Force Majeure:

The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The Affected Party shall also make efforts to resume performance of its obligations under the Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing. Further, each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event and the

time for performance by the Affected Party of any obligations or compliance by the affected Party with any time limit affected by Force Majeure Event and for the exercise of any right Affected thereby, shall be extended as may be decided by the Authority by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the Affected Party to achieve the level of activity prevailing before the Force Majeure Event, provided the expiry of term remains as it is.

ARTICLE 15: COMPENSATION FOR BREACH OF AGREEMENT

15.1 Compensation for default by Operator

In the event of Operator being in material default of this Agreement and such default is cured before Termination, the Operator shall pay to the Authority as compensation, all direct additional costs suffered or incurred by the Authority arising out of such material default by the Operator, in one lump sum within ninety days of receiving the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 15.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

15.2 Mitigation of costs and damage

The Authority shall make all possible efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the Operator.

ARTICLE 16: SUSPENSION OF OPERATOR’S RIGHTS

16.1 Suspension upon Operator Event of Default

Upon occurrence of an Operator 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 (a) suspend all rights of the Operator under this Agreement including the Operator’s right to collect revenues, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the “Suspension”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Operator. The Authority may extend the period of suspension at its sole discretion for further period as it may deem fit.

16.2 Authority to act on behalf of Operator

16.2.1 Subject to Article 16, the Authority shall have the right to utilise the revenues for meeting the costs incurred by the Authority to remedy and rectify the cause of such Suspension and for defraying the expenses during such Suspension period. Provided, however, that if the Operator is making diligent efforts to remedy and rectify such cause, then the Authority shall allow the Operator reasonable time and opportunity for such remedy or rectification.

16.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Operator in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Operator under and in accordance with this Agreement and other agreements in relation to the Project, shall be deemed to have been done or taken for and on behalf of the Operator and the Operator undertakes to indemnify the Authority for all costs incurred during such period. The Operator hereby licenses and sub-licenses respectively, the Authority or any other person authorized by it under Article 16.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Operator with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Operator in performing its obligations under the Agreement.

16.3 Revocation of Suspension

16.3.1 The suspension of the rights of the Operator by the Authority pursuant to Article 16.1 above shall be revoked by the Authority forthwith upon the Operator having remedied or removed the cause of suspension within a period not exceeding ninety days from date of suspension to the satisfaction of the Authority unless in the meantime this Agreement has been terminated by the Authority in accordance with Article 16.

16.4 Termination

- 16.4.1 At any time during the period of Suspension under this Article 16, the Operator may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 17.
- 16.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within ninety days from the date of Suspension hereunder or within the extended period, if any, set forth in Article 16.1, 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 an Operator Event of Default.

ARTICLE 17: TERMINATION

17.1 Termination for Operator Default

17.1.1 Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Operator ("Operator Event of Default") which, if not remedied within the Cure Period set forth below, or where no Cure Period is specified, within ninety days, upon receipt of written notice from the Authority, shall provide to the Authority the right to terminate this Agreement in accordance with Article 17.1.2:

- a. The Operator fails to complete the Project CP Completion;
- b. The Operator abandons the operations of the Project for any period;
- c. Commercial operation of the Project does not occur within the period of 90 days from schedule Handover Date;
- d. The Operator creates any Encumbrance, charges or lien in favor of any person;
- e. Breach of any material obligation or covenant of this Agreement of the Operator;
- f. the Operator is adjudged bankrupt or insolvent or insolvency resolution professional has been appointed under the Insolvency and Bankruptcy Code 2016, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its Project Assets that has a material bearing on the Project;
- g. a resolution for winding up of the Operator is passed, or any petition for winding up of the Operator is admitted by a court or tribunal and a provisional liquidator or receiver is appointed and such order has not been set aside or the Operator is ordered to be wound up by Court, except for the purpose of amalgamation or reconstruction which has been commenced or undertaken without prior written consent of the Authority;
- h. there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the agreements related to the Project, or of (ii) all or part of the Project Assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- i. a resolution is passed by the shareholders of the Operator for the voluntary winding up of the Operator;
- j. the Operator repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- k. the Operator suffers an execution being levied on any of its Project Assets/ equipment causing a Material Adverse Effect on the Project;
- l. the Operator has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 days irrespective of whether the interest is payable on such delay or not;
- m. the Performance Security has been encashed and appropriated in accordance with Article 7.2 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of ninety days;
- n. subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 7.2, the Operator fails to meet any Condition Precedent or cure the Operator Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of ninety days;

- o. the Operator has failed to make any payment to the Authority within the period specified in this Agreement.

10.4.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of an Operator Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator.

17.2 Termination for Authority Default

17.2.1 The Operator may after giving ninety days' notice in writing to the Authority terminate this Agreement upon the occurrence and continuation of any of the following events (each a "Authority Event of Default"), unless any such Authority Event of Default has occurred as a result of Operator Event of Default or due to a Force Majeure Event.

- a. Authority is in breach of this Agreement and such breach has a Material Adverse Effect on the Operator and the Authority has failed to cure such breach or take effective steps for curing such breach within ninety days of receipt of notice in this behalf from the Operator;
- b. Authority repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- c. Authority is in breach of any representation or warranty made under this Agreement.

17.3 Termination Payment due to Authority Default

There shall be no termination payment from one Party to the Other and each Party shall bear its own cost on termination of this Agreement.

17.3.1 Termination Payment due to Operator Default

There shall be no termination payment from one Party to the Other and each Party shall bear its own cost on termination of this Agreement. However, all raw material, finished products, plant and machinery or any other asset/ tangible item present at the Project site would become the property of the Authority. The Operator would not be allowed to take/ move any movable or immovable assets/ tangible item outside the Project site.

17.4 Survival of rights

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

ARTICLE 18: DIVESTMENT OF RIGHTS AND INTEREST

18.1 Divestment Requirements

18.1.1 Upon Termination of this Agreement for any reason whatsoever, the Operator shall comply with and conform to the following Divestment Requirements:

- a. notify to the Authority forthwith the location and particulars of all Project Assets;
- b. vacate the Project, it being agreed that the legal, actual, physical and constructive possession of the Project and the Site is and shall always, during the term of the Agreement and thereafter, remain vested with the Authority ;
- c. cure all Project Assets, of all defects and deficiencies of the Project, if any;
- d. deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' drawings as on the Transfer Date. For the avoidance of doubt, the Operator 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 liability, Encumbrance;
- e. transfer and/or deliver all applicable permits to the extent permissible under Applicable Laws;
- f. execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- g. comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, liabilities absolutely unto the Authority or to its nominee.

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

18.2 Cooperation and assistance on transfer of Project

- 18.2.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 18.2.2 The Parties shall provide to each other, six 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 much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Operator shall further provide such reasonable advice and assistance as the Authority, its operator or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

18.3 Divestment costs etc.

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

ARTICLE 19: ASSIGNMENT AND CHARGES

19.1 Restrictions on assignment and charges

- 19.1.1 Subject to Article 18.2, this Agreement shall not be assigned by the Operator to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason and the denial shall not be subject to test of reasonability.
- 19.1.2 Subject to the provisions of Article 18.2, the Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Agreements related to the Project to which the Operator is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason and the denial shall not be subject to test of reasonability.

19.2 Assignment by Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 10 (ten) days' notice to the Operator, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of Authority's then outstanding obligations of the Agreement.

ARTICLE 20: CHANGE IN LAW

- 20.1 In the event of a Change in Law results in a Material Adverse Effect, the Authority or the Operator may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Operator and the Authority shall thereafter consult in good faith to agree to such modifications and in the event agreement cannot be reached, either of them may refer the matter for determination in accordance with the Dispute Resolution Procedure. It is hereby clarified that the parties shall continue to fulfil their obligations under this agreement during pending resolution of any Dispute under this Article.
- 20.2 For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax or imposition of an existing Tax to items on which the same is not applicable as on Appointed Date shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

ARTICLE 21: LIABILITY AND INDEMNITY

21.1 Liability in respect of the Project

Operator shall be solely responsible for the construction, if any, operation and maintenance of the Project, and shall have the overall responsibility and liability with respect to the Project and all Projects Assets located upon the Project Site. In no event shall the Authority have any liability or be subject to any claim for damages arising out of the design, development, financing, construction, operation, maintenance or management of the Project and the Project Assets located upon the Project Site.

21.2 General indemnity

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

21.3 Indemnity by the Operator

21.3.1 Without limiting the generality of Article 21.2, the Operator shall fully indemnify, hold harmless and defend the Authority and Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- a. failure of the Operator to comply with Applicable Laws and applicable permits;
- b. payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator’s contractors, suppliers and representatives; or
- c. non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors.

21.3.2 Without limiting the generality of the provisions of this Article 21, the Operator 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 any accidents, consumer complaints, claims by regulatory bodies including without limitation claims under the Legal Metrology Act, 2009 and the Food Safety And Standards Act, 2006, claims of employees, union, third party claims, 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 Operator

or by the Operator's contractors in performing the Operator'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 Operator 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 Operator 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 Operator is unable to secure such license within a reasonable time, the Operator 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.

21.4 Notice and contest of claims

In the event that the Authority or either of the Indemnified Persons 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 (the "Indemnified Party"), it shall notify the Operator (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.

21.5 No consequential claims

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to indemnify the other Party for any matter arising out of or in connection with this Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by such other Party.

ARTICLE 22: RIGHTS AND TITLE OVER THE SITE

22.1 License rights

For the purpose of this Agreement, the Operator shall have rights to the use of the Site as licensee subject to and in accordance with and for the purposes of this Agreement.

22.2 Access rights of Authority and others

The Operator agrees that the Authority and its representatives shall have complete, uninterrupted and free access to the Site and Project at all times for the authorised representatives and vehicles of the Authority, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

22.3 Taxes and charges

The Operator shall:

22.3.1 Pay all property taxes or any such taxes under Applicable Laws on the Site shall be payable by the Operator post the issuance of Certificate of Compliance by the Operator, which shall not be reimbursed or payable by the Authority. Any pending payment, pertaining to property tax or any such taxes under Applicable Laws on the Site, prior to handover of the Site shall be payable by the Authority.

22.3.2 Pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Authority or its contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.

22.4 Restriction on sub-letting

The Operator shall not, sublet the whole or any part of the Site or Project or create any third party rights, title or interest or any encumbrance whatsoever, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Operator to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project as per terms of this Agreement.

ARTICLE 23: DISPUTE RESOLUTION

23.1 Dispute Resolution

- 23.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 23.1.2.
- 23.1.2 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.

23.2 Arbitration

- 23.2.1 Any other Dispute which is not resolved amicably by conciliation, as provided in Clause 23.1.2, shall be finally decided by reference to arbitration by an arbitral tribunal in accordance with Clause 23.2.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the Rules), and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 or any subsequent amendment or re-enactment thereof (“Act”). The place of such arbitration shall be Raipur and the language of arbitration proceedings shall be English.
- 23.2.2 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 Act
- 23.2.3 The arbitral tribunal shall make a reasoned award (“Award”). Any Award made in any arbitration held pursuant to this Article 23 shall be final and binding on the Parties as from the date it is made, and the Operator and the Authority agree and undertake to carry out such Award without delay.
- 23.2.4 The Operator and the Authority agree that an Award may be enforced against the Operator and/or the Authority, as the case may be, and their respective assets wherever situated.
- 23.2.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

23.3 Continued performance

While any Dispute under this Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under this Agreement

without prejudice to the final determination in accordance with the provisions under this Article 23.

ARTICLE 24: DISCLOSURE AND CONFIDENTIALITY

24.1 Confidentiality

- 24.1.1 Each Party hereby agree and undertake to keep all information received by the other Party (and/or its employees, directors, officers or authorized representatives), confidential.
- 24.1.2 Further, each Party hereby agrees that this Agreement and/or all Agreements related to the Project or the contents thereof shall not be disclosed by either Party to any third party without the prior written consent of the other Party.

24.2 Disclosure

- 24.2.1 Provided however that nothing contained hereinabove, shall apply to any disclosure by either Party of any information received from the other Party if:
- a. Such disclosure is required by Applicable Law or requested by Government or the Authority or required to be made under the agreement; or
 - b. Such information being available in the public domain, other than by a breach of the Agreement by the party seeking to make such disclosure;
 - c. Such information being made available to the consultants and professional advisers of either Party; or
 - d. Such information is disclosed by a Party with the prior written consent of the other Party. Provided the disclosure is made strictly in accordance with such written consent.

ARTICLE 25: TRANSFER PROVISIONS

- 25.1 Upon termination of this Agreement and consequent obligation/right of the Authority to acquire the Project Assets without the Authority required to pay any amount to the Operator, the Operator shall ensure that on the Transfer Date, the interest of Operator in:
- a. all immovable property, assets, structures, buildings, buildings, plant and machinery, ways, walls, compounds relating to the Project Assets shall be transferred to the Authority or its nominee, clear of any Encumbrances and with good title (other than any encroachments existing on the date hereof), except to the extent such encroachments have been removed after Effective Date;
 - b. the rights and obligations under or pursuant to all contracts relating to the Project Assets and other arrangements entered into in accordance with the provisions of this Agreement between Operator and any third party shall (in consideration of Authority's assumption of the obligations under or pursuant to the contracts and other arrangements), at the option of the Authority, be vested in the Authority or its nominee, clear of any Encumbrance and with good title. The Operator shall ensure such rights of the Authority are incorporated in all contracts between Operator and third party(ies) with a specific obligation on the parties to such contracts to enter into novation agreement with the Authority upon exercise of its option by the Authority; and
 - c. Notwithstanding anything contained in Article 25 (a) and (b), prior to any transfer of the Project Assets, the Authority shall have the right to conduct a due diligence of the contracts and agreements, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of the Authority are unreasonably onerous and would be considered onerous at the time that the contracts were entered into. In relation to all such contracts that are not transferred to the Authority, no third entity, including the counter-party of such contract shall have any right, license title, interest, benefit, claim or demand against or over any Project Assets and such Project Assets shall be transferred to the Authority or its nominee, clear of any Encumbrance and with good title.
- 25.2 Furthermore, notwithstanding anything contained in the Article 25, no liability (accrued or contingent) of Operator or relating to the Project Assets arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Authority or its nominees. Authority or its nominees shall only be liable for liabilities in relation to the Project Assets arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to Authority or its nominee or any Encumbrance existing on any of the Project Assets, the quantum of such liability and/or amount corresponding to such Encumbrance, shall be deducted from the Performance Security.
- 25.3 Furthermore, notwithstanding anything contained in the Article 25, no liability (accrued or contingent) of Operator or relating to the Project Assets arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Authority or its nominees. Authority or its nominees shall only be liable for liabilities in relation to the Project Assets arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to Authority or its nominee or any Encumbrance existing on any of the Project Assets, the quantum of such liability and/or amount corresponding to such Encumbrance, shall be deducted from the Performance Security.

- 25.4 Without prejudice to the foregoing, Operator agrees to indemnify and keep indemnified actions or omissions of Operator prior to the transfer of the Project Assets. It is expressly understood by the Parties that this Article shall survive the Termination or expiry of this Agreement.
- 25.5 Furthermore, notwithstanding anything contained in the Article 25.1, no liability (accrued or contingent) of **Operator** or relating to the Project Assets arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Authority or its nominees. Authority or its nominees shall only be liable for liabilities in relation to the Project Assets arising pursuant to the Transfer Date. In the event of any such liability being assumed or transferred to Authority or its nominee or any Encumbrance existing on any of the Project Assets, the quantum of such liability and/or amount corresponding to such Encumbrance, shall be deducted from the Performance Security.
- 25.6 Without prejudice to the foregoing, **Operator** agrees to indemnify and keep indemnified Authority from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by Authority as a result of any actions or omissions of **Operator** prior to the transfer of the Project Assets. It is expressly understood by the Parties that this Article shall survive the Termination or expiry of this Agreement.
- 25.7 **Operator** shall in accordance with Good Industry Practice ensure that all property, assets, rights and other items (constituting Assets) which are vested in or transferred to Authority shall be in good working order and in a good state of repair. For this purpose, the Parties shall appoint an independent engineer to conduct an audit of the Project Assets being transferred. In the event any of Project Assets which are vested in or transferred to Authority are not fit for purpose/ in a good state of repair/ as would be expected of an international world class assets, as certified by such Independent Engineer, then the cost or capital expenditure required to be incurred to bring it to good state of repair of all such Project Assets shall be payable by the **Operator** to Authority, and the same may be deducted from the Performance Security.
- 25.8 Expiry or Termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to Authority and/or **Operator** (or which may thereafter accrue in respect of any act or omission prior to such expiry or Termination) and without prejudice to those provisions which expressly provide for continuing obligations or which are required to give effect to such expiry or Termination or the consequences of such expiry or Termination.
- 25.9 The Parties' rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.
- 25.10 Authority at its own discretion may allow the sub- licensees/tenants/and users to continue on mutually negotiable terms and conditions.

ARTICLE 26: MISCELLANEOUS

26.1 Governing Law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article 23 (Dispute Resolution), the courts at Raipur shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

26.2 Entire Agreement

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

26.3 Severability

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

Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

26.4 No partnership

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

26.5 Third parties

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

26.6 Successors and assigns

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

26.7 Notices

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

- a. in the case of the Operator, be given by e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Raipur may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Operator may from time to time designate by notice to the Authority.

Attention:

{Designation:

Address:

Fax No:

Email: }

- b. in the case of the Authority, be given by e-mail and by letter delivered by hand at the address given below and be addressed to the of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in Raipur, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Address:

Fax No:

Email: }

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

26.8 Language

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

26.9 Counterparts

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

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

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.

The common seal of Operator has been affixed pursuant to the resolution passed by the Board of Directors of the Operator at its meeting held on the day of 20..... hereunto affixed in the presence of Director, who has signed these presents in token, Company Secretary / Authorised Officer who has countersigned the same in token thereof \$:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

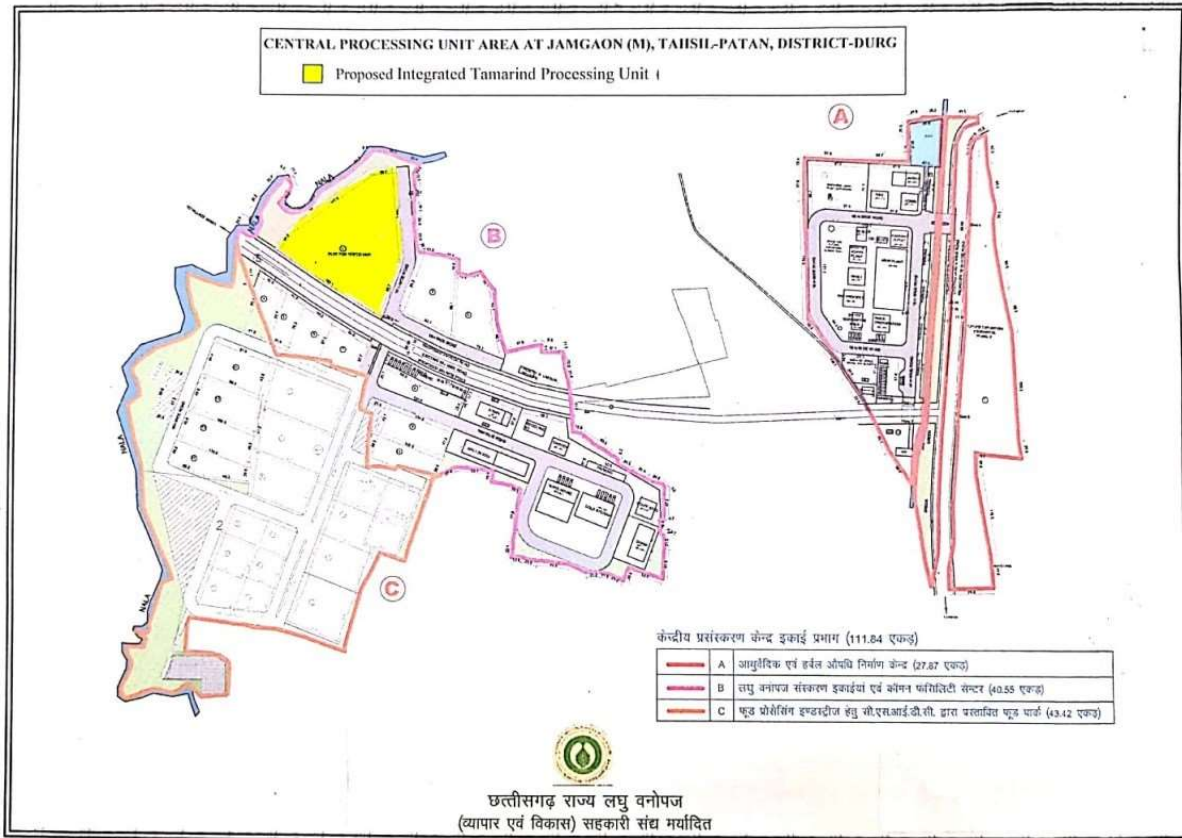
2.

....., signed these thereof and

\$To be affixed in accordance with the articles of association of the Operator and the resolution passed by its Board of Directors.

SCHEDULE A – SITE OF PROJECT

| Particular | Detail |
|------------|---------------------------------|
| Area | 6 Acres (Approx.) |
| Location | Jamgaon, Patan, Dist- Durg (CG) |



SCHEDULE B – SCOPE OF THE PROJECT

The broad scope of engagement of the Operator during the Term as per the terms of this Agreement shall mean and include the following:

- Support/assist the Authority and Engineer appointed by Authority and offer necessary advice as required for finalisation of the Design guidelines and specifications for the Project in consultation with the Authority.
- The Operator shall advice/assist in the process to finalise designs and good for construction drawings of the Project.
- The Operator shall assist Authority and the appointed Engineer to ensure compliance of the development/ construction/ installation of the Project/ Project Facilities, as specified in Schedule B and Schedule C on the Site set forth in Schedule A;
- Operating, maintaining and transfer of the Project as per the terms of this Agreement; and
- Performance and fulfilment of all other obligations of the Operator 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 Operator under this Agreement.

SCHEDULE C – PROJECT FACILITIES

Project facilities (indicative) shall be as per the Project Brief document attached. The detailed list of project facilities (civil, plant and machinery) would be finalised at the tender stage in consultation with the Operator, in accordance with this Agreement.

SCHEDULE D – SPECIFICATIONS & STANDARDS

The operator needs to comply with all civil and structural standards. Indicative list of machines to be installed at 45 MTPD Integrated tamarind processing unit are listed below:

TAMARIND SEEDLESS TO PASTE AND CONCENTRATE

| S.N | DESCRIPTION | QTY. | POWER |
|-----|--|-------|-------|
| 1 | De-lumpers | 2 set | 10 hp |
| 2 | Pulp – Washers | 3 set | 10hp |
| 3 | Tamarind soaking tank – 2000 lts | 5 set | |
| 4 | Feed Screw Conveyor | 4 set | 16 hp |
| 5 | Steel Structure for 2 tier platform | 1 set | |
| 6 | Two Stage Pulpers | 3 set | 60 hp |
| 7 | Steel Structure for 2 tier platform | 1 set | |
| 8 | Collection tank ss 304 – 2000 lts | 3 set | |
| 9 | Transfer Pump | 3 set | 6 hp |
| 10 | Blending tank – 2000 lts | 3 set | |
| 11 | Steel 2 tier platform | 1 set | |
| 12 | Transfer Pump | 3 Set | 6 hp |
| 13 | Vacuum Pan (Juice Concentrator) Jacketed 2000 lts capacity | 2 set | 40 hp |
| 14 | 2 Steel Platform for vacuum pan | 1 set | |
| 15 | Holding tank – 2000 lts | 3 set | |
| 16 | Transfer Pump | 3 set | 6 hp |
| 17 | Rotary Scrape surface Pump-paste Pasteurizer – 2000 lts | 2 set | 15 hp |
| 18 | Insulated storage tank 1000 lts with chiller attachments. | 4 set | |
| 19 | Electrical panel for pulping section, cable etc. | 3 set | |
| 20 | Packaging line retail | 1 set | |
| 21 | Packaging line bulk drum | 1 set | |
| 22 | Ex. Works Price For Misc Utilities (Boiler + RO + Ion Exchange + Compressor) | | 22 hp |
| 23 | Ex. Works Price For Packaging & Material Handling Equipment | | 7 hp |

| | | |
|--|--|--------------|
| | | 198HP |
|--|--|--------------|

TAMARIND SEED PROCESSING

| S.N | DESCRIPTION | QTY. | POWER |
|------------|---|-------------|---------------|
| 1 | Drum Siever-Cleaner | 1 SET | 5 HP |
| 2 | Seed Vibro –Cleaner Aspirator (Centrifugal Fan + Cyclone) | 1 SET | 25HP |
| 3 | Gravity Separator | 1 SET | 8 HP |
| 4 | Distoner – Aspirator (Centrifugal Fan + Cyclone) | 1 SET | 20 HP |
| 5 | Bucket Elevator | 20 SET | 60 HP |
| 6 | Seed Drum Roaster (Auto fuel Feeder) | 2 SET | 40 HP |
| 7 | Roaster Furnace | 2 SET | 30 HP |
| 8 | Seed Decorticators | 4 SET | 60 HP |
| 9 | Vibro Shifter | 1 SET | 6 HP |
| 10 | Gravity Separator | 7 SET | 10 HP |
| 11 | Rotary Screen Cleaner | 1 SET | 3 HP |
| 12 | Dust Filter Rotary Screen | 1 SET | 10 HP |
| 13 | Pappu Size Grader | 1 SET | 5 HP |
| 14 | Reel Siever for Cracked tkp Seeds | 1 SET | 5 HP |
| 15 | Pappu Silky Polisher | 1 SET | 60 HP |
| 16 | Colour Sorter | 1 SET | 10 HP |
| 17 | Colour Sorter Compressors | 1 SET | 20 HP |
| 18 | 5 Metric Tonne bins above all Machines | 10 SET | |
| 19 | Storage Silos 15 Metric Tonnes | 1 SET | |
| 20 | Sand Siever | 1 SET | 2 HP |
| 21 | Steamax Roaster Fire-Furnace | 2 SET | 20 HP |
| 22 | Cabin For Sortex with 2 ac | 1 SET | |
| 23 | Air Ducting line | 1 SET | |
| 24 | Centrifugal, Fans + Cyclones and air locks | 20 SET | |
| 25 | Fuel/ Pallets furnace, Electric Panels, Cables, Starters, Switches etc. | 1 SET | |
| | | | 399 HP |

TAMARIND KERNELS TO POWDER AND THEN CMT

| S. N. | NAME OF MACHINE | QTY. | POWER |
|------------------|------------------------|--------------|---------------|
| 1 | Crackers | 1 SET | 15 HP |
| 2 | Flakers | 1 SET | 60 HP |
| 3 | ACM – 150 | 2 SET | 500 HP |
| 4 | Pulse Jet Collector | 1 SET | 10 HP |
| 5 | ACM Compressors | 2 SET | 60 HP |
| | | TOTAL | 645 HP |

POWDER TO CMT

| S. N. | NAME OF MACHINE | QTY. | POWER |
|------------------|---|--------------|---------------|
| 1 | Caustic lye tank storage – HDPE 10kl | 3 | |
| 2 | Dosing System of lye | 1 | 4 HP |
| 3 | Dosing System of SMCA | 1 | 3 HP |
| 4 | Jacketed Reactor 4 kal | 1 | 200 HP |
| 5 | Rotary Table Feeder | 1 | 7 HP |
| 6 | Ultra FinePulverisers v-110 | 2 | 500 HP |
| 7 | UF Accessories | 1 | 5 HP |
| 8 | MS Dust Collector System | 1 | |
| 9 | Centrifugal Siever | 1 | 5 HP |
| 10 | Nauta Mixer | 1 | 10 HP |
| 11 | Ribbon blender 6kl | 1 | 40 HP |
| 12 | Screw Conveyors | 10 | 30 HP |
| 13 | Rotary Siever | 1 | 5 HP |
| 14 | Cooling, tower, chiller, Ammonia with Insulated complete pipe line with motor 50 hp | 1 | 50 HP |
| 15 | Electric, Instruments, Panels, Cables | 1 | |
| | | TOTAL | 859 HP |

SCHEDULE E – PERFORMANCE SECURITY

The,

.....

.....

WHEREAS:

- (A) (the “**Operator**”) and the, (the “**Authority**”) have entered into a O&M Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Operator undertaking the operation and maintenance of the Project, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Performance Security to the Authority in a sum of Rs. cr. (Rupees crore) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term of the Agreement (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Operator’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of in the Authority, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Term of the Agreement under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Operator, or any Dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/ or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for days during the Term of the Agreement and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
9. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
10. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of Days as mentioned in the O&M Agreement or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- i. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- ii. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch

SCHEDULE F –

NOT USED

SCHEDULE G – MAINTENANCE REQUIREMENTS

(See Clause 3.1.3)

The Operator shall maintain the Project as per below mentioned maintenance requirements, including but not limited to, and as per good industry & engineering practices and relevant manuals:

- The Operator shall maintain the project site Civil building work as per the guidelines of Bureau of Indian Standards/ National Building Code/ CPWD Works Manual.
- The Operator shall also maintain the plant and machinery as per respective maintenance manual and report the same to Supervision Consultant and the Authority.
- The Operator shall ensure that all plant fire protection facilities must be adequately maintained and periodically inspected and tested to ensure that they are always in satisfactory operating condition and will serve their purpose in an emergency.
- The Operator shall ensure that inspection and testing is performed on process equipment, using procedures that follow recognized and generally accepted good engineering practices.
- The Operator shall ensure that equipment deficiencies outside the acceptable limits defined by the process safety information must be corrected before further use. In some cases, it may not be necessary that deficiencies be corrected before further use, as long as deficiencies are corrected in a safe and timely manner, when other necessary steps are taken to ensure safe operation.
- The Operator shall undertake regular and periodic maintenance of the Plant and machinery in accordance with the schedule as finalise by Supervision Consultant, as per machinery catalogue, as per Maintenance Manual, Maintenance Requirement and in the manner of a prudent businessman.
- The Operator shall comply with and conform to all applicable laws, rules and regulations relating to maintenance of the Project and shall diligently follow all standards and practices as applicable for the maintenance of the Project.

ANNEXURE 1- PROJECT BRIEF