

# REQUEST FOR PROPOSAL

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## Development, Operation and Maintenance of 6 MTPD capacity Mahua Processing Unit in the State of Chhattisgarh

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### *Volume 2: Draft License Agreement*

**(BID DUE DATE: .....)**

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## **Part I – Preliminary**

## **DRAFT LICENSE AGREEMENT**

THIS AGREEMENT is entered into on this the \_\_\_\_\_ day of \_\_\_\_\_ 2022

### **BETWEEN**

- 1) ....., established under ....., represented by its ..... and having its principal office at ..... (hereinafter referred to as the “Licensor” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns); of One Part;

### **AND**

- 2) ..... Limited, a Special Purpose Vehicle incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the “Licensee” 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 Licensor had resolved to establish a Mahua Processing Unit (MPU) of minimum 6 MT capacity (For manufacturing Mahua energy bar (Mahua - Kodo, Mahua - Sesame and Mahua - Ragi) and Mahua liquid jaggery) at ..... with private sector participation on design, build, operate, maintain and transfer basis on a land parcel of ... (.....) acres in accordance with the terms and conditions to be set forth in a License Agreement to be entered into.
- B. The Licensor had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposal” or the “RFP”), for undertaking the Project and, accordingly issued Notice Inviting Tender (NIT), and invited proposals from interested Bidders vide Request for Proposal dated ....., 2022.
- C. After evaluation of the bids received, the Licensor had accepted the Bid of M/s..... and issued its Letter of Award No. .... dated ..... (herein after called the “LOA”) to the M/s..... requiring, inter alia, the execution of this License Agreement within 30 (thirty) days of the date of issue thereof.
- D. {The Selected Bidder/Consortium has since promoted and incorporated the Licensee as a limited liability company under the Companies Act 2013, and} has requested the Licensor to accept the Licensee as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium under the LOA}, including the obligation to enter into this License Agreement pursuant to the LOA for undertaking the Project.

- E. By its letter dated ....., the Licensee has also joined in the said request of the Selected Bidder/ Consortium to the Licensor to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this License Agreement pursuant to the LOA. The Licensee has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof
- F. The Licensor has agreed to the said request of the Licensee and the Licensee, and has accordingly agreed to enter into this License Agreement with the Licensee for implementation of the Project on design, build, operate, maintain and transfer basis, subject to and on the terms and conditions set forth hereinafter.
- G. The Licensor acknowledges that as on this day, the Licensee has submitted the requisite Construction Performance Security in the required form to Licensor.
- H. The Licensee represents and warrants that it/they have 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 document.

In light of compliance by the Selected Bidder/Licensee of the pre-conditions to the execution of the Agreement, Licensor has agreed to enter into this Agreement vesting the rights for the implementation of the Project with the Licensee 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 License 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.

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

**"Affected Party"** shall have the meaning as set forth in Clause 28.1;

**"Agreement"** or **"License 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;

**"Appendix"** means any of the schedules, supplements or documents, appended to this Agreement;

**"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;

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

**"Appointed Date"** means the date on which every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the License Period;

**"Associate"** or **"Affiliate"** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting



shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Licensor Event of Default**” shall have the meaning as set forth in Clause 31.2.1;

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

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);

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

“**Bid**” means the documents in their entirety comprised in the Bid submitted by the Selected Bidder/Consortium in response to the Request for 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;

“**Bid Security**” means the security provided by the Licensee to the Licensor along with the Bid in a sum of Rs ... Lakhs (Rupees ..... Lakhs only ), in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 16.4;

“**Certificate of Compliance**” shall have meaning set forth in Clause 4.1.4;

“**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; or

“**Change in Ownership**” shall have the meaning as set forth in Clause 5.16;

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

“**Commencement Notice**” shall have the meaning set forth in Clause 16.2;

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

“**Completion Notice**” shall have the meaning as set forth in Clause 16.1;

“**Competent Authority**” means any agency, authority, department, ministry, public or statutory Person of the or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Licensee under or pursuant to this License ;

“**License** ” shall have the meaning as set forth in Clause 3.1.1;

“**Licensee**” shall have the meaning attributed thereto in the array of Parties as set forth in the Recital 2;

“**Licensee's Representative**” means the Person appointed by Licensee under Clause 5.14;

“**License Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Licensee Event of Default**” shall have the meaning as set forth in Clause 31.1.1;

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

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

“**Consortium Member**” means a Company specified in Recital (D) as a member of the Consortium;

“**Construction Documents**” means and includes all drawings, calculations, computer application software (programs), samples, patterns, models, operation and Maintenance Manuals, and other manuals and information of a similar nature prepared in relation to the Project Facilities;

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

“**Construction Performance Security**” shall have meaning as set forth in Clause 9.1.1;

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

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

**“Contractual Arrangements”** shall mean and include all and any, licensing, tenancy, franchising and similar arrangements that may be entered into by the Licensee, in accordance with and subject always to the terms and conditions of this License Agreement, with such Persons selected by it for enabling such Persons to occupy or use the whole or part of the Project Facilities including built-up floor areas/spaces and infrastructure facilities, provided that the Licensee cannot sell title of the Site or of the Project Facilities.

**“Cure Notice”** shall have meaning as set forth in Clause 16.2;

**“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 Licensee requires any reasonable action by the Licensee that must be approved by the Licensor or the PMC hereunder, the applicable Cure Period shall be extended by the period taken by the Licensor or the PMC to accord their approval

**“design build, operate, maintain and transfer”** shall have the meaning as set forth in Recital (B);

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

**“Detailed Project Report”** or **“DPR”** means the detailed design and engineering report for the Project which shall be prepared by the Licensee based on specification (as per Schedule C), as indicated in the Clause 14.3;

**“Designs and Drawings”** means the detailed designs, drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Licensee from time to time in accordance with the provisions of this Agreement;

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

**“Dispute”** shall have the meaning as set forth in Clause 38.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 38;

**“Divestment Requirements”** means the obligations of the Licensee for and in respect of Termination as set forth in Clause 32.1;

**“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 License Agreement has been executed by the Parties;

**“Easement”** means all easements, reservations, rights-of-way, utilities and other similar rights as to the use of real property, which are necessary or appropriate for the conduct of activities of the Licensee related to the Project;

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

**“Encumbrances”** means in relation to the Project, any encumbrances such as 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;

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

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

**“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1;

**“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 Licensee 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 Licensee 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 Licensee, 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 Licensee 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 Licensee under or pursuant to this Agreement;

**“Indemnified Party”** means the party entitled to the benefit of an indemnity pursuant to Clause 36.4.1;

**“Indemnifying Party”** means the Party obligated to indemnify the other party pursuant to Clause 36.4;

**“Project Management Consultant or PMC”** shall have the meaning as set forth in Clause 21.1;

**“Indirect Political Event”** shall have the meaning as set forth in Clause 28.3;

**“Inspection Report”** shall have the meaning as set forth in Clause 15.2;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Licensee pursuant to Article 26, and includes all insurances required to be taken out by the Licensee under Clause 26.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, 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);

“**License Fees**” shall have the meaning as set forth in Clause 23.1.1;

“**Licensed Premises**” shall have the meaning as set forth in Clause 10.2.2;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 18.3.1;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 18.4.1;

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

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

“**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.

“**Non-Political Event**” shall have the meaning as set forth in Clause 28.2

“**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, in accordance with the provisions of this Agreement;

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

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

“**O&M Expenses**” means expenses incurred by or on behalf of the Licensee or by the Licensor, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all Taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the

O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

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

**“Operation Performance Security”** shall have meaning as set forth in Clause 9.1.4;

**“Operation Period”** means the period commencing from COD and ending on the Transfer Date;

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

**“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 have the meaning as set forth in Clause 9.1;

**“Political Event”** shall have the meaning as set forth in Clause 28.4;

**“Preservation Costs”** shall have the meaning as set forth in Clause 15.4.3;

**“Preliminary Project Report (PPR)”** shall be the document containing brief project details enclosed with the RFP document (Volume I – Instructions to Bidders)

**“Project”** means, subject to the provisions of this Agreement, the (i) designing, , construction, implementation, completion, commissioning, operation, management and transfer of the Project Facilities and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Licensee during the License Period;

**“Project Agreements”** means this Agreement, EPC Contract, O&M Contract, and any other material agreements or contracts entered into or may hereafter be entered into by the Licensee with any person in connection with matters relating to, arising out of or incidental to the Project;

**“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 Selected Bidder/Licensee under the Project Agreements and other agreements relating to the Project entered into by the Licensee, (e) proceeds from insurance policies taken by the Licensee 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 Completion Schedule”** means the progressive Project Milestones set forth in Schedule-H for completion of the Project on or before the Scheduled Completion Date;

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

**“Project Milestones”** means the project milestones as set forth in Schedule-H;

**“Project Revenue”** means revenues generated from the Project or any other usage of the Project Site as permitted by the Licensor;

**“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 Licensor;

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

**“Safety Requirements”** shall have the meaning as set forth in Clause 19.1.1;

**“Schedule”** means any of the schedules appended to this Agreement;

**“Scheduled Project Completion Date”** or **“Scheduled Completion Date”** shall have the meaning as set forth Clause 16.6;

**“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

**“Selected Bidder”** means the consortium/entity that has been successful in the Bidding Process for the Project and that has been incorporated as the Licensee;

**“Special Purpose Vehicle”** or **“SPV”** shall mean the Licensee;

**“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in



Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Licensee to, and expressly approved by, the Licensor;

“**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 the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/or building/ services or part thereof, as the context may require, to whom the Licensee contracts or subcontracts the Works in full or part;

“**Suspension**” shall have the meaning as set forth in Clause 30.1;

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

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

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

“**Tests**” means the tests to be carried out in accordance with the Construction Requirements and if not expressly specified in the said requirements, as instructed by the Licensor /PMC, in accordance with this Agreement, tests set forth in Schedule J to determine the completion of the Project;

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

“**Total Project Cost**” means a sum of Rs. 12,50,00,000.00 crore (Rupees Twelve Crore Fifty Lakh Only) for plant capacity of 6 MT;

provided that the Total Project Cost shall not exceed the actual capital cost of the Project upon completion of the Project;

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

**“Vacant Possession”** means delivery of possession of the land comprising the Site free from all Encumbrances, restriction or impediments and with all Easement and all other rights appurtenant or in relation thereto;

**“Vesting Certificate”** shall have the meaning as set forth in Clause 32.4;

**“Works”** mean the works under and in accordance with the provisions of this Agreement relating to design, development of Site, construction, completion, testing and commissioning of the Project/Project Facilities (the “Construction Works”), and the O&M Works, collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required hereunder;

**“WPI”** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

**“Year”** means 12 months with 30 days in each month.

## 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. references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, development of site, engineering, procurement, delivery, transportation, installation, processing, fabrication, equipping, establishment, testing, commissioning and other activities incidental to the construction and **“construct”** or **“build”** shall be construed accordingly;
- h. references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- i. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- j. any reference to day shall mean a reference to a calendar day;

- k. Any reference to Rs. or Rupees shall mean a reference to Indian Rs. or Rupees (currency of India);
- l. 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;
- m. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- n. references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- o. any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; 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;
- p. words importing singular shall include plural and vice versa;
- q. references to any gender shall include the other and the neutral gender;
- r. **“lakh”** means a hundred thousand (100,000) and **“crore”** means ten million (10,000,000);
- s. **“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;
- t. references to the **“winding-up”**, **“dissolution”**, **“insolvency”**, or **“reorganisation”** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors;
- u. save and except as otherwise provided in this Agreement, any reference, at any time, to any Agreement, deed, instrument, licence or document of any description shall be construed as reference to that Agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (s) shall not operate so as to increase liabilities or obligations of the Licensor hereunder or pursuant hereto in any manner whatsoever;
- v. any Agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the PMC shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the PMC, as the case may be, in this behalf and not

otherwise;

- w. 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;
  - x. 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 this Schedule or Annex, as the case may be, in which such reference appears;
  - y. the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
  - z. 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
  - aa. 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 and/or the PMC in this behalf.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Licensee to the Licensor and/or the PMC shall be provided free of cost and in three copies, and if the Licensor and/or the PMC is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 Measurements and Arithmetic Conventions**

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

### **1.4 Priority of Agreements, clauses and Schedules**

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

- a. this Agreement; and
- b. all other agreements and documents forming part hereof or referred to herein i.e. the Agreement at a) above shall prevail over the agreements and documents at b) above.

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

- a. Between two or more clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- b. between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- c. between any two Schedules, the Schedule relevant to the issue shall prevail;
- d. between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- e. between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- f. between any value written in numerals and that in words, the latter shall prevail.

## **Part II– The License**

## **ARTICLE 2: SCOPE OF THE PROJECT**

### **2.1 Scope of Project**

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

- a. Submit to the Licensor and the PMC detailed design, drawings, construction methodology, quality assurance procedures, cost estimates and the procurement, engineering and quarter wise Milestones of construction time schedule of facilities including civil, electrical, plumbing, machine/equipment, based on broad specifications specified in Schedule C;
- b. planning, designing, constructing, operating, maintaining and transfer of the Project as specified in Schedule B and Schedule C on the Site set forth in Schedule A, and in conformity with the Specifications and Standards set forth in Schedule D;
- c. operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement in Schedule L; and
- d. performance and fulfilment of all other obligations of the Licensee 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 Licensee under this Agreement.



## **ARTICLE 3: GRANT OF LICENSE**

### **3.1 The License**

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Licensor hereby grants to the Licensee and the Licensee hereby accepts the License for a period of 21 years (the “**Term**”), commencing from the Appointed Date, including the exclusive right, license and authority during the subsistence of this Agreement to implement the Project (the “**License**”).

Provided that the Licensor may, on or before the expiry of the Term, undertake a fresh bidding for selection of Licensee for operating and maintaining the Mahua Processing Unit for a further term, in the form and manner, as may be prescribed by the Licensor, at such time and in any such case of competitive bidding:

- a. The Licensee shall have a right to match the highest bid, if its bid is within 15.00% 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 Licensee shall not be qualified, either directly or indirectly, to participate in any such bidding process; and
- c. It is clarified the Licensee 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 the Licensee shall be entitled to participate in any such competitive bidding process only when it is not in default of any of the provisions of this Agreement as evidenced by imposition of damages amounting to 5% or more of the amount of Performance Security and should be in compliance with all the provisions of this Agreement. It is hereby clarified that the decision of Licensor in terms of qualification of the Licensee shall be final and binding on the Licensee.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Licensee hereby granted shall entitle the Licensee to enjoy, and oblige the Licensee to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

- 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 design, develop, construct, market, manage, administer, operate and maintain the project during the License Period;
- c. upon completion of the Project and during the Operations Period 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

development of the Project;

- e. perform and fulfil all of the Licensee's obligations under this Agreement;
- f. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Licensee under this Agreement;
- g. neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the License 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 or the Substitution Agreement;
- h. To apply for and obtain all requisite approvals and consents including from all Governmental Authorities concerned, for the development of Project site, including plans for construction of building/s and other structure/s thereon for such uses and purposes as described herein;
- i. The Licensee has no right to sell or mortgage the title of the Site 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 Licensor or its nominated agency in accordance with the provisions hereof; and
- j. Any part of the work (but not the whole of works) may be sub-contracted by the Licensee through construction contracts/O&M Contract, provided always that notwithstanding the construction contracts/O&M Contract, the Licensee retains overall management, responsibility, obligation and liability in relation to the sub-contracted work. Any such subcontracting shall not relieve the Licensee from any of its obligations in respect of the provision of such work under this Agreement. It is clarified that Licensee shall remain liable and responsible for any acts, omissions or defaults of any Contractor, and shall indemnify the Licensor in respect thereof;
- k. Any deviation from the approved civil infrastructure and machines specifications provided by the Licensor shall not be allowed. However, in case Licensee wants to upgrade/ procure civil infrastructure/ machinery of specification (Civil Infrastructure / Machinery) better than the specifications provided by the Licensor as per the provisions of this Agreement, the same shall be allowed only after obtaining prior approval from Licensor in writing.

The Licensee acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

### 3.1.3 **License Period**

The License Period shall commence from the Appointed Date for a Term of 21 years, in accordance with Clause 3.1.1, or the earlier Termination of this Agreement in terms hereof and during which the Licensee is authorized to implement the Project and to operate the Project Facilities in accordance with the provisions

hereof. For the avoidance of doubt, the License Period shall include the Construction Period.

- a. In the event of Termination, the License Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination;
- b. At the end of the License Period or sooner Termination of this Agreement for any reason whatsoever, all rights given under this License Agreement shall cease to have effect and the Project Site, Project Facilities and the Project Assets shall revert to the Licensor.

## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 10, 28, 38 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”) save and except to the extent of waiver, if any, that a Party may grant in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be.
- 4.1.2 The Licensee may, at any time after 30 (thirty) days from the Effective Date or on an earlier day acceptable to the Licensor, by notice require the Licensor to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of **180 (one hundred eighty)** days of the said notice. The Conditions Precedents required to be satisfied by the Licensor prior to the Appointed Date shall be deemed to have been fulfilled when the Licensor shall have:
- a. handed over possession of Site, on “as is where is basis” to the Licensee along with all Easementary Rights, in accordance with the terms and conditions of this Agreement, provided that the Licensee shall have given a Bank guarantee to the Licensor as Construction Performance Security in accordance with the terms hereof; and
  - b. Appointed PMC for Development and Construction Period as per the provisions of this Agreement.
- 4.1.3 The Conditions Precedent required to be satisfied by the Licensee prior to the Appointed Date within 180 days from the Effective Date shall be deemed to have been fulfilled when:
- a. Licensee shall have obtained all such Applicable Permits as listed in Schedule ‘E’ unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;
  - b. Provide an undertaking that all of the Representations and Warranties of the Licensee set forth in Article 7 are true and correct as on date of this License Agreement and as on the Appointed Date and thereafter;
  - c. The Licensee shall have been granted all Government clearances and permits under the Applicable Laws relating to environmental protection and conservation from the Ministry of Environment and Forests;
  - d. The Licensee (In case of HNI Criteria) shall enter into an agreement “O&M Contract) with an O&M partner having effective date of the agreement from

the Commercial Date of Production. The O&M partner with whom the O&M Contract shall be executed should have similar experience of operating and managing Food /agriculture processing Industry / Minor Forest Processing based Industry etc. for performing O&M obligations as per this agreement

- e. Certified true copies of all Project Agreements, in particular, the EPC Contract, O&M Contract (with an entity having the requisite O&M experience specified in the RFP document) in case of HNI as per (d) above;
- f. The Licensor shall have received from the Licensee copies (certified as true copies by an authorised officer of the Licensee) of the constitutional documents of the Licensee;
- g. The Licensor shall have received copies (certified as true copies by a Director of the Licensee) of all resolutions adopted by the Board of Directors of the Licensee authorising the execution, delivery and performance by the Licensee of this Agreement and each of the Project Agreements; and
- h. The Licensor shall have received from the Indian legal counsel of the Licensee a legal opinion with respect to the Licensor of the Licensee to enter into this Agreement and the Project Agreements and the enforceability of the provisions thereof;

Any of the conditions precedent set forth in Clause 4.1.3, save and except condition of (c) thereof, may be waived fully or partially by the Licensor at any time in its sole discretion

#### 4.1.4 **Obligations to satisfy Condition Precedents**

- a. The Licensee and the Licensor shall make all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out in Clause 4.1.3 above. The Licensee and the Licensor shall make all reasonable endeavours to procure fulfillment of the conditions set forth in Sub-clause (c) of Clause 4.1.3. Each Party shall bear its respective cost and expense of satisfying such Condition 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 Conditions Precedent (the “**Certificate of Compliance**”).
- c. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

## 4.2 **Deemed Termination upon Delay**

- 4.2.1 In the event that (i) the Licensee does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the Effective Date, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.3 or other breach of this Agreement by the Licensor, or due to Force Majeure, the Licensee shall pay to the Licensor Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 20% (twenty percent) of the Performance Security, and upon reaching such maximum, the Licensor may, in its sole discretion, terminate the Agreement.
- 4.2.2 The Licensor, at its discretion, can extend the period of Licensor's Conditions Precedent by informing the Licensee in writing with regards to delay in any or all of the Licensors' Conditions Precedent set forth in Clause 4.1.2.
- 4.2.3 Without prejudice to the provisions of Clause 4.2 , the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within 270 days from the Effective Date or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Licensee under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Licensee, and the License 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 Licensee, the Performance Security of the Licensee shall be encashed and appropriated by the Licensor as Damages thereof.

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: OBLIGATIONS OF THE LICENSEE**

### **5.1 Obligations of the Licensee**

5.1.1 It is expressly agreed that the Licensee shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Licensee from its obligations or liability hereunder.

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

- a. make, or cause to be made, necessary applications to the relevant Authority 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;
- b. perform its obligations under this Agreement;
- c. submit to the Licensor certified true copies of each of the Project Agreements within 7 (seven) days of their execution;
- d. The Licensee shall not make any addition, replacement or amendments to any of the Project Agreements without the prior written consent of the Licensor if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Licensee shall not enforce such replacement or amendment nor permit enforcement thereof against the Licensor;
- e. remove promptly from the Project Site, all waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Project Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- f. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- g. appoint, supervise and control the activities of Contractors under their respective Project Agreements as may be necessary, also provide all assistance to the PMC as it may require for the performance of its duties and services;
- h. support, cooperate with and facilitate the Licensor in execution of the Project

Agreement, implementation and operation of the Project in accordance with the provisions of this Agreement;

- i. provide to Licensor reports on regular basis during the Construction Period and the Operations Period in the form and manner set forth in this Agreement and Schedule 'V';
- j. obtain and maintain in force on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- k. ensure and procure that each Project Agreement contains provisions that entitle Licensor to step into such Agreement in its discretion in place and substitution of the Licensee in the event of Termination or Suspension of this Agreement on account of default or breach by the Licensee;
- l. make all necessary payments to the Licensor such as Annual License Fee, or any other payment that needs to be made to the Licensor in accordance with the provisions of this Agreement;
- m. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Licensee's obligations under this Agreement;
- n. comply with all Applicable Permits and Applicable Laws in the performance of the Licensee's obligations under this Agreement including those being performed by any of the Contractors;
- o. develop, implement and administer a safety program for the Project , the users thereof, and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Schedule 'M', Applicable Laws and Good Industry Practice;
- p. 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;
- q. after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- r. indemnify the Licensor 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 Licensee in connection with the performance of its obligations under this Agreement;



- s. comply with the Divestment Requirements and hand over the Project to Licensor upon Termination of the Agreement;
- t. not do or omit to do any act, deed or thing which may in any manner be violate any of the provisions of this Agreement; and
- u. Notwithstanding anything to the contrary contained in this Agreement, the Licensee shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset without prior written approval of the Licensor, which approval the Licensor may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Licensor under this Agreement or Applicable Laws;

5.1.2 Licensee shall use the process/ technology provided by the Licensor for manufacturing Mahua energy bar (Mahua - Kodo, Mahua - Sesame and Mahua - Ragi) and Mahua liquid jaggery at the Mahua Processing Unit.

5.1.3 The Licensee shall mandatorily procure 75% of its annual requirement (Financial Year) of raw material (Mahua) for MPU from within the State of Chhattisgarh. The Licensee shall be free to procure the remaining 25% of raw material (Mahua) from open market from anywhere even from other states.

The PMC will ensure and certify that the 75% of total annual raw material (Mahua) requirement (Financial Year) has been procured from within the State of Chhattisgarh (by checking the procurement bills and other supporting documents)

The Mahua Processing Unit has the installed capacity to process 6.5 MTPD of raw material (Mahua, sesame seeds, kodo-kutki, groundnut, honey etc). The Licensee may process quantity lesser than that of the installed capacity. However, this would not have any impact on the Annual License Fees which is to be paid to the Licensor by the Licensee. The Licensee can also utilize the installed machinery for processing MFPs other than Mahua with prior approval of the Licensor.

5.1.4 The Licensor will have the right, but not the obligation, to procure finished products from the Licensee. The Licensor may place order for the required finished product(s) in writing to the Licensee at least one (1) quarter prior to the agreed date of delivery. Upon the receipt of order placed by Licensor in writing, the Licensee will send an acceptance letter to the Licensor within 7 working days of the receipt of the purchase order along with the expected date of delivery of the finished product(s).

The Licensee shall supply finished products to the Licensor on at least

- I. 10% discount on the average selling price OR
- II. 40% discount on Maximum Retail Price (MRP) of the product(s)

(whichever is the lowest I or II above) for which Licensor has placed order with the Licensee.

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 Licensor and MRP would be determined based on the labelling done on the products in the previous one quarter from the date when demand/order was placed by the Licensor. Average selling price would be determined based on the rate at which is finished product(s) has moved out of the Mahua Processing Unit

**5.2** Subject to the terms and conditions of this Agreement, the Licensee shall at its cost and expense:

- a) undertake the planning, design, engineering, procurement, construction, marketing, administration, management, operation and maintenance of all the components of the Project in accordance with this Agreement;

**5.3** The Licensee shall, before commencement of construction of the Project

- a. submit to the Licensor with due regard to Project Completion Schedule as set forth in Schedule 'H' and Scheduled Project Completion Date, its design, engineering and construction time schedule in MSP/PRIMAVERA format and shall formulate and provide CPM/PERT/GANTT charts for the completion of the said activities;
- b. have requisite organisation and designate and appoint a Project manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the Licensor Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement; and
- c. undertake, do and perform such acts, deeds and things as may be necessary or required for construction and Project completion under and in accordance with this Agreement.

**5.4** In respect of the Licensee's obligations with respect to the Designs and Drawings of the Project as set forth in Schedule 'I', the following shall apply:

- a. The Licensee shall prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Designs and Drawings to Licensor and the PMC for review and comments.
- b. By forwarding the Designs and Drawings for review and comment to Licensor, the Licensee represents that it has determined and verified that the design and

engineering including field construction criteria related thereto is in conformity with the Specifications and Standards and quality set forth in this Agreement for and in respect of the Project.

- c. If the comments/observations of Licensor indicate that the Designs and Drawings are not in conformity with the Specifications and Standards set forth in this Agreement or as per Applicable Laws, such Designs and Drawings shall be revised by the Licensee to the extent necessary and resubmitted to Licensor for review, observations and comments.
- d. The Licensee shall be responsible for delays in Project Completion Schedule caused by reasons of any of Designs and Drawings not being in conformity with the Specifications and Standards, and the License Period shall not be extended in any manner whatsoever on account of submission or revision of any Drawings.
- e. Within 90 (ninety) days of the COD, the Licensee shall furnish the Licensor with “as built” Drawings reflecting the Project as actually designed, engineered and constructed, including without limitation an “as built” survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

**5.5** The Licensee shall submit to the Licensor the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Licensor shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Licensee within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Licensee shall submit to the Licensor a true copy thereof, duly attested by a Director of the Licensee, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Licensor and/or its failure to review and/or convey its observations on any document shall relieve the Licensee of its obligations and liabilities under this Agreement in any manner nor shall the Licensor be liable for the same in any manner whatsoever.

**5.6**

- a. During the Construction Period, the Licensee shall be responsible for maintaining the Project Site including the existing roads/service lanes provided for the access of site, at its own cost and expense.
- b. Provide or arrange at its cost during the License Period all on-site infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction,

operation and maintenance of the Project/Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

- c. It shall at its cost install meters to measure the consumption of power and water. The Licensee shall, at its cost, make alternate and back up arrangement for power, including but not limited to installation of generators and for water, subject to the Licensee obtaining Applicable Permits if any.

**5.7** The Licensee shall, at all times, afford access to the Site to the authorised representatives of Licensor and the PMC 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 Licensor and upon reasonable notice, the Licensee shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Project Site.

#### **5.8 Employment of foreign nationals**

The Licensee acknowledges, agrees and undertakes that employment of foreign personnel by the Licensee 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 Licensee and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Licensee or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Licensee from the performance and discharge of its obligations and liabilities under this Agreement.

#### **5.9 Employment of trained personnel**

The Licensee 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.

#### **5.10 Sole purpose of the Licensee**

The Licensee having 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 design, development, implementation, operation and management of the Project, the Licensee hereby agrees not to have any shareholding interest/control in any form 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 Licensee hereby agrees not to form any subsidiary/Joint Venture or to invest in securities of any other body corporate or to have any shareholding interest/control in any form, whether direct or indirect or through voting rights, or be or become directly or indirectly engaged, concerned or interested in any business, for undertaking its obligations in relation to design, development, implementation, operation and management of the Project.

#### **5.11 Branding of the Project**

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Licensee or its shareholders. The Licensee undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Licensee 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 Licensor.

#### **5.12 Licensee's Representative**

- a. The Licensee's Representative shall be the person so designated by the Licensee. If at some point of time the Licensee is unable to provide the services of the person named the Licensee's Representative, and then it shall notify the Licensor its reasons for this, and thereafter, provide a substitute person who can be the Licensee's Representative.
- b. The person named as the Licensee's Representative under this License Agreement shall be a qualified and competent person having previous experience in a similar capacity in works comparable to the Project. Prior to appointment of the Licensee's Representative, the Licensee shall also submit the curriculum vitae of the person it proposes to appoint, detailing in particular the relevant project experience, and then obtain the written consent of the Licensor to the appointment of the Licensee's Representative.
- c. The Licensee's Representative shall be exclusively employed or engaged by the Licensee to give his whole time to directing the preparation of the Construction Documents, the execution of the Works, and operation and maintenance of the Project. Except as otherwise stated in the License Agreement, the Licensee's Representative shall receive on behalf of the Licensee all notices, instructions, consents, approvals, certificates, determinations and other communications under the License Agreement. Whenever the Licensee's Representative is to remain absent from the Project Site for a continuous period in excess of 14 (fourteen) days, a suitable replacement Person shall be appointed with the Licensor's consent.
- d. The Licensee'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 Licensor has received prior written notice signed by the Licensee's Representative, specifying the powers, functions and authorities being delegated or revoked. Licensee's Representative shall notify in writing to the Licensor the names, duties and scope of Licensor of such Persons. Any instructions given to any of them shall be deemed to have been given to the Licensee's Representative. Any such delegation shall not relieve the Licensee's Representative of its obligation and duties under this Agreement.

### **5.13 Shareholding Lock-in**

- 5.13.1 The Licensee confirms that the Lead Member and each of the other members together with their Associates whose technical experience has been evaluated for the purposes of the RFP, has subscribe at least 26% (fifty per cent) or more and 26% (twenty six percent) or more respectively, of the paid up and subscribed Equity of the Licensee and further commits that each such member shall, for a period of 5 (five) years from COD of the Project, hold Equity share capital not less than:
- i. 26% (fifty one percent) of the subscribed and paid up Equity share capital of the Licensee for Lead member;
  - ii. 26% (twenty six percent) of the subscribed and paid up Equity share capital of the Licensee for each of the other members and,
  - iii. 5% (five percent) of the Total Project Cost specified in the License Agreement;
- 5.13.2 Any transfer of such share capital after such Lock-in Period shall require the prior written approval of the Licensor, which shall not be unreasonably denied;
- 5.13.3 At no stage, including as specified under Clause 5.13.1 to 5.13.2 above, shall any change in the shareholding patterns shall be made in the Licensee without obtaining prior approval from the Licensor. On an application made for the purpose, the Licensor may permit the change of Equity Components/ shareholding patterns, and such permission shall not be unreasonably rejected or withheld, provided the Licensor is satisfied that the proposed changes shall be in the interest of the implementation of the Project in future and would not be detrimental to any of the rights or interests of the Licensor and any of the Confirming Authorities. However, no such change in the shareholding pattern shall be permitted by the Licensor, which would make the Consortium Members or Associates or the Licensee non-compliant with sub-clauses above;

### **5.14 Obligations relating to Change in Ownership**

- 5.14.1 The Licensee shall not undertake or permit any Change in Ownership, except with the prior approval of the Licensor.

5.14.2 Notwithstanding anything to the contrary contained in this Agreement, the Licensee agrees and acknowledges that:

- a. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Licensee; or
- b. acquisition of any control directly or indirectly of the Board of Directors of the Licensee by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Licensor from national security and public interest perspective, the decision of the Licensor in this behalf being final, conclusive and binding on the Licensee, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Licensee without such prior approval of the Licensor. For the avoidance of doubt, it is expressly agreed that approval of the Licensor hereunder shall be limited to national security and public interest perspective, and the Licensor shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Licensor shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Licensee from any liability or obligation under this Agreement.

**For the purposes of this Clause 5.14.2:**

- (i) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Licensee;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Licensee; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Licensee, not less than half of the directors on the Board of Directors of the Licensee or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Licensee shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Licensee.

## **ARTICLE 6: OBLIGATIONS OF THE LICENSOR**

### **6.1 Obligations of the Licensor**

- 6.1.1 The Licensor shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Licensor agrees to provide support to the Licensee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- a. enable access to the Site, free from Encumbrances, in accordance with this Agreement;
  - b. permit peaceful use of the Site by the Licensee as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from Licensor or persons claiming through or under it;
  - c. assist and provide all reasonable support to the Licensee in obtaining Applicable Permits;
  - d. Appoint PMC for Operation Period before COD (Commercial Operation Date) as per the provisions of this Agreement;
  - e. upon receiving a written request in for procurement of raw material from the Licensee, the Licensor shall sign separate agreement/ MoU with the Licensee for assured supply of 75% (or such lesser percentage as decided by the Licensor) of Licensee's yearly requirement of the raw materials for 6 MTPD Mahua Processing Unit at price decided by the Licensor.
  - f. upon written request from the Licensee, assist the Licensee in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Licensee than those generally available to commercial customers receiving substantially equivalent services;
  - g. procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order;
  - h. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - i. upon written request from the Licensee, and subject to the Licensee complying with Applicable Laws, provide reasonable support and assistance to the Licensee in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;



- j. upon written request from the Licensee and subject to the provisions of Clause 5.9, provide reasonable assistance to the Licensee and any expatriate personnel of the Licensee or its Contractors to obtain applicable visas and work permits for discharging their respective obligations under this Agreement and the Project Agreements;
- k. facilitate provision of external infrastructure to the Project Site viz. road, water and power by the relevant Government Departments;
- l. develop, operate and maintain the common services/utilities (as described in Schedule B, Clause 4), roads, service road along the development and if required, modify, repair or otherwise make improvements to the Site Facilities to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits;
- m. Observe and comply with its obligations set forth in this Agreement.

## **6.2 Maintenance Obligations prior to Appointed Date**

Prior to the Appointed Date, the Licensor shall maintain the Project Site surrounding, at its own cost and expense, so that its existing facilities (e.g. road, water supply system, sewerage and other similar facilities) and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof.

### **6.3** In respect of the Licensor's obligations with respect to the Designs and Drawings of the Project as set forth in Schedule 'I', the following shall apply:

6.3.1 Within 30 (thirty) days of the receipt of the Designs and Drawings, the Licensor shall review the same and convey its comments/observations to the Licensee with particular reference to the conformity or otherwise with the Specifications and Standards set forth in this Agreement. It is expressly agreed that notwithstanding any review and comment/observations of Licensor on any Drawings or failure of Licensor to provide comments/ observations thereon, Licensor shall not be liable for the same in any manner whatsoever and the Licensee shall remain solely responsible for and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement. The Licensee shall not be obliged to await the comments/observations of Licensor on the Drawings submitted pursuant hereto beyond the period set forth hereinabove.

6.3.2 On resubmission to Licensor for review, observations and comments, Licensor shall give its observations and comments, if any, within 15 (fifteen) days of the receipt of such revised Drawings provided, however, that any observations or comments of Licensor or failure of Licensor to give any observations or comments on such revised drawings shall not relieve or absolve the Licensee of its obligation to conform to such Specifications and Standards.

## **ARTICLE 7: REPRESENTATIONS AND WARRANTIES**

### **7.1 Representations and warranties of the Licensee**

The Licensee represents and warrants to the Licensor that:

- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- b. It has full power and Licensor to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. 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;
- d. along with its Associates, it has the financial standing and capacity to undertake the Project;
- e. the obligations of the Licensee under this Agreement will be legally valid, binding and enforceable against it in accordance with the terms hereof;
- f. 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;
- g. 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;
- h. 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 Licensee 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;
- i. There are no actions, suits, proceedings, or investigations pending or, to the Licensee'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 Licensee 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;

- j. 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 Licensee's ability to perform its obligations and duties under this Agreement;
- k. 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;
- l. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.14 and that the {Selected Bidder/Consortium Members}, whose technical and financial capacity was evaluated for the purposes of qualification and short-listing in response to the Request for Proposal, shall hold at least, as specified below, during the Construction Period and five years thereafter together with {its/their} Associates :
- m. 26% (fifty one percent) of the subscribed and paid up Equity share capital of the Licensee as Lead member;
- n. 26% (twenty six percent) of the subscribed and paid up Equity share capital of the Licensee for each of the other members and,
- o. 5% (five percent) of the Total Project Cost specified in the License Agreement;
- p. the Selected Bidder/ Consortium Members and its/their} Associates have the financial standing and resources for undertaking and implementing the Project in accordance with this Agreement;
- q. Each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and Licensor to consent to and has validly consented to and requested Licensor to enter into this Agreement with the Licensee pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- r. All rights and interests of the Licensee in and to the Project shall pass to and vest in Licensor 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 Licensee or Licensor and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Licensee 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;

- s. No representation or warranty by the Licensee contained herein or in any other document furnished by it to Licensor, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- t. It warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Licensee, to any person by way of fees, commission or otherwise for securing the License or entering into this Agreement or for influencing or attempting to influence any officer or employee of Licensor in connection therewith;
- u. 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
- v. all undertakings and obligations of the Licensee arising from the Request for Proposal or otherwise shall be binding on the Licensee as if they form part of this Agreement.

## **7.2 Representations and warranties of the Licensor**

The Licensor represents and warrants to the Licensee that:

- a. Licensor is duly organised and validly existing under the laws of India;
- b. Licensor has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. Licensor has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Licensor's ability to perform its obligations under this Agreement;
- f. To the best of the Licensor's knowledge and belief, Project Site is free from all Encumbrances and is available for immediate development in accordance with the terms of this Agreement;
- g. To the best of the Licensor'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 Authority, 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 Licensor under this Agreement or result in impairment of the Licensor's ability to perform its obligations and duties under this Agreement.

- h. it has complied with Applicable Laws in all material respects; and
- i. it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Licensee.

### **7.3 Disclosure**

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

## **ARTICLE 8: DISCLAIMER**

### **8.1 Acceptance of Project Site**

8.1.1 The Licensee acknowledges that it has either itself or through its shareholders undertaken a due diligence over the Project Site, and all aspects of the Project. For the purposes of this Agreement, Licensee shall be deemed to have:-

- a. inspected Project Site and all buildings thereat and its surroundings;
- b. satisfied itself as to the nature of the climatic, 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 with, 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;

**8.2** Licensee further acknowledges that it, or any entity claiming under it, shall have no recourse against Licensor 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 Licensee in relation to any of the foregoing provisions of Article 8. If a deficiency is found, Licensee acknowledges and agrees that it shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.

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

**8.4** 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 Licensee

and Licensee shall have no right or interest in such fossils, antiquities and structures.

## **8.5 Deemed Knowledge and Disclaimer**

8.5.1 Subject to the provisions of this Agreement, the Licensee shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the design, , construction, completion, commissioning, 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 Licensee shall have no right whether express or implied to bring any claim against, or to recover any compensation or other amount from, the Licensor and/or any of their agencies other than in respect of those matters in respect of which express provision is made in this Agreement.

## **Part III – Development and Operations**



## ARTICLE 9: PERFORMANCE SECURITY

### 9.1 Performance Security

- 9.1.1 The Performance Security for this License Agreement include:
- a. **“Construction Performance Security”** in the form of Bank Guarantee, for “Construction Period”
  - b. **“Operation Performance Security”** in the form of Bank Guarantee, for “Operation Period”

- 9.1.2 The Licensee has, for the performance of its obligations, provided to the Licensor an irrevocable and unconditional guarantee of Construction Performance Security, valid from the Effective Date for a period of 24 months from a Bank for an amount of Rs. 1,25,00,000.00 crore (Rupees One crore twenty-five lakhs only) or 10% of Total Project Cost (whichever is higher), in the form set forth in Schedule-F (the **“Construction Performance Security”**).

The Selected Bidder/Licensee shall keep the Construction Performance Security, valid at all times during the stipulated period of Twenty-Four months from the Effective Date and any other extended period beyond Twenty-Four months, as required by the Licensor. The Licensee shall renew it 30 (thirty) days prior to the expiry of its validity, as applicable;

- 9.1.3 The Licensee shall provide an Operation Performance Security in the form of Bank Guarantee (the **"Operation Performance Security"**) **payable at Raipur**, no later than 15 days from the Commercial Operation Date, for an amount of Rs. 62,50,000.00 (Rupees Sixty-Two Lakh Fifty Thousand Only) or 5% of Total Project Cost (whichever is higher) payable for a period of 3 consecutive years, The validity for each Bank Guarantee shall be for three years **and should be payable at Raipur Branch**. A renewed Operation Performance Security is to be submitted every third year as specified in Clause 9.1.3 (b), for next three years.

- a) The Licensee’s failure to provide /and or maintain the Operation Performance Security, in accordance with the provisions of this Article 9.1 shall (i) entitle the Licensor to call in and invoke the Construction Performance Security / subsisting Operation Performance Security, as the case may be and retain and appropriate the same; and (ii) constitute the same as a Licensee Default entitling the Licensor to Terminate this Agreement under the provision hereof;
- b) The Selected Bidder/Licensee shall keep the Operation Performance Security, valid at all times during the License Period and renew it 30 (thirty) days prior to the expiry of its validity, as applicable;

### 9.2 Appropriation of Performance Security

- 9.2.1 In the event of the Licensee being in default in the due and faithful performance of

its obligations under this Agreement and failing to remedy such default within the Cure Period, the Licensor shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security (for Construction Period and Operation period) as Damages for such default. Upon such encashment and appropriation of the Performance Security, Licensor shall grant a period of 15 (fifteen) days to the Licensee to provide fresh Performance Security and the Licensee shall within the time so granted furnish to Licensor such Performance Security failing which Licensor shall be entitled to terminate this Agreement under clause 31.1.

- 9.2.2 Notwithstanding anything to the contrary contained in clause 9.2.1, upon furnishing of fresh Performance Security in accordance with clause 9.2.1, the Licensee shall be granted an additional period of 30 (thirty) days as Cure Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Licensee continuing to be in breach of the provisions of this Agreement after such Cure Period, Licensor shall be entitled to terminate this Agreement under the provisions of Clause 31.1.

### **9.3 Release of Performance Security**

- a. Upon provision of the Operation Performance Security pursuant hereto, the Licensor shall release the Construction Performance Security to the Licensee in terms hereof.
- b. The Licensor shall release the Operation Performance Security forthwith, upon expiry of 150 (one hundred and fifty) days from the Transfer Date, subject however to deductions towards any outstanding amount payable to Licensor by Licensee in terms hereof.
- c. The Performance Security shall remain in force and effect by the Licensee, throughout the License Period. Upon request made by the Licensee for release of the Performance Security along with the particulars which establish satisfaction of the requirements, the Licensor shall release the Performance Security forthwith.

## **ARTICLE 10: LICENSE AND ACCESS TO THE PROJECT SITE**

### **10.1 The Site**

10.1.1 The Site of the Project shall comprise the real estate described in Schedule-A and in respect of which the right of way shall be provided and granted by the Licensor to the Licensee as a licensee under and in accordance with this Agreement (the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule-A.

### **10.2 License and Access**

10.2.1 The Licensor hereby grants to the Licensee access to the Project Site for carrying out any surveys, investigations, inspections and soil tests that the Licensee may deem necessary during the Development Period, it being expressly agreed and understood that the Licensor shall have no liability whatsoever in respect of survey, investigations, inspections and tests carried out or work undertaken by the Licensee on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the payments specified under the agreements, this Agreement and the covenants and warranties on the part of the Licensee herein contained, the Licensor, in accordance with the terms and conditions set forth herein, hereby grants to the Licensee, commencing from the Appointed Date, license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Project Site which is described, delineated and shown in Schedule A hereto (the “**Licensed Premises**”), on an ‘as is where is’ basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easement and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the License Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Licensor to terminate the license, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Licensee or its sub-licensees, the license in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.4 The Licensee hereby irrevocably appoints the Authority (or its nominee) to be its

true and lawful attorney, to execute and sign in the name of the Licensee a transfer or surrender of the license granted hereunder at any time after the License Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Licensor, and the Licensee consents to it being registered for this purpose.

- 10.2.5 It is expressly agreed that trees on the Project Site are property of the Licensor except that the Licensee shall be entitled to exercise usufructuary rights thereon during the License Period.

### **10.3 Handover of the Project Site**

- 10.3.1 The Parties shall, within 7 (seven) days of the Licensor notice in this behalf to the Licensee prior to Appointed Date, carry out through the Licensor Representative and the Licensee, on a mutually agreed date and time, inspection of the Project Site and preparation of a memorandum containing an inventory of the Project Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Project Site. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2 be deemed to constitute a valid license to the Licensee for free and unrestricted use and development of the vacant and unencumbered Project Site during the License Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.
- 10.3.2 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Licensee shall maintain a round-the-clock vigil over the Project Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Licensee shall report such encroachment or occupation forthwith to the Licensor and undertake its removal at its cost and expenses.

### **10.4 Project Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Project Site shall be made available by the Licensor to the Licensee pursuant hereto free from all Encumbrances and occupations and without the Licensee being required to make any payment to the Licensor on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Site for the duration of the License Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easement, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Licensee accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

### **10.5 Protection of Project Site from Encumbrances**

During the License Period, the Licensee shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Licensee to place or create any Encumbrance or security interest over all or any part of the Project Site or the Project Assets, or on any rights of the Licensee therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

#### **10.6 Special/temporary access to the Project Site**

The Licensee shall bear all costs and charges for any special or temporary access to the Project Site. The Licensee shall obtain at its cost such facilities on or outside the Project Site as may be required by it for the purposes of the Project and the performance of its obligations under this Agreement.

#### **10.7 Access to the Licensor and PMC**

- 10.7.1 The license and right to the Project Site granted to the Licensee hereunder shall always be subject to the right of access of the Licensor and the PMC and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### **10.8 Geological and archaeological finds**

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

## **ARTICLE 11: UTILITIES, ASSOCIATED ROADS AND TREES**

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

### **11.1 Shifting of obstructing utilities**

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

### **11.2 New utilities and roads**

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

### **11.3 Felling of trees**

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

## **ARTICLE 12: PROJECT ASSET DEVELOPMENT**

### **12.1 Covenants in respect of the License**

- 12.1.1 In consideration of the development of the Project Site by the Licensee and subject to payments to the Licensor in accordance with the terms hereof and adherence to the terms and conditions as contained in this Agreement and/or the Project Documents, the Licensor permits the Licensee unhindered, exclusive and unobstructed right to implement the Project on the Project Site for the Term.
- 12.1.2 The Licensee shall be solely responsible to seek connection of, to procure and ensure at its own cost and expense, water, electricity and all other utilities required for the construction, operation and maintenance of Project Assets at the Project Site and the Licensor shall not be responsible to provide any infrastructure in relation to any such services and/or utilities. The Licensor shall provide reasonable assistance to the Licensee in applying for and procuring any such connections for the supply of electricity, water, fuel and other utilities. Provided, however, the Licensee shall not be permitted to dig bore wells or extract ground water at any point of time, without the prior permission/approval from the concerned local/State/Central Government authorities under Applicable Laws.
- 12.1.3 It is agreed that the Licensee shall, with effect from the Appointed Date, pay all present and future outgoings, cesses, taxes (including municipal taxes), rates and other charges whatsoever and all increases thereto, in respect of the Project Site on the due dates thereof and the Licensor shall not be liable to pay the same. The Licensee shall also pay all taxes (including GST), levies, import duties, fees (including any License Fees) and other charges, dues, assessments or outgoings payable in respect of the License Fee (including GST) or in respect of, Project or in respect of the materials stored therein which may be levied by any Governmental Authority. If the Licensee fails to pay any of the above charges, the Licensor shall be entitled, but not obliged to pay the same and recover the same from the Licensee along with interest at a rate per annum of 5% above prime lending rate of State Bank of India (or in the absence of State Bank of India's prime lending rate, the highest lending rate applicable to term lending).
- 12.1.4 The Licensor shall, at all times during the construction of Project Assets be entitled to inspect the Project Site through its duly authorized representative. Provided however, the duly authorized representatives of the Licensor shall not interfere with or prevent the Licensee's officials from discharging their functions.
- 12.1.5 During the Term, the Licensee shall not transfer or create any Encumbrance over the Project Site.
- 12.1.6 The Parties recognize and agree that nothing contained in this Agreement shall be construed to constitute a transfer of title in the Project Site in favour of the Licensee. The Licensee shall not at any time during the Term, assert any ownership rights over the Project Site.

- 12.1.7 The Licensee shall at all times be responsible for the Project in accordance with this Agreement and in compliance with the local building byelaws/regulations and development requirements prescribed in Schedule B, C and D hereto.
- 12.1.8 The Licensee shall undertake the Project using due care and diligence in a professional manner, using sound engineering and design principles and project management and supervisory procedures and in accordance with Good Industry Practice.
- 12.1.9 The Licensee shall at all times, obtain and maintain all Applicable Permits which are required by Applicable Law to undertake the Project and all certifications in accordance with Schedule E. The Licensor shall provide all reasonable assistance to the Licensee to obtain and maintain all such Applicable Permits. The Licensee shall apply for and obtain all Applicable Permits required to be obtained in the name of the Licensor, for which purposes the Licensor shall extend assistance to the Licensee on a best efforts basis, including through executing all documents required to apply for such approvals. The Parties agree that the Licensee shall indemnify the Licensor in respect of any loss caused to, or suffered by the Licensor, arising out of a breach of the terms of any Applicable Permit taken in the name of the Licensor.
- 12.1.10 The Licensee shall be obliged to achieve all Project Milestones as per Project Completion Schedule set forth in Schedule H and commence the commercial operations of all permissible Project Assets on the Project site, within a period of 365 (three hundred and sixty five) days from the Appointed Date. Provided that, upon occurrence of a Licensor default which substantially prevents the Licensee from achieving commercial operations of all permissible Project Assets on Project site within a period of 365 (three hundred and sixty five) days from the Appointed Date, the Licensee shall be entitled to a day for day extension beyond the aforesaid period, equivalent to the time taken by the Licensor to complete its obligations hereunder. Further, subject to the Licensee having made timely applications for all Applicable Permits, in the event of a delay [as reasonably determined by the Licensor] in the receipt of Applicable Permits, the Licensor may permit a day for day extension beyond the aforesaid 365 (three hundred and sixty five) days equivalent to the delay in receipt of such Applicable Permits.
- 12.1.11 Licensee will undertake the Project during the term with due regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, control of pollution, maintenance of competent personnel and labour and industrial relations as per the codal provision, amended upto date and the mandatory compliances as per the Schedule E.
- 12.1.12 Licensee will ensure that all materials, equipment, machinery, etc. installed and/or used at Project site will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit



for the purpose for which it is required.

- 12.1.13 Licensee shall be responsible for safety, soundness and durability of the Project Assets constructed upon Project site and shall ensure their compliance with the specifications and standards set out in Schedule D.
- 12.1.14 Licensee shall be responsible for the operation and maintenance of the Project and shall at all times ensure that the Project Assets upon the Project site are operated, maintained and managed in accordance with the Good Industry Practice and guidelines as laid down in Schedule L. The Licensee shall have the right to undertake such operation and maintenance itself, or through a sub-contractor, provided however, that it shall always be the liability of the Licensee to ensure compliance with the operation and management standards prescribed in this Agreement.
- 12.1.15 The Licensee shall obtain and maintain in force on and from the Appointed Date all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- 12.1.16 The Licensee shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Assets located upon the Project site;
- 12.1.17 After receiving possession of Project site, the Licensee shall ensure that such land remains free from all encroachments during the term, provided however, upon request of the Licensor, the Licensee shall provide to the Licensor or to the relevant Governmental Authority as requested by the Licensor, such temporary access to the Project site as is required for the provision of services or utilities to Project site;
- 12.1.18 The Licensee shall co-operate with all other contractors present on or in the vicinity of the Project site. In the event that the Licensor appoints any Contractor to undertake the development of the facilities pursuant to any of the other Project Documents, the Licensee shall co-operate with such contractors and their sub-contractors to ensure a coordinated development of the Project site;
- 12.1.19 In the event that there are any existing structures laid upon or on the Project site, then the Licensee shall be required to demolish/dispose all such structures at its own risk and cost, with the prior written approval of the Licensor, which shall not be unreasonably withheld;
- 12.1.20 The Licensee shall not set up labour camp and/or lay down areas within the Project Site.
- 12.1.21 During construction, the Licensee shall use only those approach roads to the Project Site which are specified by the Licensor, provided that the Licensor may notify any change in such approach routes which shall be followed by the Licensee.
- 12.1.22 The Licensee shall indemnify the Licensor 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 Licensee in connection with the performance of its obligations under this Agreement, provided however that the Licensee's obligation to indemnify the Licensor shall only extend to all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be claimed during the Term or for a period of two years after the expiry of the Term, in relation to any claim for an event occurring during the Term.

- 12.1.23 The Licensee shall, from time to time, promptly pay all the charges/bills for the usage of infrastructure facilities provided to them by the relevant Governmental Authority or by the Licensor.
- 12.1.24 The Licensor covenants that it shall not seek or agree to an amendment of the terms of the Agreement so as to adversely affect the grant to the Licensee hereunder, without the consent of the Licensee.

## **12.2 Sub-Contracts**

- 12.2.1 Licensee shall have the right to grant a sub-contract with regard to any activity relating to the Project, including but not limited to the design, construction, operation, maintenance or any part thereof, provided always that notwithstanding the sub-contract, Licensee shall retain overall responsibility, obligation and liability in relation to the Project. It is clarified that Licensee shall remain liable and responsible for any acts, omissions or defaults of any Sub-contractor and shall indemnify the Licensor in respect thereof. Provided further that Licensee shall ensure that all such sub-contracts are in compliance with the terms of this Agreement.
- 12.2.2 Licensee shall have license rights over all the Project Assets constructed upon Project Site and shall have no right to grant licenses of spaces within the Project Assets (including the Project site or any part thereof) to third parties.
- 12.2.3 The Licensee shall further procure that any contracts entered into by any counterparty, licensees, as the case may be, and relating to the Project Assets shall be for a duration not exceeding the expiry of the Term hereof.

The Licensee shall ensure all rights of the Licensor under Article 42.1 (ii) are incorporated in all contracts between Licensee and third parties with a specific obligation on the parties to such contracts to enter into novation agreement with the Licensor upon exercise of its option by the Licensor under said Article 42.1(ii).

## **ARTICLE 13: DEVELOPMENT REQUIREMENTS**

- 13.1** Without prejudice to the generality of anything contained in this Agreement and compliance with the Development Requirements set out in Schedule B, the Licensee shall inter alia comply with the following in order to achieve the above mentioned objective:
- 13.1.1 Licensee shall, in addition to compliance with Applicable Law, at all times during the term hereof, undertake the development, operation and maintenance of the Project Assets in accordance with the requirements set forth in Schedule A, B, C, D & L hereof. The Licensee shall also use best endeavours to comply with the requirements of Schedule A, B, C, D & L hereto. Prior to making any application to the State/Central Government Authority in relation to sanction of any plans for construction of Project Assets, the Licensee shall be required to get a no-objection in respect of development/layout plans from the Licensor. Any subsequent changes to said development/layout plans would also require a no objection certificate from the Licensor, which certificate shall not be unreasonably withheld by the Licensor. All constructions shall be in accordance with the development plans in respect of which the Licensor has issued a no-objection certificate. In the event, the Licensor is of the reasonable opinion that the Project Assets developed by Licensee do not comply with the requirements specified in Schedule L, the Licensor shall have a right to issue a written notice to the Licensee requiring the Licensee to cure the defect and develop the Project Assets as per the requirements specified in Schedule B, within the period specified in such notice. Notwithstanding anything set forth herein, the Licensee agrees and recognizes that the Licensee shall not be entitled to commercially operate an Project asset on Project Site if the same does not conform to the requirements of Schedule B. The Parties agree that a no-objection certificate granted by the Licensor shall in no event amount to certifying the conformity of the Licensee's development layout plans with Applicable Law or discharge the Licensee from the requirement of obtaining Applicable Permits. The Licensor shall be required to communicate its no-objection or reject the development layout plans within a period of 15 Business Days from the receipt of the development lay-out plans, failing which the Licensor shall be deemed to have granted its no-objection with respect to the development / lay-out plans.
- 13.1.2 Any development and/or construction of any Project Asset on Project Site shall at all times comply with the requirements of Schedule E and the Licensee shall not make any Project Asset on Project site other than those stipulated in Schedule B. The Licensee agrees and recognises that the Licensee shall not be entitled to commercially operate a Project Asset on Project Site if the same does not conform to the requirements of Schedule B and C.

## **ARTICLE 14: CONSTRUCTION OF THE PROJECT FACILITIES**

### **14.1 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Licensee shall:

- a) Submit to the Licensor and the PMC detailed design, drawings, construction methodology, quality assurance procedures, cost estimates and the procurement, engineering and quarter wise Milestones of construction time schedule of facilities including civil, electrical, plumbing, machine/equipment, etc., for completion of the project in accordance with the Project Completion Schedule as set forth in Schedule-H;
- b) Appoint its representative duly authorized to deal with the Licensor in respect of all matters under or arising out of or relating to this Agreement;
- c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits;
- d) Undertake all the statutory approvals or permits required to be taken before the commencement of the Construction Works from State/Central Government Authorities; and
- e) Make its own arrangements for construction and procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

### **14.2 Maintenance during Construction Period**

During the Construction Period, the Licensee shall maintain, at its cost, the existing facilities (e.g. road, water supply system, sewerage and other) so that the Site surroundings and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Licensee may, at its cost, interrupt and divert the facility if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Licensee only with the prior written approval of the PMC which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Licensee shall at all times be responsible for ensuring safe operation of the Project.

### **14.3 Detailed Project Report (DPR)**

In respect of the Licensee's obligations relating to the Detailed Project Report (DPR) of the Project as set forth in Schedule-I, the following shall apply:

- a) The Licensee shall, at its cost, charges and expenses, prepare or cause preparation and submit within 60 (sixty) days of the Effective Date, with reasonable promptness the Designs and Drawings for the Project Facilities including civil, electrical, plumbing, machine/equipment, etc., in conformity with the Detailed Project Report (DPR) and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all the documents to the Licensor/PMC for review.
- b) By submitting the Detailed Designs and Drawings for review to the Licensor/PMC, the Licensee shall be deemed to have represented that it has determined and verified that the Detailed Project Report (DPR), Designs and Drawings are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- c) Within 15 (fifteen) days of the receipt of the Designs and Drawings, the PMC shall review the same and convey its observations to the Licensee with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards.
- d) If the aforesaid observations of the Licensor/PMC indicate that the Designs and Drawings are not in conformity with the Scope of the Project or the Specifications and Standards or the Detailed Project Report (DPR), such documents shall be revised by the Licensee and resubmitted to the Licensor/PMC for review. The Licensor/PMC shall give its observations, if any, within 21 (twenty one) days of receipt of the revised documents.
- e) No review and/or observation of the Licensor/PMC and/or its failure to review and/or convey its observations on any Drawings shall not relieve the Licensee of its obligations and liabilities under this Agreement in any manner nor shall the PMC or the Licensor be liable for the same in any manner.
- f) The project development guidelines which may be considered by the Licensor with respect to the ecosystem of the project surrounding area shall be incorporated by the Licensee.
- g) Without prejudice to the foregoing provisions of this Clause 14.3, the Licensee shall submit to the Licensor for its information, its Designs and Drawings. The Licensor shall respond within 30 (thirty) days of the receipt of such documents. The Licensee will be obliged to make changes, if any, as suggested by the Licensor. The provisions of this Clause 14.3 shall apply mutatis mutandis to the review and comments hereunder.
- h) Within 90 (ninety) days of COD, the Licensee shall furnish to the Licensor and

the PMC a complete set of as-built Drawings, in 2 (two) hard copies and in CD/DVD or in such other medium as may be acceptable to the Licensor, reflecting the Project/Project Facilities as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Facilities and setback lines, if any, of the buildings and structures forming part of the Project Facilities.

- i) The Licensee shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Licensor may suitably extend the Construction Period or provide other relief to compensate for any such delay not attributable to the Licensee and which has a Material Adverse Effect.
- j) The Licensee shall not change any DPR, Designs and Drawings, specifications and calculations approved by the PMC and the Licensor under this Agreement, without the prior written consent of the Licensor.
- k) The Licensee shall obtain sanction to the building plans for the Project Facilities, with necessary designs, plans and specifications, as necessary to commence and undertake construction, from the proper municipal/local bodies/State or Central Government departments or Authority, at its own expense.
- l) At any time during the License Period, the Licensee shall not revise the DPR, Designs and Drawings, including expansion of existing Project Facilities/develop additional Project Facilities as permitted under the provisions of this Agreement, without the prior approval of the Licensor.

#### **14.4 Construction standards and maintenance of the Project**

- 14.4.1 The Licensee shall ensure that all contract(s) and arrangement(s) entered into in relation to the Construction Works shall (to the extent such provisions can be reasonably obtained in the market concerned) include provisions whereby the relevant Contractor warrants that each part of such Works carried out there under shall be fit for its purpose and free from all defects in design, workmanship and materials;
- 14.4.2 In the execution of the Construction Works, the Licensee shall procure coordination amongst and avoidance of conflicts in the working of the Contractors, including all types of suppliers, sub-contractors, agents, advisors and consultants. The Licensee shall monitor and supervise the activities of the Contractors, retained by it to fulfill its obligations hereunder, under the terms of their respective contracts;
- 14.4.3 The Licensee shall, by itself or through its Contractors, at its cost and risk undertake the development of the Site, including land filling, levelling, clearing, landscaping

and demarcation and division of the Site etc. for establishment of the Project Facilities, in accordance with the provisions of this Agreement, including the Specifications and Standards and Good Industry Practice. Each of the Project Facilities shall have adequate facilities with respect to water supply, power, entry & exit arrangement, fire safety provisions, etc.

- 14.4.4 The Licensee shall at its responsibility arrange for materials such as bricks, cement, steel, aggregates, soil, bituminous and asphalt materials, and any other materials used in undertaking the Construction Works, as well as equipment, machinery, tools and ancillary materials such as shuttering and scaffolding, bearings, joint fillers and similar materials. The Licensee shall make arrangements for transport, loading and unloading, stacking and proper storage (including making sheds) for all materials and equipment. The PMC/Licensors shall have the right to inspect and check the quality and quantity of the materials and equipment and their storage in compliance with the terms of this Agreement.
- 14.4.5 The Licensee shall organize the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labor and industrial relations and general site services including, without limitation, access to and on the Site.
- 14.4.6 The Licensee shall ensure that the Works shall comprise only materials and goods which shall be of sound quality and which shall have been manufactured and prepared and all workmanship shall be in accordance with the Specifications and Standards and Good Industry Practice and that each part of the Works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from such plans.
- 14.4.7 The Licensee shall carry out or cause to be carried out the Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, engineers and contractors with experience of work similar in scope and nature to that required under this Agreement. The Licensee shall design, engineer and execute the construction and implementation of the Works using the best design and engineering principles and practices.
- 14.4.8 The Licensee shall ensure that in fulfilling its obligations hereunder it shall procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for the designs, software, materials, methods, processes and systems used or incorporated into the Works undertaken by it and indemnify and keep indemnified the Licensor and its advisors and consultants against all costs, damages, liabilities or consequences arising out of any breach by the Licensee in this behalf.

## **14.5 Construction Commencement & Construction Works**

- 14.5.1 On or after the Appointed Date, the Licensee shall undertake construction of the

Project as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.

- 14.5.2 The Licensee shall construct the Project in accordance with the Project Completion Schedule set forth in Schedule-H. In the event that the Licensee fails to achieve any Project Milestone within a period of 30 (thirty) days from the date set forth for such Project Milestone in Schedule-H, unless such failure has occurred due to Force Majeure or for reasons attributable to the Licensor, it shall pay Damages to the Licensor in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-H shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-H has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Date, the Damages paid under this Clause 14.5.2 shall be refunded by the Licensor to the Licensee, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 14.5.2 shall be without prejudice to the rights of the Licensor under this Agreement, including the right of Termination thereof.



## **ARTICLE 15: MONITORING AND SUPERVISION OF CONSTRUCTION**

### **15.1 Monthly progress reports**

During the Construction Period, the Licensee shall, no later than 7 (seven) days after the close of each month, furnish to the Licensor and the PMC a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the PMC.

### **15.2 Inspection**

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

### **15.3 Delays during construction**

Without prejudice to the provisions of Clause 14.5.2, if the Licensee does not achieve any of the Project Milestones or the PMC shall have reasonably determined that the rate of progress of Construction Works is such that the Project completion is not likely to be achieved by the Scheduled Project Completion Date, it shall notify the Licensee to this effect, and the Licensee shall, within 15 (fifteen) days of such notice, by a communication inform the PMC in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

### **15.4 Suspension of unsafe Construction Works**

15.4.1 Upon recommendation of the PMC to this effect, the Licensor may by notice require the Licensee to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Licensor, such work threatens the safety of the users or people.

15.4.2 The Licensee shall, pursuant to the notice under Clause 15.4.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Licensor and thereupon carry out remedial measures to secure the safety of suspended works and the users. The Licensee may by notice require the PMC to inspect such remedial measures forthwith and make a report to the Licensor recommending whether or not the Suspension hereunder may be revoked.

Upon receiving the recommendations of the PMC, the Licensor shall either revoke such Suspension or instruct the Licensee to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Licensor, and the procedure set forth in this Clause 15.4 shall be repeated until the Suspension hereunder is revoked.

- 15.4.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of Suspension (the “**Preservation Costs**”) shall be borne by the Licensee; If the Suspension pursuant to Sub-clause 15.4.2 above, is caused by:
- a) any reason other than default or breach of this Agreement by the Licensee including breach of any of the obligations of the Licensee under this Agreement, the Preservation Costs shall be borne by the Licensee;
  - b) reason of any Force Majeure Event, the Preservation Costs shall be borne by the Licensee save and except to the extent otherwise expressly provided in Article 28.
- 15.4.4 If Suspension of Construction Works is for reasons not attributable to the Licensee, the PMC shall determine any extension of the dates set forth in the Project Completion Schedule to which the Licensee is reasonably entitled, and shall notify the Licensor accordingly whereupon the Licensor shall extend such Project Completion Schedule dates in accordance with the recommendations of the PMC.

## ARTICLE 16: COMPLETION

- 16.1** Upon the completion of the design, development, construction and other activities, but prior to seeking completion certificate from Licensor, in relation to the Project, in accordance with the terms of this Agreement, as may be required to bring the Project into commercial operation, the Licensee shall intimate PMC in writing, together with all Applicable Permits required for the purposes of commencement of commercial operations ("**Completion Notice**"). The PMC shall, within 15 (fifteen) Business Days of the receipt of the Completion Notice, inspect the Project to ascertain its compliance with Applicable Laws and the terms of this Agreement including but not limited to Schedule B, C, and D.
- 16.2** In the event that the Project complies with this Agreement including but not limited to Schedule B, C, D, the PMC shall submit a compliance report to the Licensor for information. The Licensor may, if required, conduct a joint inspection of the Project Asset with the PMC. On finding the aforesaid report satisfactory, the Licensor shall direct the PMC to issue a notice to the Licensee (the "**Commencement Notice**").
- If the Project does not comply with the Applicable Laws and/or this Agreement including but not limited to Schedule B, C & D, the PMC shall share a copy of a non-compliance report to the Licensor and Licensee for information, indicating the deviations and requiring the Licensee to make such alterations to the Project as would be required to ensure its conformity. Upon receipt of report, the Licensor may, if required, conduct a joint inspection with PMC. The Licensor on finding the aforesaid report correct, shall direct the PMC to issue a notice to the Licensee, to make such alterations to the Project to ensure its conformity with the Applicable Laws and/or this Agreement including but not limited to Schedule B, C & D ("**Cure Notice**").
- 16.3** In the event that PMC issues a Cure Notice in accordance with Article 16.2, the Licensee shall undertake the alterations, that are required in terms of the Cure Notice, provided that such alterations are permissible as per Applicable Laws, whereafter the Licensee may issue another Completion Notice in accordance with Article 16.1.
- 16.4** Upon receipt of a Commencement Notice from PMC and any other Applicable Permits, the Licensee may commence commercial operation of the Project (the "**COD or Commercial Operation Date**").
- 16.5** The PMC shall issue either the Commencement Notice or the Cure Notice within fifteen (15) days of the inspection of the Project, pursuant to the receipt of the Completion Notice. If PMC fails to issue either a Commencement Notice or a Cure Notice within the aforesaid period, PMC shall be deemed to have granted a Commencement Notice in respect of the Project.
- 16.6** The Licensee guarantees that the Project Completion shall be achieved in

accordance with the Project Completion Schedule set forth in Schedule H and other provisions of this Agreement on a date not later than 365 (Three Hundred and Sixty Five) days from the Appointed Date (**the “Scheduled Project Completion Date”**).

**16.7** If the COD is not achieved prior to the 31st day from the Scheduled Completion Date for any reason other than conditions constituting Force Majeure or for reasons attributable to Licensor or any Governmental Agency, the Licensee shall pay to Licensor as daily Damages for delay in the achievement of the COD, an amount calculated at the rate of 0.1% (point one per cent) of the Total Project Cost per week or part thereof.

In the event that the COD is not achieved within 90 (ninety days) days of the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Licensor or due to Force Majeure, the Licensor shall be entitled to terminate this Agreement.

**16.8** Licensor shall not be responsible for any loss of business, profit, goodwill or any other loss caused to the Licensee due to a delay in the commencement of commercial operations of the Project Asset on account of issue of a Cure Notice by PMC.

## **ARTICLE 17: CHANGE OF SCOPE**

### **17.1 Change of Scope**

- 17.1.1 The Licensor may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement or arise due to the change in development controls as defined in Schedule B (the “Change of Scope”). Any such Change of Scope shall be made in accordance with the provisions of this Article 17 and the costs thereof shall be borne by the Licensee.
- 17.1.2 If the Licensee proposes at any time that a Change of Scope is required for providing safer and improved services or due to the change in development controls, it shall by notice in writing require the Licensor to consider such Change of Scope. The Licensor shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 17 or inform the Licensee in writing of its reasons for not accepting such Change of Scope. In case of acceptance of the proposal, all the cost and expenses shall be borne by the Licensee for the Change of Scope.

### **17.2 Procedure for Change of Scope initiated by Licensor or Licensee**

- 17.2.1 In the event of the Licensor determining that a Change of Scope is necessary, it shall issue to the Licensee a notice specifying in reasonable detail the works and services contemplated thereunder (the “Change of Scope Notice”).
- 17.2.2 Upon receipt of a Change of Scope Notice, the Licensee shall, with due diligence, provide to the Licensor such information as is necessary, together with preliminary Documentation in support of:
- a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
  - b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof.
- 17.2.3 In the event of the Licensee proposes that a Change of Scope is required, it shall submit to the Licensor a proposal with preliminary Drawings and other Documentation including information like implementation time and cost for consideration.
- 17.2.4 Upon receipt of information set forth in Clause 17.2.1 and 17.2.3, if the Licensor decides to proceed with the Change of Scope, it shall convey its preferred option to the Licensee, and the Parties shall, with assistance of the PMC, thereupon make good faith efforts to agree upon the time for implementation thereof. Upon reaching an agreement, the Licensor shall issue an order (the “Change of Scope Order”)

requiring the Licensee to proceed with the performance thereof.

## **ARTICLE 18: OPERATION AND MAINTENANCE**

### **18.1 O&M obligations of the Licensee**

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

- a) permitting safe, smooth and uninterrupted use of Project Facilities during normal operating conditions;
- b) collecting and appropriating the revenues;
- c) minimizing disruption in the event of accidents or other incidents-affecting the safety and use of the Project Facilities by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- d) carrying out periodic preventive maintenance of the Project;
- e) undertaking routine maintenance including prompt repairs of cracks, joints, drains, markings, lighting, signs and other control devices;
- f) undertaking major maintenance such as repairs to structures, and refurbishment of parking system and other equipment;
- g) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
- h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- i) protection of the environment and provision of equipment and materials therefor;
- j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- k) complying with Safety Requirements in accordance with Article 19;
- l) make all necessary payments in time bound manner to the Licensor such as Annual License Fee or any other payment to comply with the provisions of this Agreement;
- m) make all necessary/ applicable and time bound utilities payments and taxes to all Central and State Government utilities;

18.1.2 The Licensee shall remove promptly from the Project Site all surplus construction 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.

## **18.2 Maintenance requirements**

The Licensee shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements set forth in Schedule-L (the “**Maintenance Requirements**”).

## **18.3 Maintenance Manual**

18.3.1 The Licensee shall in consultation with the PMC prepare not later than 90 (ninety) days before the Scheduled Project Completion Date, the repair and maintenance manual (the “**Maintenance Manual**”) for the regular, periodic and preventive maintenance, and shall ensure and procure that at all times during the Operations Period, the Project is maintained in a manner that it complies with the Specifications and Standards and the minimum Maintenance Requirements set forth in Schedule L. The Licensee shall supply, at least two months before the COD, 2 (two) copies of the Maintenance Manual to Licensor and PMC.

The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 18.3.1 shall apply, mutatis mutandis, to such revision.

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

## **18.4 Maintenance Programme**

18.4.1 On or before COD and Not later than forty five (45) days before the beginning of each Accounting Year, the Licensee, shall in consultation with the PMC prepare and provide to Licensor, its proposed programme of preventive and other scheduled maintenance of the Project subject to the minimum Maintenance Requirements set forth in Maintenance Manual and in Schedule ‘L’ necessary to maintain the Project at all times in conformity with the Specifications and Standards (the “**Maintenance Programme**”). Such Maintenance Programme shall include but not be limited to the following:

- a) intervals and procedures for the carrying out of inspection of all elements of the Project;



- b) criteria to be adopted for deciding maintenance needs;
- c) preventive maintenance schedule;
- d) intervals at which the Licensee shall carry out periodic maintenance;
- e) intervals for major maintenance and the scope thereof; and
- f) arrangements and procedures for carrying out periodic maintenance

18.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the PMC shall review the same and convey its comments to the Licensee with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

18.4.3 The Licensee may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 18.4.1 and 18.4.2 shall apply mutatis mutandis to such modifications.

## **18.5 De-commissioning due to Emergency**

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

18.5.2 The Licensee shall re-commission the Project/Project facilities or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Licensee to re-commission the Project and shall notify the Licensor of the same without any delay.

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

## **18.6 Project/Project facilities closure**

18.6.1 Save and except as provided in Clause 18.5, the Licensee shall not close any part of the Project/Project facilities for undertaking maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of the PMC. Such approval shall be sought by the Licensee through a written request to be made to the PMC, and a copy thereof furnished to the Licensor, at least 7 (seven) days before the proposed closure and shall be accompanied by

particulars thereof. Within 3 (three) days of receiving such request, the PMC shall grant permission with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Programme and a copy of such permission shall be sent to the Licensor.

18.6.2 Upon receiving the permission pursuant to Clause 18.6.1, the Licensee shall be entitled to close the designated facility for the period specified therein.

## **18.7 Damages for breach of maintenance obligations**

18.7.1 In the event the Licensee does not maintain and/ or repair the Project or a part thereof up to and in accordance with the Specifications and Standards and/or in accordance with the Maintenance Programme or the Maintenance Manual, and shall have failed to commence remedial works within 15 (fifteen) days of receipt of notice in this behalf from Licensor or the PMC, or the O&M Inspection Report, as the case may be, Licensor shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project at the risk and cost of the Licensee and to recover the same from the Licensee. In addition to recovery of the aforesaid cost of repair and maintenance by the Licensor, a sum equal to 25% (twenty five per cent) of such cost shall also be recovered by the Licensor from the Licensee as Damages.

18.7.2 In the event the Licensor does not exercise its option to undertake the required repair and maintenance after expiry of the 15 (fifteen) days period set forth in 18.7.1, it shall recover Damages from the Licensee for default in operating and maintaining the Project Site in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 15 (fifteen) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely (a) Rs.10,000 (Rs. Ten thousand), and (b) 0.1% (zero point one per cent) of the cost of such repair as estimated by the PMC/ Licensor. Recovery of such Damages shall be without prejudice to the rights of the Licensor under this Agreement, including Termination thereof.

18.7.3 Damages set forth in Clause 18.7 may be assessed and specified forthwith by the PMC; provided that the Licensor may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Licensee is otherwise in compliance with its obligations hereunder. The Licensee shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

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

### **18.8 Restoration of loss or damage**

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the License Period from any cause whatsoever, the Licensee 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.

### **18.9 Modifications to the Project**

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

### **18.10 Excuse from performance of obligations**

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

- a) an event of Force Majeure;
- b) compliance with a request from the Licensor or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project:

provided, that any such non-availability and particulars thereof shall be notified by the Licensee to the Licensor and PMC without any delay.

## **ARTICLE 19: SAFETY REQUIREMENTS**

### **19.1 Safety Requirements**

- 19.1.1 The Licensee shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the persons present at the Project site. In particular, the Licensee shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project and shall comply with the safety requirements set forth in Schedule-M (the “**Safety Requirements**”).
- 19.1.2 The PMC shall carry out the safety audit of the Project in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

### **19.2 Expenditure on Safety Requirements**

- 19.2.1 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Licensee.

## **ARTICLE 20: MONITORING OF OPERATION AND MAINTENANCE**

### **20.1 Monthly status reports**

- 20.1.1 During Operation Period, the Licensee shall, no later than 7 (seven) days after the close of each month, furnish to the Licensor and the PMC a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the PMC or the Licensor. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 20.1.2 During Operation Period, the Licensee shall, no later than 10 (ten) days after the close of each month, furnish to the Licensor and the PMC a monthly management report which shall be a summary of:
- a) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
  - b) key financial parameters for the month, as benchmarked against the monthly budget, the reasons for shortfall, if any, and proposals to remedy the same.

### **20.2 Inspection**

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

### **20.3 Tests**

For determining that the Project conforms to the Maintenance Requirements, the PMC or the Licensor shall require the Licensee to carry out, or cause to be carried out, Tests specified by it in accordance with Good Industry Practice. The Licensee shall, with due diligence, carry out or cause to be carried out all such Tests at its own cost in accordance with the instructions of the PMC and furnish the results of such Tests forthwith to the PMC.

### **20.4 Remedial measures**

- 20.4.1 The Licensee shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 20.3 and

furnish a report in respect thereof to the PMC and the Licensor within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Licensee shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

- 20.4.2 The PMC or the Licensor shall require the Licensee to carry out or cause to be carried out Tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 20.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Licensee in conformity with the provisions of this Agreement, the Licensor shall be entitled to recover Damages from the Licensee under and in accordance with the provisions of Clause 18.7.

## **ARTICLE 21: PROJECT MANAGEMENT CONSULTANT**

### **21.1 Appointment of Project Management Consultant**

21.1.1 The Licensor shall appoint a consulting engineering firm or body corporate selected by the Licensor in accordance with the selection process set forth in Schedule 'N'.

21.1.2 The appointment of the PMC for Development and Construction Period pursuant to Clause 21.1.1 shall be done by the Licensor. The date of such appointment shall **be no later than 180 (one hundred eighty) days** from the date of this Agreement.

The appointment of the PMC for Operation Period pursuant to Clause 21.1.1 shall be done by the Licensor. The date of such appointment shall be before and no later than the Commercial Operation Date (COD).

### **21.2 Duties and functions**

21.2.1 The PMC shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-O.

21.2.2 The PMC shall submit regular periodic reports (at least once every month) to the Licensor in respect of its duties and functions set forth in Schedule-O.

21.2.3 A true copy of all communications sent by the Licensor to the PMC and by the PMC to the Licensor shall be sent forthwith by the PMC to the Licensee.

21.2.4 A true copy of all communications sent by the PMC to the Licensee and by the Licensee to the PMC shall be sent forthwith by the PMC to the Licensor.

### **21.3 Remuneration**

The remuneration, cost and expenses of the PMC shall be borne by the Licensor during the period of development and construction and the same shall be borne by the Licensee during the Operation period. However, the payment to PMC during the Operation period shall be made by the Licensor to the PMC directly and due amount shall be reimbursed by the Licensee to the Licensor. The Licensor may, in its discretion, terminate the appointment of the PMC at any time, but only after appointment of another PMC in accordance with Clause 21.1.

21.3.1 If the Licensee has reason to believe that the PMC is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Licensor and seek termination of the appointment of the PMC. Upon receipt of such representation, the Licensor shall hold a tripartite meeting with the Licensee and PMC for an amicable resolution of the Dispute, and if any difference or disagreement between the Licensor and the Licensee remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the PMC is terminated hereunder, the Licensor shall appoint forthwith another PMC in accordance with Clause 21.1.

21.3.2 If either party disputes any advice, instruction or award of the PMC, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **21.4 Authorized signatories**

The Licensor shall require the PMC to designate and notify to the Licensor and the Licensee up to 2 (two) persons employed in its firm to sign for and on behalf of the PMC, and any communication or document required to be signed by the PMC shall be valid and effective only if signed by any of the designated persons; provided that the PMC may, by notice in writing, substitute any of the designated persons by any of its employees.

#### **21.5 Dispute resolution**

Subject to the Dispute resolution mechanism contained herein where a technical issue arises in which the two parties have a different view, then either party can nominate suitable technical experts to review the process and the other party selects one of these experts. Each party would brief the expert in writing on the issue to be addressed and would provide a copy of the briefing to the other party. The two Parties would agree with the expert on the time frame to review and report on the matter. The cost of the review will be borne equally by the two Parties.



## **Part IV – Financial Covenants**

**ARTICLE 22: DELETED**

## **ARTICLE 23: PROJECT COST & ANNUAL LICENSE FEE**

### **23.1 Project Cost**

The Parties expressly agree that the cost of construction of the Project, as on the Bid Date, which is due and payable by the Licensor to the Licensee, shall be deemed to be Rs. 12,50,00,000 (Rupees Twelve Crore Fifty Lakh Only) (The “Project Cost”). The Parties further agree that the Project Cost specified hereinabove for payment to the Licensee shall be inclusive of the cost of construction, interest during construction, working capital, physical contingencies and all other costs, expenses and charges for and in respect of construction of the Project.

### **23.2 Payment of Bid Project Cost**

100% (one hundred per cent) of the Total Project Cost shall be due and payable to the Licensee upon substantial completion of Milestones as per Schedule H, during the Construction Period in accordance with the provisions of Clause 23.3.

The Licensee shall submit actual/original expense (GST bill) bills to the Licensor and the Licensor shall reimburse the expenses as part of the “Total Project Cost”.

If the DPR submitted by Licensee as per clause 14.3 exceeds the cost under civil infrastructure head mentioned in the PPR enclosed with the RFP document, the Licensee shall bear such exceeded cost without any recourse to the Licensor.

The payment to the Licensee by the Licensor shall be done upon substantial completion of Milestones as per Schedule H based on the actual/original GST bills submitted by the Licensee to the Licensor.

### **23.3 Payment during Construction Period**

For the purpose of this Clause 23.3, the release of payment during Construction Period shall be as under:

Upon receiving a report from the PMC certifying the substantial completion of physical achievement of the Milestones as per Schedule H, the Licensor shall disburse, **within 45 (Forty Five) days** of the receipt of each such report, the total amount of actual/original GST bills submitted by the Licensee to the Licensor. The Licensor will disburse payment after deducting 10% amount from the amount due for each Milestone for which the physical progress has been certified by the PMC. All the payments shall be made after deducting TDS (if applicable) by the Licensor.

All the GST bills shall be drawn in the name of the Licensee.

The amount so deducted (10% of the amount for each Payment) shall be disbursed to the Licensee after commencement of commercial operation of the Mahua Processing unit.

Provided that in case of reduction of Scope, the effective amount for payment during construction period shall be recalculated to account for the changed scope. In any event of excess payment, such payment shall be recovered from next payable payment during construction period or shall be refunded by the Licensee within 60 days of such notice served by Licensor.

## **23.4 Annual License Fee**

23.4.1 In consideration of the grant of License, the Licensee shall pay to the Licensor Annual License Fee (the "**Annual License Fee**"). The Annual License Fee payable by the Licensee to the Licensor shall be:

**1. Annual License Fee for first year of operation (Due from Commercial Operation Date) =**

Annual License Fee as quoted by the bidder in the financial proposal for 6 MTPD capacity plant.

**2. Annual License Fee for subsequent years (from second year of operation to last year of operation) =**

The Annual License 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 License Fee is to be calculated) Annual License Fee. The Annual License Fee for second year onwards would be as calculated below:

Annual License Fee for last year (year preceding to the year for which License Fee is calculated) of operation as escalated with annual escalation factor as defined below.

a. The annual escalation factor for increase in Annual License Fee from second year of Operation is

- 5% per annum

Or

- ✓ Increase in WPI factor to reflect the increase between the WPI for Last Accounting Year<sup>1</sup> (prior to current year for which annual revision is to be done) and the WPI for the one year prior to Last Accounting Year (one year prior to Last Accounting Year) (whichever is higher)

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<sup>1</sup>If revisions is to be done for FY 2025-26 (1st April 2025 to 31st March 2026), then Last Accounting Year means FY 2024-25 (1st April 2024 to 31st March 2025).

One year prior to Last Accounting Year would be FY 2023-24 (1st April 2023 to 31st March 2024)

The revised Annual License 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 License Fee as applicable for respective year of operation would be paid in four instalments on a quarterly basis.
  - ✓ Quarterly License Fee to be paid every quarter would be = (Annual License Fee as applicable for respective financial year/ 4)

23.4.3 In consideration of the rights, privileges and interests granted by the Licensor to the Licensee in terms of this Agreement, the Licensee shall pay the Annual License Fee to the Licensor, commencing from Commercial Operation Date as follows:

- ✓ Annual License Fee shall be due and payable, in four installments on quarterly basis, latest by the seventh day of the succeeding month, starting from Commercial Operation Date.

For the payment of the above Annual License Fee the Financial Year (FY) shall be the English Calendar i.e., 1<sup>st</sup> April to 31<sup>st</sup> March. Accordingly, the quarters shall be April-June, July-September, October-December & January-March.

In case the commercial operation Date happens to be a day in between one of the Four quarters then the “Annual License Fee” for the First quarter shall be computer on “pro-rata” basis. The second quarter shall obviously commence as per the English Calendar (e.g. If the commercial operation date is 13<sup>th</sup> August of a particular Financial Year, then the First quarter shall be treated as that of remaining days of August and September and the quarterly payment of Annual License Fee shall be computed for remaining days of August and September instead of July-September). The First Financial Year may be/ may not be of full 12 months.

23.4.4 The Licensee shall not be granted any waiver in the License Fee during the license period under any circumstances including change in the taxes.

23.4.5 For the avoidance of doubt, GST or any other tax applicable shall be borne by the Licensee over and above the Annual License Fee.

23.4.6 In the event of delay up to 7 days from the due date in the payment of the Annual License Fee, the Licensee shall be liable to pay to the Licensor, 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.

23.4.7 In consideration of the Grant, the Licensee hereby agrees to make payment of License Fee throughout the Operation Period in accordance with clause 23.4.1 .

23.4.8 The Licensee shall be liable to pay damages for any delay in payments of Annual License Fee to the Licensor calculated at the rate of SBI PLR + 2 % per annum for the period from due date until the date of actual payment.

## **ARTICLE 24: PROJECT REVENUE**

### **24.1 Collection and appropriation of revenue by the Licensee**

- 24.1.1 With effect from the COD till the Transfer Date, the Licensee shall have the sole and exclusive right to demand, collect, revise and appropriate revenue from the users in accordance with Good Industry Practice and more particularly in terms set out under this Agreement.
- 24.1.2 The Licensee shall be free to decide on the sale price for the finished products from the Project subject to applicable laws.
- 24.1.3 The Licensee shall be and remain solely liable and responsible for the collection of revenue in accordance with this Agreement.

### **24.2 Appropriation of Project revenue**

On and from the COD and during the Operations Period, the Licensee or its agents or servants shall charge, collect and appropriate the revenues in respect of the Project.

### **24.3 Collection & Handling**

- 24.3.1 The Licensee 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.
- 24.3.2 The Licensee 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 (i) all money being held by the Licensee shall at all times be insured against loss due to but no limited to theft, loss, fire and natural disasters and (ii) the Licensee shall remain liable for timely payment of License Fee to the Licensor in accordance with the terms of this Agreement.

**ARTICLE 25: DELETED**

## **ARTICLE 26: INSURANCE**

### **26.1 Insurance during License Period**

#### **26.1.1 Insurance during Construction Period**

- a) The Licensee shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required by the Licensor, and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Licensee shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Licensor as a consequence of any act or omission of the Licensee during the Construction Period. The Licensee shall procure that in each insurance policy, the Licensor shall be a co-insured.
  
- b) No later than 45 (forty-five) days prior to commencement of the Construction Period, as the case may be, the Licensee shall by notice furnish to the Licensor, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Licensor may require the Licensee to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

#### **26.1.2 Insurance during Operation Period**

Not later than 60 days prior to the anticipated Completion of the Project, the Licensee shall obtain and maintain at no cost to Licensor during the Operations Period in respect of the Project and its operations, such insurance as may be required under any of the Applicable Laws and such insurance as the Licensee may reasonably consider necessary or desirable in accordance with Good Industry Practice. The Licensee shall procure that in each insurance policy, the Licensor shall be a co-insured.

For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Licensee pursuant to this Article 26 are herein referred to as the “**Insurance Cover**”.

### **26.2 Insurance Cover**

Without prejudice to the provisions contained in Clause 26.1, the Licensee shall, during the Construction period and Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- a) Loss, damage or destruction of the Project Assets, including assets handed over by the Licensor to the Licensee, at replacement value;



- b) comprehensive third party liability insurance including injury to or death of personnel of the Licensor or others caused by the Project;
- c) the Licensee's general liability arising out of the License ;
- d) liability to third parties for goods or property damage;
- e) workmen's compensation insurance; and
- f) any other insurance that may be necessary to protect the Licensee and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

### **26.3 Evidence of Insurance Cover**

All insurances obtained by the Licensee in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Licensee shall furnish to the Licensor, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Licensee to the Licensor.

### **26.4 Remedy for failure to insure**

If the Licensee shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Licensor shall have the option to either keep in force any such insurances and pay such premia and recover the costs thereof from the Licensee.

### **26.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Licensee pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Licensor, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

### **26.6 Licensee's waiver**

The Licensee hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Licensor and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and

underwriters, which the Licensee may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Licensee pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**26.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Licensee and it shall, notwithstanding anything to the contrary contained in Clause 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project.

**ARTICLE 27: DELETED**

## **Part V-Force Majeure and Termination**

## **ARTICLE 28: FORCE MAJEURE**

**28.1** Force Majeure : As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 28.2, 28.3, and 28.4 respectively hereinafter which prevent the Party claiming Force Majeure (the “**Affected Party**”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and (iii) has a Material Adverse Effect on the Project.

### **28.2 Non-Political Force Majeure Events**

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

- a) acts of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Licensee, Contractors or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a period exceeding a continuous period of 30 (thirty) days in an Accounting Year, and not being an Indirect Indian Political Event set forth in Clause 28.3 hereof;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Licensee by or on behalf of such Contractor;
- d) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Licensee in any proceedings for reasons other than failure of the Licensee to comply with any Applicable Law or Applicable Permits or on account of breach thereof, or of any contract, or enforcement of this Agreement or exercise of any of its rights under this Agreement by the Licensor;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) Any event or circumstance of a nature analogous to any of the foregoing.

### **28.3 Indirect Political Force Majeure Events**

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents collection of fees for an continuous period exceeding 7 (seven) days in an Accounting Year;
- b) industry wide or State wide or India wide strikes or industrial action for a period exceeding a continuous period of 30 (thirty) days in an Accounting Year; or
- c) any civil commotion, boycott or political agitation which prevents realization of revenue by the Licensee for a continuous period exceeding 7 (seven) days in an Accounting Year;
- d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Licensee by or on behalf of such Contractor; or
- e) any event or circumstance of a nature analogous to any of the foregoing.

### **28.4 Political Force Majeure Events**

A Political Event shall mean one or more of the following acts or events by or on account of Government of India or any other Governmental Agency:

- a) expropriation or compulsory acquisition by any Governmental Agency of any Project Assets or rights of the Licensee or of the Contractors; or
- b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Licensee or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Licensee's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- c) Any decision or order of a court or tribunal which has the effect of restraining all or any part of the activities concerning the construction, operation or maintenance of the Project including the determination, levy, demand, collection, retention and appropriation of revenue;
- d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being

payable to the Licensee by or on behalf of such Contractor; or

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

#### **28.5 Effect of Force Majeure before Appointed Date**

Upon the occurrence of any Force Majeure Event prior to Appointed Date as set forth in Article 22, the following shall apply:

- a) There shall be no Termination except as provided in Clause 28.8;
- b) the period set forth in Clause 4.1 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.;
- c) The Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event.

#### **28.6 Effect of Force Majeure Event after Appointed Date**

Upon occurrence of any Force Majeure Event after Appointed Date, the following shall apply:

- a) There shall be no Termination of this Agreement except as provided in Clause 28.8;
- b) Where the Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule, and the License Period shall be extended by the period for which such Force Majeure Event shall subsist;
- c) Where a Force Majeure Event occurs after COD, the Licensee shall continue to make all reasonable efforts to collect revenue, but if he is unable to collect revenue during the subsistence of such Force Majeure Event, the License Period shall be extended by the period for which collection of revenue remains suspended on account thereof; and
- d) Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Clause 28.7.
- e) The Parties expressly agree that payment of License Fee shall not be suspended during the pendency of Force Majeure event and/or its effect.

#### **28.7 Allocation of costs during subsistence of Force Majeure**

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

## **28.8 Termination Notice**

If a Force Majeure Event subsists for a period of 365 days (three hundred and sixty five ) days, either Party may in its sole discretion terminate this Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever, save as provided in Clause 28.9 and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **28.9 Termination Payment for Force Majeure Events**

- 28.9.1 Upon Termination of this Agreement pursuant to Clause 28.8, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

## **28.10 Dispute Resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **28.11 Liability for other losses, damages, etc.**

Save and except as expressly provided in this Article 28, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 28.

## **28.12 Duty to Report**

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

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



- b) Any notice pursuant to this Clause 28.12 shall include full particulars of:
  - i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
  - ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - iii. the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - iv. any other information relevant to the Affected Party's claim.
- c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 28.12, and such other information as the other Party may reasonably request the Affected Party to provide.

**28.13 Excuse from performance of obligations:**

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

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

## **ARTICLE 29: COMPENSATION FOR BREACH OF AGREEMENT**

### **29.1 Compensation for default by Licensee**

In the event of Licensee being in material default of this Agreement and such default is cured before Termination, the Licensee shall pay to Licensor as compensation, all direct additional costs suffered or incurred by Licensor arising out of such material default by the Licensee, in one lumpsum within 30 (thirty) days of receiving the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 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 Licensor.

### **29.2 Compensation for default by the Licensor**

In the event of Licensor being in material default of this Agreement and such Material Breach is cured before Termination, Licensor shall pay to the Licensee as compensation, all direct additional costs suffered or incurred by the Licensee arising out of such material default by Licensor, in one lumpsum within 30 (thirty) days of receiving the demand supported by necessary particulars thereof; provided that no compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in the Agreement. For the avoidance of doubt, compensation payable may include O&M Expenses and all other directly attributable to such material breach or default but shall not include loss of revenues or other consequential losses.

### **29.3 Extension of License Period**

Subject to the provisions of Clause 29.4, in the event that a Material Breach or default of this Agreement set forth in Clause 29.2 causes delay in achieving COD or leads to suspension of or reduction in the realisation of revenues, as the case may be, the Licensor shall, in addition to payment of compensation under Clause 29.2, extend the License Period, such extension being equal in duration to the period by which COD was delayed.

### **29.4 Mitigation of costs and damage**

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

## **ARTICLE 30: SUSPENSION OF LICENSEE’S RIGHTS**

### **30.1 Suspension upon Licensee Default**

Upon occurrence of a Licensee Event of Default, the Licensor 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 Licensee under this Agreement including the Licensee’s right to collect revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise 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 Licensor to the Licensee and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Licensee, the Licensor shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 60 (sixty) days.

### **30.2 Licensor to act on behalf of Licensee**

30.2.1 Subject to Clause 30, Licensor shall have the right to utilise the proceeds of revenues for meeting the costs incurred by Licensor to remedy and rectify the cause of such Suspension and for defraying the O&M Expenses during such Suspension period. Provided, however, that if the Licensee is making diligent efforts to remedy and rectify such cause, then Licensor shall allow the Licensee reasonable time and opportunity for such remedy or rectification.

30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Licensee 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 Licensor for discharging the obligations of the Licensee under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Licensee and the Licensee undertakes to indemnify the Licensor for all costs incurred during such period. The Licensee hereby licenses and sub-licenses respectively, the Licensor or any other person authorised by it under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Licensee with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Licensee in performing its obligations under the Agreement.

### **30.3 Revocation of Suspension**

30.3.1 The Suspension of the rights of the Licensee by Licensor pursuant to Clause 30.1 above shall be revoked by Licensor forthwith upon the Licensee having remedied or removed the cause of Suspension within a period not exceeding 90 days from date of Suspension to the satisfaction of Licensor unless in the meantime this Agreement has been terminated by Licensor in accordance with Article 30.

## **30.4 Termination**

- 30.4.1 At any time during the period of Suspension under this Article 30, the Licensee may by notice require the Licensor to revoke the Suspension and issue a Termination Notice. The Licensor shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 30.
- 30.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, the License 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 Licensor upon occurrence of a Licensee Event of Default.

## **ARTICLE 31: TERMINATION**

### **31.1 Termination for Licensee Default**

31.1.1 Each of the following events or circumstances, to the extent not caused by a default of Licensor or Force Majeure shall be considered for the purposes of this Agreement as events of default of the Licensee ("**Licensee Event of Default**") which, if not remedied within the Cure Period set forth below, or where no Cure Period is specified, within 60 (sixty) days, upon receipt of written notice from Licensor, shall provide Licensor the right to terminate this Agreement in accordance with Article 31.1.4:

- a) The Licensee fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth in Schedule 'H' and fails to cure such default within a period of 60 (sixty) days from the date of its occurrence;
- b) The Licensee abandons the operations of the Project for more than 15 (fifteen) consecutive days without the prior consent of Licensor, provided that the Licensee shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by Licensor;
- c) COD does not occur within the period of 90 days from Schedule Project Completion Date specified in Clause 16.7;
- d) The Licensee creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Clause 34.2;
- e) The shareholding of the Consortium Members falls below the minimum prescribed under Clause 7.1 (l) and the Licensee does not suo moto cure such default within 90 (ninety) days of its occurrence;
- f) the Licensee is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Licensee 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 Licensee is passed, or any petition for winding up of the Licensee is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Licensee is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, Project Assets and undertaking of the Licensee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Licensee under this

Agreement and the Project Agreements; and provided that:

- i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Licensee as at the Appointed Date; and
  - iii. each of the Project Agreements remains in full force and effect;
- h) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Licensee under any of the Project Agreements, or of (ii) all or part of the Project Assets or undertaking of the Licensee, and such transfer causes a Material Adverse Effect;
  - i) a resolution is passed by the shareholders of the Licensee for the voluntary winding up of the Licensee;
  - j) the Licensee repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
  - k) the Licensee suffers an execution being levied on any of its Project Assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days;
  - l) the Licensee has delayed any payment that has fallen due under this Agreement if such delay exceeds 30 (thirty) days;
  - m) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Licensee fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
  - n) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Licensee fails to meet any Condition Precedent or cure the Licensee Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 60 (sixty) days;
  - o) the Licensee has failed to make any payment to the Licensor within the period specified in this Agreement;

31.1.2 Without prejudice to any other rights or remedies which the Licensor may have under this Agreement, upon occurrence of a Licensee Event of Default, the Licensor shall be entitled to terminate this Agreement by issuing a Termination

Notice to the Licensee; provided that before issuing the Termination Notice, the Licensor shall by a notice inform the Licensee of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Licensee to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 31.1.3.

- 31.1.3 Save and except as otherwise provided in Clause 31.1.2, and without prejudice to any other right or remedy which Licensor may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Licensee under this Agreement including any Licensee Event of Default, Licensor shall be entitled to terminate this Agreement by a communication in writing (the “**Termination Notice**”) to the Licensee if the Licensee has failed to cure such breach or default within the period provided for the same in this Agreement or Cure Period of 60 (sixty) days.

Subject to Clause 31.1.2, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- a) The Cure Period shall commence from the date on which a notice in writing is delivered by Licensor to the Licensee asking the latter to cure the breach or default specified in such notice;

The Cure Period provided in this Agreement shall not relieve the Licensee from liability for Damages caused by its breach or default;

The Cure Period shall not in any way be extended by any period of Suspension under this Agreement;

If the cure of any breach by the Licensee requires any reasonable action by Licensee that must be approved by Licensor or the PMC hereunder, the applicable Cure Period (and any liability of the Licensee for Damages incurred) shall be extended by the period taken by Licensor or the PMC to accord their required approval.

## **31.2 Termination for Licensor Default**

- 31.2.1 The Licensee may after giving 90 (ninety) days’ notice in writing to Licensor terminate this Agreement upon the occurrence and continuation of any of the following events (each a “**Licensor Event of Default**”), unless any such Licensor Event of Default has occurred as a result of Licensee Event of Default or due to a Force Majeure Event:

- a) Licensor is in breach of this Agreement and such breach has a Material Adverse Effect on the Licensee and Licensor has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Licensee;

- b) the Licensor repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- c) the Licensor has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days;
- d) The Licensor is in breach of any representation or warranty made under this Agreement, or it repudiates this Agreement;

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

### **31.3 Termination Payment**

#### **31.3.1 Upon Termination of the Agreement pursuant to a Licensee Event of Default or Licensor Event of Default occurring**

##### **Prior to COD:**

Upon Termination on account of Licensee Event of Default during the Construction Period, the Licensor shall pay to the Licensee expenses incurred by it till the date of Termination. The Parties also agree that for determining the Termination Payment under this Clause 31.3.1, only the outstanding expenditure comprising and up to the latest Project Milestone shall be reckoned.

##### **Post COD:**

Upon Termination by Licensor on account of occurrence of Licensee Event of Default during the Operations Period, the Licensor shall not be liable to pay any sum to the Licensee.

31.3.2 The Termination Payment pursuant to this Agreement shall become due and payable to the Licensee by Licensor within 30 days of a demand being made by the Licensee with the necessary particulars duly certified by the Statutory Auditors. If Licensor fails to disburse the full Termination Payment within 90 (ninety) days, the amount remaining unpaid shall be disbursed along with interest rate equal to 3% (three per cent) above the Bank rate for the period of delay on such amount. For the avoidance of doubt, it is expressly agreed that the Termination payment shall constitute full discharge by the Licensor of its payment obligations in respect



thereof hereunder.

31.3.3 Mode of Payment: Payment of compensation of costs by Licensor pursuant to this Article 31 shall be made by way of credit to the Licensee's account and such payment shall constitute valid discharge of Licensor's obligations for Termination Payment hereunder.

31.3.4 The Licensee expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Licensee on account of Termination of this Agreement for any reason whatsoever and that the Licensee or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

#### **31.4 Other rights and obligations of the Licensor**

Upon Termination for any reason whatsoever, the Licensor shall:

- a) take possession and control of the Project/Project Facilities forthwith;
- b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- c) be entitled to restrain the Licensee and any person claiming through or under the Licensee from entering upon the Site or any part of the Project;
- d) require the Licensee to comply with the Divestment Requirements set forth in Clause 32.1; and
- e) succeed upon election by the Licensor, without the necessity of any further action by the Licensee, to the interests of the Licensee under such of the Project Agreements as the Licensor may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Licensor elects to succeed to the interests of the Licensee. For the avoidance of doubt, the Licensee acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Licensee and such Contractors, and the Licensor shall not in any manner be liable for such sums. It is further agreed that in the event the Licensor elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Licensor for this purpose shall be deducted from the Termination Payment.

#### **31.5 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 32: DIVESTMENT OF RIGHTS AND INTEREST**

### **32.1 Divestment Requirements**

32.1.1 Upon Termination, the Licensee shall comply with and conform to the following Divestment Requirements:

- a) notify to the Licensor forthwith the location and particulars of all Project Assets;
- b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
- c) cure all Project Assets, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Licensee 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 Licensor free of any Encumbrance;
- e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- f) execute such deeds of conveyance, documents and other writings as the Licensor may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Licensee 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 Licensor, absolutely unto the Licensor 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 Licensee in the Project, free from all Encumbrances, absolutely unto the Licensor or to its nominee.

32.1.2 Subject to the exercise by the Licensor of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Licensee, 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.

## **32.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 30 (thirty) days prior to the effective date of such Termination, the PMC shall verify, after giving due notice to the Licensee of the time, date and place of such verification, compliance by the Licensee with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Licensee's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Licensee at its cost and the provisions of Article 33 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 32.

## **32.3 Cooperation and assistance on transfer of Project**

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

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

32.3.3 The Licensor shall have the option to purchase or hire from the Licensee at a fair market value and free from any encumbrances all or any part of the plant and machinery used in connection with the Project but which does not form part of the Project Assets specified in Clause 32.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

## **32.4 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Licensor shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-T (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Licensee of all of its rights, title and interest in the Project, and their vesting in the Licensor pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Licensor or its nominee on, or in respect of, the Project

on the footing that all Divestment Requirements have been complied with by the Licensee.

**32.5 Divestment costs etc.**

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

32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

## **ARTICLE 33: DEFECTS LIABILITY**

### **33.1 Liability of Defects before Expiry**

#### **33.1.1 Initial Inspection**

- a) Not less than 30 months nor more than 36 months prior to the expiry of the License Period, the Licensee and the Licensor/ PMC shall conduct a joint inspection (the “**Initial Inspection**”) of the Project and all facilities.
- b) Within 90 days after the completion of the Initial Inspection, the Licensee shall provide to the Licensor/ PMC a report on the condition of the Project and its facilities and a notice setting out the Licensee’s proposals as to the renewal works required to comply with the Divestment Requirements.
- c) The Licensor/ PMC, within 90 days after receipt of the notice from the Licensee in accordance with Clause 33.2, by notice to the Licensee object to the proposals giving details of the grounds for such objection and shall give the Licensor/ PMC’s proposals in respect of the renewal works.
- d) If no Agreement is reached between the Licensee and the Licensor/ PMC within 30 days of receipt of such notice, then either the Licensee or the PMC may refer the matter to the Disputes Resolution Procedure.
- e) Upon Agreement or determination in accordance with the Disputes Resolution Procedure, the Licensee shall carry out the renewal works at its own cost.

#### **33.1.2 Second Inspection**

- a) Not less than 9 months nor more than 12 months prior to the expiry of the License Period, the Licensee and the Licensor/ PMC shall conduct a joint inspection (the “**Second Inspection**”) of all elements of the Project and all facilities (whether or not the Renewal Works have been carried out).
- b) Within 30 days after the completion of the Second Inspection, the Licensee shall provide to the Licensor/ PMC a report on the condition of the Project and its facilities and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.
- c) The Licensor/ PMC, within 30 days after receipt of the notice from the Licensee in accordance with Clause 33.2, by notice to the Licensee object to the proposals giving details of the grounds for such objection and shall give the Licensor/ PMC’s proposals in respect of the renewal works.
- d) If no Agreement is reached between the Licensee and the Licensor/ PMC within 30 days of receipt of such notice, then either the Licensee or the PMC may refer the matter to the Disputes Resolution Procedure.

- e) Upon Agreement or determination in accordance with the Disputes Resolution Procedure, the Licensee shall carry out the renewal works at its own cost.

### **33.2 Liability for defects after Termination**

The Licensee shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the PMC in the Project during the aforesaid period. In the event that the Licensee fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Licensor in this behalf, the Licensor shall be entitled to get the same repaired or rectified at the Licensee's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Licensor hereunder shall be reimbursed by the Licensee to the Licensor within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Licensor shall be entitled to recover the same from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 33 shall not apply if Termination occurs prior to COD.

## **Part VI- Other Provisions**



## **ARTICLE 34: ASSIGNMENT AND CHARGES**

### **34.1 Restrictions on assignment and charges**

- 34.1.1 Subject to Clauses 34.2 and 34.3, this Agreement shall not be assigned by the Licensee to any person, save and except with the prior consent in writing of the Licensor, which consent the Licensor shall be entitled to decline without assigning any reason.
- 34.1.2 Subject to the provisions of Clause 34.2, the Licensee shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Licensee is a party except with prior consent in writing of the Licensor, which consent the Licensor shall be entitled to decline without assigning any reason.

### **34.2 Permitted assignment and charges**

The restraints set forth in Clause 34.1 shall not apply to, subject to the prior consent in writing of the Licensor:

- a) liens or encumbrances required by any Applicable Law.

### **34.3 Assignment by the Licensor**

Notwithstanding anything to the contrary contained in this Agreement, the Licensor may, after giving 60 (sixty) days' notice to the Licensee, 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 Licensor, capable of fulfilling all of the Licensor's then outstanding obligations of the Agreement.

## **ARTICLE 35: CHANGE IN LAW**

- 35.1.1 In the event of a Change in Law results in a Material Adverse Effect, the Licensor or the Licensee 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 Licensee and the Licensor 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 fulfill their obligations under this Agreement during pending resolution of any Dispute under this clause 35.1.1
- 35.1.2 For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax 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 36: LIABILITY AND INDEMNITY**

### **36.1 Liability in respect of the Project**

36.1.1 Licensee shall be solely responsible for the construction, operation and management 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 Licensor have any liability or be subject to any claim for damages arising out of the design, development, construction, operation, maintenance or management of the Project and the Project Assets located upon the Project Site.

### **36.2 General indemnity**

36.2.1 The Licensee will indemnify, defend, save and hold harmless the Licensor and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Licensor 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 Licensee 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 Licensee to the Licensor or to any user or from any negligence of the Licensee 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 Licensor Indemnified Persons.

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

### **36.3 Indemnity by the Licensee**

36.3.1 Without limiting the generality of Clause 36.2.1, the Licensee shall fully indemnify, hold harmless and defend the Licensor and the Licensor Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

a) failure of the Licensee to comply with Applicable Laws and Applicable

Permits;

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

36.3.2 Without limiting the generality of the provisions of this Article 36, the Licensee shall fully indemnify, hold harmless and defend the Licensor Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Licensor Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Licensee or by the Licensee's Contractors in performing the Licensee'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 Licensee 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 Licensee shall promptly make every reasonable effort to secure for the Licensor a license, at no cost to the Licensor, authorising continued use of the infringing work. If the Licensee is unable to secure such license within a reasonable time, the Licensee 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.

#### **36.4 Notice and contest of claims**

36.4.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

#### **36.5 Defence of claims**

- 36.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 36.5.2 If the Indemnifying Party has exercised its rights under Clause 36.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 36.5.3 If the Indemnifying Party exercises its rights under Clause 36.4, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
  - b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action;
  - c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
  - d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
    - i. that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

- ii. that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:
- b. Provided that if Sub-clauses (b), (c) or (d) of this Clause 36.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **36.6 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

### **36.7 Survival on Termination/Expiry**

It is expressly understood by the Parties that this Article shall survive the termination or expiry hereof.

### **36.8 Licensor's Limitation of Liability**

Notwithstanding anything contained in the Agreement, the maximum liability of Licensor towards the Licensee in respect of the Project resulting out of any default of Licensor as provided in Article 36.2.2 of this Agreement or any Dispute and subsequent claim by the Licensee in terms of the Agreement shall not exceed the Termination Payment payable to the Licensee in terms of Agreement or aggregate amount already paid by the Licensee to the Licensor towards the consideration, whichever is higher.

## **ARTICLE 37: RIGHTS AND TITLE OVER THE SITE**

### **37.1 Licensee rights**

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

### **37.2 Access rights of the Licensor and others**

37.2.1 The Licensee shall allow free access to the Site at all times for the authorised representatives and vehicles of the Licensor and the PMC, 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 Licensee shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

### **37.3 Taxes and charges**

The Licensee shall:

- a) Pay all property taxes or any such taxes under Applicable Laws on the site shall be payable by the Licensee post the issuance of Certificate of Compliance by the Licensee, which shall not be reimbursed or payable by the Licensor. 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 Licensor.
- b) Pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Licensor 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.

### **37.4 Restriction on sub-letting**

The Licensee shall not sub-license or sub-let the whole or any part of the Site, 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 Licensee to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

## **ARTICLE 38: DISPUTE RESOLUTION**

### **38.1 Dispute Resolution**

- 38.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 38.2.
- 38.1.2 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.

### **38.2 Conciliation**

- 38.2.1 In the event of any Dispute between the Parties, either Party may call upon the PMC to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the PMC or without the intervention of the PMC, either Party may require such Dispute to be referred to the Managing Director of the Licensor and the Chairman of the Board of Directors of the Licensee for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 38.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 38.3.

### **38.3 Arbitration**

- 38.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 38.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 38.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be Raipur, and the language of arbitration proceedings shall be English.
- 38.3.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 38.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award



made in any arbitration held pursuant to this Article 38 shall be final and binding on the Parties as from the date it is made, and the Licensee and the Licensor agree and undertake to carry out such Award without delay.

38.3.4 The Licensee and the Licensor agree that an Award may be enforced against the Licensee and/or the Licensor, as the case may be, and their respective Project Assets wherever situated.

38.3.5 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.

#### **38.4 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 38.

## **ARTICLE 39: DISCLOSURE AND CONFIDENTIALITY**

### **39.1 Confidentiality**

39.1.1 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.

39.1.2 Further, each Party hereby agrees that this Agreement and/or all Project Agreements or the contents thereof shall not be disclosed by either Party to any third party without the prior written consent of the other Party.

### **39.2 Disclosure**

39.2.1 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 Governmental Licensor 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 40: DELETED**

**ARTICLE 41: DELETED**

## **ARTICLE 42: TRANSFER PROVISIONS**

**42.1** Upon termination of this Agreement and consequent obligation/right of Licensor to acquire the Project Assets under Articles 31 at nil value without the Licensor required to pay any amount to the Licensee, the Licensee shall ensure that on the Transfer Date, the interest of Licensee in:

- a) all immovable property, assets, structures, buildings, plant and machinery, ways, walls, compounds relating to the Project Assets shall be transferred to Licensor 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 Licensee and any third party shall (in consideration of Licensor's assumption of the obligations under or pursuant to the contracts and other arrangements), at the option of Licensor, be vested in Licensor or its nominee, clear of any Encumbrance and with good title. The Licensee shall ensure such rights of Licensor are incorporated in all contracts between Licensee and third party(ies) with a specific obligation on the parties to such contracts to enter into novation agreement with Licensor upon exercise of its option by Licensor;
- c) Notwithstanding anything contained in Article 42.1 (a) and (b), prior to any transfer of the Project Assets, Licensor 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 Licensor 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 Licensor, 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 Licensor or its nominee, clear of any Encumbrance and with good title.

**42.2** Furthermore, notwithstanding anything contained in the Article 42.1, no liability (accrued or contingent) of Licensee or relating to the Project Assets arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to Licensor or its nominees. Licensor 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 Licensor 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.

- 42.3** Without prejudice to the foregoing, Licensee agrees to indemnify and keep indemnified Licensor from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by Licensor as a result of any actions or omissions of Licensee 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.
- 42.4** Licensee 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 Licensor 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 Licensor 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 Licensee to Licensor, and the same may be deducted from the Performance Security.
- 42.5** Expiry or Termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to Licensor and/or Licensee (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.
- 42.6** The Parties' rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.

## **ARTICLE 43: MISCELLANEOUS**

### **43.1 Governing Law and jurisdiction**

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

### **43.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

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

### **43.3 Delayed payments**

43.3.1 The Parties hereto agree that payments due from Licensee to the Licensor under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the Licensee shall pay interest for the period of delay calculated at a rate equal to SBI PLR plus 2% (two per cent) and recovery thereof shall be without prejudice to the rights of the Licensee under this Agreement including Termination thereof.

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

### **43.4 Waiver**

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

- a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c) shall not affect the validity or enforceability of this Agreement in any manner.

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

#### **43.5 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- a) no review, comment or approval by the Licensor or the PMC of any Project Agreement, Document or Drawing submitted by the Licensee nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Licensee from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and
- b) the Licensor shall not be liable to the Licensee by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

#### **43.6 Exclusion of implied warranties etc.**

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

#### **43.7 Survival**

43.7.1 Termination shall:

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



for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

43.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

#### **43.8 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless 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 Licensee arising from the Request for Proposal shall be deemed to form part of this Agreement and treated as such.

#### **43.9 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.

#### **43.10 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 Licensor 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.

#### **43.11 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.

#### **43.12 Successors and assigns**

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

### **43.13 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 Licensee, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Licensee may from time to time designate by notice to the Licensor; 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 Licensee may from time to time designate by notice to the Licensor.

Attention:  
{Designation:  
Address:  
Fax No:  
Email:}

- b) in the case of the Licensor, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the Chairman of the Licensor with a copy delivered to the Licensor Representative or such other person as the Licensor may from time to time designate by notice to the Licensee; provided that if the Licensee 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:};and

- 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.

### **43.14 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.

### 43.15 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))

THE COMMON SEAL OF LICENSEE has been affixed pursuant to the resolution passed by the Board of Directors of the Licensee at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>§</sup>:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

((e-mail address))

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<sup>§</sup> To be affixed in accordance with the articles of association of the Licensee and the resolution passed by its Board of Directors.

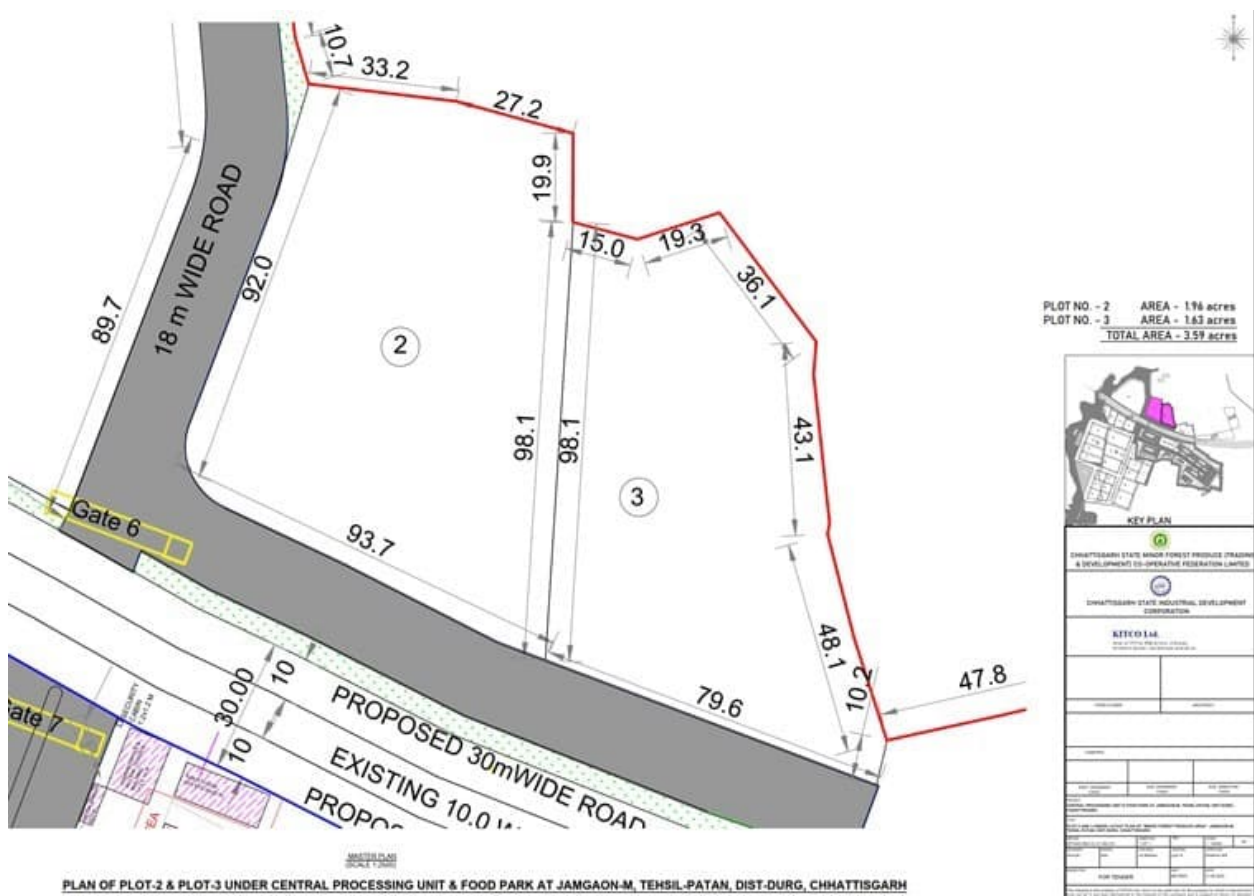
## **Appendix: Schedules**

# SCHEDULE A – SITE OF THE PROJECT

(See Clause 10.1)

## The Site (Map of the site)

S.no	Particulars	Area Details
1	Plot No 2	1.96 Acre
2	Plot No 3	1.63 Acre
<b>Total Plot Area</b>		<b>Approx. 3.59 Acre</b>
<b>Location</b>		<b>Jamgaon, Patan, Dist- Durg (CG)</b>





**KHASRA SUPER IMPOSED MASTER PLAN  
(SCALE 1:2500)**

## **SCHEDULE B – SCOPE OF THE PROJECT**

*(See Clause 2.1)*

### **1 Scope of the Project:**

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

- a) Submit to the Licensor and the PMC detailed design, drawings, construction methodology, quality assurance procedures, cost estimates and the procurement, engineering and quarter wise Milestones of construction time schedule of facilities including civil, electrical, plumbing, machine/equipment, based on broad specifications specified in Schedule C
- b) planning, designing, constructing, operating, maintaining and transfer of the Project as specified in Schedule B and Schedule C on the Site set forth in Schedule A, and in conformity with the Specifications and Standards set forth in Schedule D;
- c) operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement in Schedule L ; and
- d) performance and fulfilment of all other obligations of the Licensee 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 Licensee under this Agreement.

## **SCHEDULE C – PROJECT FACILITIES**

*(See Clause 2.1)*

The Licensee shall construct or install the Project including all the amenities and facilities required as basic and support infrastructure for Project, for the optimal functioning thereof.



## SCHEDULE D – SPECIFICATIONS AND STANDARDS

(See Clause 2.1)

The operator needs to comply with all civil and structural standards. Indicative list of machines to be installed at 6 MTPD Mahua processing unit are listed below:

### 1. PRE PROCESSING LINE- Major equipment only

Sl. No.	Description	No. of units
1.	<b>Pre dry cleaner with Lump breaker</b> Purpose: To clean the dust and separate impurities Cap: 01 TPH MOC: Material contact area made of SS 304	01
2.	<b>Bubble washer / Rotary Drum Washer 1</b> Purpose: To wash Mahua flower Cap.: 1TPH MOC: Material contact area made of SS 304	02
3.	<b>Bubble washer / Rotary Drum Washer 2</b> Purpose: To wash the Mauha flower Cap.: 500 kg/hr MOC: Material contact area made of SS 304	02
4.	<b>Dehydrator with air blower</b> Purpose: To remove the adhesive water Cap.: 500 kg/hr MOC: Material contact area made of SS 304	01
5.	<b>Continuous drying system / Multi deck dryer.</b> Purpose: To dry mahua flower Cap.: 250 kg/h MOC: SS 304	02

## 2. MAHUA-ENERGY BAR LINE- Major equipment only

Sl. No.	Description	No. of units
1.	<b>Rotary type continuous roaster with cooling drum</b> Purpose: Continuous drum type roaster for oil seeds with electrical heating. Cap.: 300 kg/h MOC: SS 304	02
2.	<b>Ribbon Blender</b> Purpose: To mix the ingredients Cap: 100 kg /batch MOC: Contact parts made of SS304	02
3.	<b>Pulveriser/multi mill</b> Purpose: To grind the pre-mix Cap: 1 TPH MOC: Contact parts made of SS304	02
4.	<b>Steam Jacketed kettle with low speed Scraping stirrer</b> Purpose: pre heat the honey Cap.: 200 liter MOC: SS 304	02
5.	<b>Sigma mixer with tilting mechanism</b> Purpose: To mix the ingredients Cap: 250 kg/batch MOC: SS 304	03
6.	<b>Bar forming and cutting unit (as used in energy or protein bar)</b> Purpose: Parallel bar forming and cutting machine with auto feeding system with viscus lump Cap: 500 kg/hr MOC: SS 304	02
7.	<b>Continuous baking oven</b> Purpose: To bake the bar Cap: 500/hr MOC: Contact parts made of SS304	02
8.	<b>Horizontal flow wrap packing machine (double headed)</b> Purpose: to wrap the bar Cap:200 pieces/min MOC: Contact parts made of SS304	02

### 3. Mahua Liquid Jaggery LINE- Major equipment only

Sl. No.	Description	No. of units
1.	<b>Fruit mill</b> Purpose: To crush mauha flower Cap.: 500 kg/h MOC: SS 304	02
2.	<b>Steam Jacketed kettle with low speed Scraping stirrer</b> Purpose: Aqueous extraction Cap.: 500 liter MOC: SS 304	06
3.	<b>Screw press/ Juice extractor</b> Purpose: To extract the juice Cap: 1 TPH MOC: Made of SS304	02
4.	<b>Continuous decanter</b> Purpose: To separate the suspended solids Cap: 1 TPH MOC: SS 304	03
5.	<b>Double effect Forced circulation evaporator system.</b> Purpose: To Concentrate the mauha juice Cap: 500 kg/hr MOC: SS 304	02
6.	<b>Bottling line with all accessories</b> Purpose: to fill in PET bottles Cap: 30 BPM MOC: Contact parts made of SS304	01
7.	<b>Tray/cabinet/Crossflow drier (Electrical/Steam Heating)</b> (with an extra set of perforated trays) Purpose: To dry the pomace Cap.: 192 trays MOC: Inner- wall & trays made of SS 304, outer-wall MS	01

#### 4. COMMON UTILITIES AND ACCESSORIES

<b>Sl. No</b>	<b>Description</b>	<b>No. of units</b>
1.	Cold Room (01) and Walk in cooler (3) To maintain low RH (~500m <sup>3</sup> )	04
2.	Boiler System (IBR) with all necessary accessories Capacity:02 TPH (diesel fired)	02
3.	Generator Cap: 500 kVA	02
4.	RO plant Cap: 10 kl /hr	01
5.	Water treatment Plant (WTP)	01
6.	Effluent Treatment Plant (ETP ) Cap: Approx. 100 k l	01
7.	Material Handling elevator, conveyor, Fork lift, Hydraulic trolley, Electric transport vehicle, Hoist, Cranes, Weighing scales and Miscellaneous	01

## **SCHEDULE E – APPLICABLE PERMITS**

*(See Clause 4.1.3)*

The Licensee shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Licensor in accordance with Clause 4.1.3 of the Agreement. An indicative list of approvals is detailed below, however the Licensee needs to ensure all other approvals not mentioned in the list but applicable under the law are also procured:

Sr. No.	Indicative list of approvals required
2	Conversion of Land for Factory use
3	Pollution Consent to establish
4	Consent to Operate
5	Professional Tax Registration
6	GST Registration
7	Water Connectivity
8	Environmental Clearance
9	Permission for connection of Power
10	Building Plan Approval from Panchayat
11	Final NOC from Fire Department
12	Registration of unit with the District Industries Centre
13	Site and building plan approval
14	Registration of manufacturing capacity
15	Certificate of registration for employment of contract labour
16	License to work a factory
17	Boiler inspection and certification

Nothing in this License Agreement shall relieve the Developer from also securing relevant approval(s), permit(s), licenses and clearances of any and all Governmental Authorities or entities having jurisdiction over the development activities and the use of Project Site.

## SCHEDULE F – PERFORMANCE SECURITY

(See Clause 9.1)

*The* .....,  
.....  
.....

### WHEREAS:

- (A) ..... (the “**Licensee**”) and the ....., ..... (the “**Licensor**”) have entered into a License Agreement dated ..... (the “**Agreement**”) whereby the Licensor has agreed to the Licensee undertaking the development of the Project on design, build, operate, maintain and transfer basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Licensee to furnish a Performance Security which shall be **payable at Raipur Branch** to the Licensor 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 License Period (as defined in the Agreement).
- (C) We, ..... through our Branch ..... **at Raipur** (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 Licensor upon occurrence of any failure or default in due and faithful performance of all or any of the Licensee’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 Licensee, such sum or sums upto an aggregate sum of the Guarantee Amount as the Licensor shall claim, without the Licensor 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 Licensor, under the hand of an Officer not below the rank of ..... in the Licensor, that the Licensee 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 Licensor shall be the sole judge as to whether the Licensee is in default in due and faithful performance of its obligations during the License Period under the Agreement and its decision that the Licensee is in default shall be final, and binding on the Bank, notwithstanding any differences between the Licensor and the Licensee, or any Dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Licensee for any reason whatsoever.
3. In order to give effect to this Guarantee, the Licensor shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Licensee 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 Licensor to proceed against the Licensee before presenting to the Bank its demand under this Guarantee.
5. The Licensor 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 Licensee contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Licensor against the Licensee, 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 Licensor, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Licensor of the liberty with reference to the matters aforesaid or by reason of time being given to the Licensee or any other forbearance, indulgence, act or omission on the part of the Licensor 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 Licensor 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 Licensee 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 License Period and unless a demand or claim in writing is made by the Licensor on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Licensor 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 Licensor 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 Licensor 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 License Agreement or until it is released earlier by the Licensor 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 G – ANNUAL LICENSE FEE**

### **I. The Annual License Fee (the "Annual License Fee") for first year of operation.**

#### **1. Annual License Fee for first year of operation (Due from Commercial Operation Date) =**

Annual License Fee as quoted by the bidder in the financial proposal for 6 MTPD capacity plant

#### **2. Annual License Fee for subsequent years (from second year of operation to last year of operation) =**

The Annual License 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 License Fee is to be calculated) Annual License Fee. The Annual O&M for second year onwards would be as calculated below:

Annual License Fee for last year (year preceding to the year for which License Fee is calculated) of operation as escalated with annual escalation factor as defined below.

a. The annual escalation factor for increase in Annual License Fee from second year of Operation is

- 5% per annum

Or

- ✓ Increase in WPI factor to reflect the increase between the WPI for Last Accounting Year<sup>2</sup> (prior to current year for which annual revision is to be done) and the WPI for the one year prior to Last Accounting Year (one year prior to Last Accounting Year)  
(whichever is higher)

The revised Annual License 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 License Fee as applicable for respective year of operation would be paid in four instalments on a quarterly basis.

- ✓ Quarterly License Fee to be paid every quarter would be = (Annual License Fee as applicable for respective financial year/ 4)

### **II. In consideration of the rights, privileges and interests granted by the Licensor to the Licensee in terms of this Agreement, the Licensee shall pay the Annual License Fee**

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<sup>2</sup>If revisions is to be done for FY 2025-26 (1st April 2025 to 31st March 2026), then Last Accounting Year means FY 2024-25 (1st April 2024 to 31st March 2025).  
One year prior to Last Accounting Year would be FY 2023-24 (1st April 2023 to 31st March 2024)

to the Licensor, commencing from Commercial Operation Date as follows:

- ✓ Annual License Fee shall be due and payable, in four installments on quarterly basis, latest by the seventh day of the succeeding month, starting from Commercial Operation Date.

For the payment of the above Annual License Fee the Financial Year (FY) shall be the English Calendar i.e., 1<sup>st</sup> April to 31<sup>st</sup> March. Accordingly, the quarters shall be April-June, July-September, October-December & January-March.

In case the commercial operation Date happens to be a day in between one of the Four quarters then the “Annual License Fee” for the First quarter shall be computed on “pro-rata” basis. The second quarter shall obviously commence as per the English Calendar (e.g., If the commercial operation date is 13<sup>th</sup> August of a particular Financial Year, then the First quarter shall be treated as that of remaining days of August and September and the quarterly payment of Annual License Fee shall be computed for remaining days of August and September instead of July-September). The First Financial Year may be/ may not be of full 12 months.

- IV. The Licensee shall not be granted any waiver in the License Fee during any circumstances including change in the taxes.
- V. For the avoidance of doubt, GST or any other tax applicable shall be borne by the Licensee over and above the Annual License Fee as per clause 8.1.
- VI. In the event of delay up to 7 days from the due date in the payment of the Annual License Fee, the Licensee shall be liable to pay to the Licensor, 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.
- VII. In consideration of the Grant, the Licensee hereby agrees to make payment of License Fee throughout the Operation Period commencing from the Date of Commercial Operation.
- VIII. The Licensee shall be liable to pay damages for any delay in payments of Annual License Fee to the Licensor calculated at the rate of SBI PLR + 2 % per annum for the period from due date until the date of actual payment.

## **SCHEDULE H -PROJECT COMPLETION SCHEDULE**

*(See Clause 14.1)*

Project completion schedule including quarter wise milestone payment percentage and physical work progress to be finalized prior to execution of this License Agreement in consultation with the Licensor and in accordance with this Agreement.

### **Project Completion Schedule**

During Construction Period, the Licensee shall comply with the requirements set forth in this Schedule-I and Schedule -H. The Schedule H will comprise quarter wise Project Milestones and the Scheduled Project Completion Date which shall be submitted by the Licensee and approved by Licensor before signing this License Agreement Within 15 (fifteen) days of the date of each Project Milestone, the Licensee shall notify the Licensor of such compliance along with necessary particulars thereof.

### **Project Milestone-I**

Project Milestone-I shall occur on the date falling on the \_\_\_\_\_ (In Words) day from the Appointed Date (the “**Project Milestone-I**”).

Prior to the occurrence of Project Milestone-I, the Licensee shall have completed all the < Description of Milestone I> and expended not less than \_\_\_\_\_% (\_\_\_\_per cent) of the total capital cost set forth in the Agreement.

### **Project Milestone-II**

Project Milestone-II shall occur on the date falling on the \_\_\_\_\_(In words\_\_\_\_) day from the Appointed Date (the “**Project Milestone-II**”).

Prior to the occurrence of Project Milestone-II, the Licensee shall have completed all the < Description of Milestone II> and expended not less than \_\_\_\_\_% (\_\_\_\_per cent) of the total capital cost set forth in the Agreement.

### **Project Milestone-III**

Project Milestone-III shall occur on the date falling on \_\_\_\_ (In Words) day from the Appointed Date (the “**Project Milestone-III**”).

Prior to the occurrence of Project Milestone-III, the Licensee shall < Description of Milestone III> and expended not less than \_\_\_\_\_% (In Words\_\_\_\_per cent) of the total capital cost set forth in the Agreement.

### **Project Milestone-IV**

Project Milestone-IV shall occur on the date falling on the \_\_\_\_ (In Words \_\_\_percent) day from the Appointed Date (the “**Project Milestone-IV**”).

Prior to the occurrence of Project Milestone-IV, the Licensee shall have < Description of Milestone IV> and expended not less than \_\_\_\_% (In Words ) of the total capital cost set forth in the Agreement.

### **Scheduled Project Completion Date**

The Scheduled Water Supply System Date shall occur on the 365th (three hundred and sixty five) day from the Appointed Date.

On or before the Scheduled Project Completion Date, the Licensee shall have completed the project construction and installed necessary machinery as proposed in Schedule-I in accordance with this Agreement.

Note: Project Milestone II and III may be further split into smaller milestones for the purpose of machine procurement on mutual consent and prior approval from the Licensor without making any changes in the Scheduled Project Completion Date.

## **SCHEDULE I – DETAILED PROJECT REPORT**

*(See Clause 14.3)*

### **1. Detailed Project Report**

In compliance of the obligations set forth in Clause 14.3 of this Agreement, the Licensee shall furnish to the Licensor and PMC, free of cost, details of Site Plan, Cost details, plant capacity, equipment details, drawings.

The Licensee would be responsible for ensuring that all detailed design and specifications are as per Schedule C, Schedule I and Applicable Laws.

### **2. Additional Drawings/Report**

If the PMC determines that for discharging its duties and functions under this Agreement, it requires any drawings or reports other than those listed in Annex-I, it may by notice require the Licensee to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Licensee shall promptly prepare and furnish such drawings or reports to the PMC.

# **SCHEDULE J– TESTS**

*(See Clause 15.2, 20.3, 16)*

## **1 Schedule for Tests**

- 1.1 The Licensee shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the PMC and the Licensor of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the PMC and the Licensor detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2 The Licensee shall notify the PMC of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the PMC shall, in consultation with the Licensee, determine the date and time for each Test and notify the same to the Licensor who may designate its representative to witness the Tests. The PMC shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 16 and this Schedule-J.

## **2 Tests**

[Note: The Licensor, in consultation with the PMC shall hereunder describe all the Tests that are required to be performed]

## **3 Agency for conducting Tests**

All Tests set forth in this Schedule-J shall be conducted by the PMC or such other agency or person as it may specify in consultation with the Licensor.

## **4 Completion/Provisional Certificate**

Upon successful completion of Tests, the PMC shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 16.

## **5 Tests during construction**

Without prejudice to the provisions of this Schedule-J, Tests during construction shall be conducted in accordance with the provisions of Clause 15.2 & 20.3.

## **SCHEDULE K – COMPLETION CERTIFICATE**

*(See Clause 16.1)*

3. I/We, ..... (Name of the PMC), acting as PMC, under and in accordance with the License Agreement dated ..... (the “**Agreement**”), for the Project (the “**Project**”) on design, build, operate, maintain and transfer basis, through ..... (Name of Licensee), hereby certify that the Tests specified in Article 16 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.
  
4. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the ..... day of ..... 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

the PMC by:

(Signature)

(Name)

(Designation)

(Address)

**PROVISIONAL CERTIFICATE**

- 1 I/We, ..... (Name of the PMC), acting as PMC, under and in accordance with the License Agreement dated ..... (the “Agreement”), for the Project (the “**Project**”) on design, build, operate, maintain and transfer basis through ..... (Name of Licensee), hereby certify that the Tests specified in Article 16 and Schedule-J of the Agreement have been undertaken for the Project Component ..... to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Project Components ..... of the Project that were found to be incomplete and/or deficient have been specified and appended hereto, and the Licensee has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Licensor or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Licensee) I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Component ..... of the Project, pending completion thereof.
- 3 In view of the foregoing, I/We am/are satisfied that the Project Components ..... of the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Component ..... of the Project is hereby provisionally declared fit for entry into commercial operation on this the ..... day of ..... 20.....

ACCEPTED, SIGNED, SEALED  
SEALED AND  
AND DELIVERED  
For and on behalf of  
on behalf of  
LICENSEE by:

SIGNED,  
  
For and  
  
PMC by:

(Signature)  
(Name and Designation)  
Designation)  
(Address)

(Signature)  
(Name and  
  
(Address)



## **SCHEDULE L – MAINTENANCE REQUIREMENTS**

*(See Clause 18.2)*

The Licensee 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 Licensee shall maintain the project site Civil building work as per the guidelines of Bureau of Indian Standards/ National Building Code/ CPWD Works Manual.
- The Licensee shall also maintain the plant and machinery as per respective maintenance manual and report the same to PMC and the Licensor.
- The Licensee 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 Licensee shall ensure that inspection and testing is performed on process equipment, using procedures that follow recognized and generally accepted good engineering practices.
- The Licensee 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 Licensee shall undertake regular and periodic maintenance of the Plant and machinery in accordance with the schedule as finalise by PMC, as per machinery catalogue, as per Maintenance Manual, Maintenance Requirement and in the manner of a prudent businessman.
- The Licensee 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.

# **SCHEDULE M - SAFETY REQUIREMENTS**

*(See Clause 19.1.1)*

## **1 Guiding principles**

- 1.1 Safety Requirement aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Terminal, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of operation, management and development with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirement include measures associated with safe movement, safety management, safety of equipment, fire safety, enforcement and Emergency response.

## **2 Obligations of the Licensee**

- 2.1 The Licensee shall abide by the following in so far as they related to safety of the Users:
  - a) Applicable Laws and Applicable Permits;
  - b) Manual for Safety, issued by the Licensor;
  - c) Provision of this Agreement;
  - d) Good Industry Practice

## **3 Appointment of Safety Consultant**

- 3.1 For carrying out safety audit of the Project, Licensor shall appoint from time to time, one or more qualified firms or organization as its consultant (the "Safety Consultant").
- 3.2 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review, compile and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project. The Safety Consultant shall complete the audit within a period of 1(one) month and submit a Safety Report (the "Safety Report") recommending specific improvements, if any, required to be made in the Project. The Safety Report shall be submitted to Licensor, in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Licensor to the Licensee and the PMC forthwith.

## **4 Safety measures during License Period**

- 4.1 The Licensee shall develop, implement and administer a surveillance and safety programme for Users of the Project.
- 4.2 The Licensee shall keep a copy of every first information report (the “FIR”) recorded by Police with respect to any accident occurring in the Project. In addition, the Licensee shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized in the form prescribed by the Licensor for this purpose. The Licensee shall also record the exact location of each accident on the Layout plans and aforesaid data shall be submitted to Licensor at the conclusion of every quarter.
- 4.3 The Licensee shall submit to the Licensor before 31<sup>st</sup> (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Licensee pursuant to the provisions of Paragraph 4.1 of this Schedule for averting or minimizing such accidents in future.
- 4.4 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Licensor. It shall review and analyse annual report and accident data of the preceding year, and undertake an inspection of the Terminal. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Project. Such recommendations shall be processed, mutatis mutandis, and acted upon in the manner set forth in Paragraphs 4.2, 4.3 and 4.4 of this Schedule—M

## **5 Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 19.

## **SCHEDULE N – SELECTION OF PROJECT MANAGEMENT CONSULTANT**

*(See Clause 21.1)*

### **1 Selection of Project Management Consultant**

- 1.1 The Licensor shall follow the selection process specified in the Model RFP Document for Selection of Technical Consultants as published by the Ministry of Finance/Planning Commission or any substitute thereof for selection of an experienced firm/individual consultants to discharge the functions and duties of an PMC during Development & Construction Period and- Operation Period. Two separate tenders shall be issued for selection of experienced firm/ individual consultants for development & construction period and Operation Period.
- 1.2 In the event of Termination of an PMC appointed in accordance with the provisions of paragraph 1.1, the Licensor shall appoint another firm of Technical Consultants /individual consultants forthwith or may engage a Government-owned entity in accordance with the provisions of paragraph 4 of this Schedule-N.
- 1.3 The Licensee may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Licensor under this Schedule-N.

### **2 Terms of Reference**

- 2.1 The Terms of Reference for the PMC shall substantially conform with Schedule-O.

### **3 Fee and expenses**

- 3.1 The nature and quantum of duties and services to be performed by the PMC during the Development Period and Construction Period shall be determined by the Licensor in accordance with the provisions of this Agreement. All payments made to the PMC on account of fee and expenses during the Development Period and Construction Period, shall be borne fully by the Licensor.
- 3.2 The nature and quantum of duties and services to be performed by the PMC during the Operation Period shall be determined by the Licensor in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the PMC on account of fee and expenses during the Operation Period, shall be borne fully by the Licensee. However, payment to PMC shall be made by the Licensor directly and the Licensee shall reimburse fee of the PMC to the Licensor within 30 (Thirty) days of such demand, as and when presented by the Licensor in writing to the Licensee.

### **4 Appointment of Government entity as PMC**

Notwithstanding anything to the contrary contained in this Schedule, the Licensor may in its discretion appoint a Government-owned entity as the PMC; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a Government-owned entity which is owned or controlled by the Licensor shall not be eligible for appointment as PMC.

# **SCHEDULE O – TERMS OF REFERENCE FOR PROJECT MANAGEMENT CONSULTANT**

*(See Clause 21.2.1)*

## **1 Scope**

- 1.1 These Terms of Reference for the PMC (the “**TOR**”) are being specified pursuant to the License Agreement dated ..... (the “**Agreement**”), which has been entered into between the Licensor and ..... (the “**Licensee**”) for the Project on design, build, operate, maintain and transfer basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 Two separate tenders shall be issued for selection of experienced firm/ individual consultants for development & construction period and Operation Period.
- 1.3 This TOR shall apply to construction, operation and maintenance of the Project.

## **2 Definitions and interpretation**

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

## **3 Role and functions of the PMC**

- 3.1 The role and functions of the PMC shall include the following:
  - (i) review of the Drawings and Documents as set forth in Paragraph 4;
  - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
  - (iii) conducting Tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Paragraph 5;
  - (iv) review, inspection and monitoring of O&M as set forth in Paragraph 6;
  - (v) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
  - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
  - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (viii) assisting the Parties in resolution of Disputes as set forth in Paragraph 9; and
  - (ix) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The PMC shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4 Development Period**

- 4.1 During the Development Period, the PMC shall undertake a detailed review of the Drawings and Detailed Project Report to be furnished by the Licensee along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites and topographical surveys. The PMC shall complete such review and send its comments/observations to the Licensor and the Licensee within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings and Detailed Project Report with the Scope of the Project and Specifications and Standards.
- 4.2 The PMC shall review any modified Drawings or supporting Documents sent to it by the Licensee and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The PMC shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-M and furnish its comments thereon to the Licensor and the Licensee within 7 (seven) days of receiving such Drawings. The PMC shall also review the Safety Report and furnish its comments thereon to the Licensor within 15 (fifteen) days of receiving such report.
- 4.4 The PMC shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Licensee and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Licensor, the PMC shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Licensor.

#### **5 Construction Period**

- 5.1 In respect of the Drawings, Detailed Project Report, Documents and Safety Report received by the PMC for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

- 5.2 The PMC shall review the monthly progress report furnished by the Licensee and send its comments thereon to the Licensor and the Licensee within 7 (seven) days of receipt of such report.
- 5.3 The PMC shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Licensee, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the PMC shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The PMC shall send a copy of its Inspection Report to the Licensor and the Licensee within 7 (seven) days of the inspection.
- 5.4 The PMC may inspect the Project Site more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the PMC shall require the Licensee to carry out, or cause to be carried out, Tests on a sample basis, to be specified by the PMC in accordance with Good Industry Practice for quality assurance. The PMC shall issue necessary directions to the Licensee for ensuring that the Tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the Tests, to be specified by the PMC under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of Tests prescribed for each category or type of Tests in the Quality Control Manuals; provided that the PMC may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of Tests.
- 5.7 The timing of Tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the PMC in accordance with the Quality Control Manuals. The Tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the Tests that may be carried out by the Licensee for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Licensee carries out any remedial works for removal or rectification of any defects or deficiencies, the PMC shall require the Licensee to carry out, or cause to be carried out, Tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such Tests.
- 5.9 In the event that the Licensee fails to achieve any of the Project Milestones, the PMC shall undertake a review of the progress of construction and identify potential delays,



if any. If the PMC shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Licensee to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which Scheduled Project Completion Date shall be achieved. Upon receipt of a report from the Licensee, the PMC shall review the same and send its comments to the Licensor and the Licensee forthwith.

- 5.10 If at any time during the Construction Period, the PMC determines that the Licensee has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Licensor forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Licensee carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the PMC to inspect such works, and within 3 (three) days of receiving such notice, the PMC shall inspect the suspended works and make a report to the Licensor forthwith, recommending whether or not such Suspension may be revoked by the Licensor.
- 5.12 If Suspension of Construction Works is for reasons not attributable to the Licensee, the PMC shall determine the extension of dates set forth in the Project Completion Schedule, to which the Licensee is reasonably entitled, and shall notify the Licensor and the Licensee of the same.
- 5.13 The PMC shall carry out, or cause to be carried out, all the Tests specified in Schedule-J and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the PMC shall act under and in accordance with the provisions of Article 16 and Schedule-J.
- 5.14 Upon reference from the Licensor, the PMC shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 17 and certify the reasonableness of such costs for payment by the Licensor to the Licensee.
- 5.15 The PMC shall aid and advise the Licensee in preparing the Maintenance Manual.

## **6 Operation Period**

- 6.1 In respect of the Drawings, Detailed Project Report, Documents and Safety Report received by the PMC for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The PMC shall review the annual Maintenance Programme furnished by the Licensee and send its comments thereon to the Licensor and the Licensee within 15 (fifteen) days of receipt of the Maintenance Programme.

- 6.3 The PMC shall review the monthly status report furnished by the Licensee and send its comments thereon to the Licensor and the Licensee within 7 (seven) days of receipt of such report.
- 6.4 The PMC shall inspect the Project Site once every month, preferably after receipt of the monthly status report from the Licensee, but before the 20<sup>th</sup> (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the PMC shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The PMC shall send a copy of its O&M Inspection Report to the Licensor and the Licensee within 7 (seven) days of the inspection.
- 6.5 The PMC may inspect the Project Site more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The PMC shall in its O&M Inspection Report specify the Tests, if any, that the Licensee shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such Tests and the remedial measures, if any, taken by the Licensee in this behalf.
- 6.7 In respect of any defect or deficiency, the PMC shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The PMC will seek information from the Licensee 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 Licensee is bound to provide, and the PMC will submit a report on monthly basis to Licensor in order to ensure transparency in the pricing mechanism.
- 6.9 The PMC will ensure that the plant and machinery are in working condition and service records are complete and shared periodically with the Licensor;
- 6.10 The PMC shall be responsible to ensure proper maintenance of civil structure and plant and machinery installed at Mahua Processing Unit as per the schedule proposed by the PMC;
- 6.11 The PMC will record and report actual annual raw material requirement of the project, and shall confirm procurement of 75% of the annual raw material (Mahua) requirement within the State by checking the procurement bills and other relevant supporting documents, and consumption of the Mahua Processing Unit along with the annual production of finished products;

- 6.12 The PMC will monitor to ensure the quality of finished product supplied to Licensor and other buyers is of same/ similar quality;
- 6.13 The PMC will ensure that at the end of License Period, the Project Assets and civil infrastructure will be handed over to the Licensor in good working condition after completing due maintenance works and with proper recorded documentation, which will be certified by the PMC.
- 6.14 The PMC shall support the Licensor in calculation of Annual License Fee as per Schedule G
- 6.15 The PMC shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Licensee to the Licensor for such delay.
- 6.16 The PMC shall examine the request of the Licensee for closure of any part of the Project Site for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption to employees/ Users and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Licensee. Upon expiry of the permitted period of closure, the PMC shall monitor the re-opening of such part of the Project Site, and in case of delay, determine the Damages payable by the Licensee to the Licensor under Clause 18.7.
- 6.17 The PMC shall monitor and review the curing of defects and deficiencies by the Licensee as set forth in Clause 20.2.
- 6.18 In the event that the Licensee notifies the PMC of any modifications that it proposes to make to the Project, the PMC shall review the same and send its comments to the Licensor and the Licensee within 15 (fifteen) days of receiving the proposal.

## **7 Termination**

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the PMC shall, in the presence of a representative of the Licensee, inspect the Project for determining compliance by the Licensee with the Divestment Requirements set forth in Clause 32.1 and, if required, cause Tests to be carried out at the Licensee's cost for determining such compliance. If the PMC determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, it shall recommend payment of the required amount to the Licensor.
- 7.2 The PMC shall inspect the Project once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Licensee under Article 33, in respect of the defects or deficiencies specified therein. If any such

defect or deficiency is found by the PMC, it shall make a report in reasonable detail and send it forthwith to the Licensor and the Licensee.

## **8 Determination of costs and time**

8.1 The PMC shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The PMC shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

## **9 Assistance in Dispute resolution**

9.1 When called upon by either Party in the event of any Dispute, the PMC shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the PMC shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Good Industry Practice and authentic literature.

## **10 Other duties and functions**

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

## **11 Miscellaneous**

11.1 The PMC shall notify its programme of inspection to the Licensor and to the Licensee, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the PMC to the Licensee pursuant to this TOR, and a copy of all the test results with comments of the PMC thereon shall be furnished by the PMC to the Licensor forthwith.

11.3 The PMC shall obtain, and the Licensee shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Licensee to the PMC, whereupon the PMC shall send 1 (one) of the copies to the Licensor along with its comments thereon.

11.4 The PMC shall retain at least one copy each of all Drawings, Detailed Project Report and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the PMC shall duly classify and list all Drawings, Detailed Project Report, Documents, results of Tests and other relevant records, and hand them over to the Licensor or such other person as the Licensor may specify, and obtain written receipt thereof. 2 (two) copies of the said documents shall

also be furnished in editable digital format or in such other medium as may be acceptable to the Licensor.

Wherever no period has been specified for delivery of services by the PMC, the PMC shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

**SCHEDULE P- DELETED**

**SCHEDULE Q – DELETED**

**SCHEDULE R- DELETED**



**SCHEDULE S – DELETED**

## SCHEDULE T-VESTING CERTIFICATE

(See Clause 32.4)

- 1 The ....., .....Department, (the “**Licensor**”) refers to the **License Agreement dated** ..... (the “**Agreement**”) entered into between the Licensor and ..... (the “**Licensee**”) for **Selection of the Licensee for** ..... (the “**Project**”) on design, build, operate, maintain and transfer basis.
- 2 The Licensor hereby acknowledges compliance and fulfilment by the Licensee of the Divestment Requirements set forth in Clause 32.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Licensor shall be deemed to have acquired, and all title and interest of the Licensee in or about the Project shall be deemed to have vested unto the Licensor, free from any Encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Licensee to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Licensee in any manner of the same.

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

AGREED, ACCEPTED AND  
SIGNED

For and on behalf of  
LICENSEE by:

(Signature)  
(Name)  
(Designation)  
(Address)

SIGNED, SEALED

AND DELIVERED

For and on behalf of  
..... Authority by:

(Signature)  
(Name)  
(Designation)  
(Address)

In the presence of:

1.

2.

**SCHEDULE U– DELETED**

**SCHEDULE V- REPORTING AND RECORD  
REQUIREMENTS**

*(See Clause 5.1.1 and 20.1 )*

*[The above Schedule shall be filled prior to signing of the License Agreement]*

**SCHEDULE W– FORMAT OF  
ACKNOWLEDGEMENT OF PROJECT SITE**

*( Clause 4.1.3 )*

FORMAT OF ACKNOWLEDGEMENT OF PROJECT SITE [•]

[on the letter head of the Licensee ]

Date:

To:

[insert]

Re:Handing over of Project Site [•]

Dear Sir,

We write in reference in to the License Agreement dated , entered into by us with authority. As per the requirements of Article 4.1.3(b) of the said License Agreement, this is to acknowledge receipt of Project Site from the Licensor. We further acknowledge that the Project Site is unencumbered and is fit and immediately available for the purpose of development of Assets thereon.

We have undertaken a due diligence over the Project Site, ourselves/through our shareholders. For the purposes of this Agreement,

We further acknowledge that we, or any entity claiming under us, shall have no recourse against the Licensor 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 us in relation to any of the foregoing provisions mentioned above(deficiency). If a Deficiency is found, we acknowledge and agree that we shall, at its own cost, take all appropriate measures to remedy the same in order to undertake the Project.

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 our property and we shall have no right or interest in such fossils, antiquities and structures.

For and on behalf of

Signature of Authorised Representative Seal/Stamp