
 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 1 of 119</b></p>
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Ref: AESD/ WtE/ NDMC

Date: 09/09/2021

M/s \_\_\_\_\_

**Sub: Selection of Concessionaire for Processing and Disposal of municipal solid waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi**

**Ref: Bid document No: AESD/WtE/NDMC/GTE/01/2021-22 due on 25/10/2021@1400 HRS IST**

Sir,

- 1) IndianOil Corporation Ltd on behalf of North Delhi Municipal Corporation propose to invite a Global Bid document in TWO BID System for the subject project.
- 2) We request you to submit your bid for the project details provided in the Bid document.
- 3) The bidder has to submit their quote / bid in soft copy (.pdf format for Technical Bid & .xls format for the Price Bid) only to the secure email address specified below:

**Part - A: Submit Technical (Un-priced Part) Bid to the email address [aesd\\_technical@indianoil.in](mailto:aesd_technical@indianoil.in)**

**Note: The e-mail address for submitting the price bid (Part - B) shall be communicated to the qualified bidders only after complete evaluation of Technical Bid.**

- 4) Bidders are advised to restrict the size of attachment in their email to 10 MB to avoid any technical glitches. In case the attachments are > 10 MB due to unavoidable circumstances, the bidder shall submit their offer in two emails, with the subject line of each email clearly defining it as Part-1, Part-2 etc.
- 5) In case of Bid Security is by way of Bank Guarantee, the original Bid Security Instrument (amount as per Notice Inviting Bid) in a sealed envelope may please be dropped in Tender box kept in our office at address given below.



**IndianOil Corporation Limited**

**Alternate Energy & Sustainable Development Group,**

**SCOPE Complex, Core 6, 5<sup>th</sup> Floor,**

**7, Institutional Area, Lodhi Road, New Delhi - 110003.**

- 6) Bidders must note that IndianOil will not be responsible for delay in submission of online bid & receipt of Original Bid Security Instrument on or before due date & time of bid submission as mentioned in the Notice Inviting Bid.
- 7) Any query about non-issuance of the Bid document or rejection of the bid may be forwarded to Shri. Bijay Kumar, General Manager (Alternate Energy), IndianOil, New Delhi.  
E-mail: [bijaykumar1@indianoil.in](mailto:bijaykumar1@indianoil.in)

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- 8) Pre Bid Meeting:- Bidders to please note that Pre-Bid Conference shall be held through Virtual mode (Video Conference) on **29/09/2021 at around 1100 hrs Indian Standard Time**, wherein all the clarifications with regard to Technical/ Commercial conditions shall be given. Bidders are advised to ensure that the queries must reach office of IndianOil latest by **27/09/2021** for this purpose. The queries in editable form may be sent on email to [aesd\\_technical@indianoil.in](mailto:aesd_technical@indianoil.in).

The link for VC shall be sent latest by 28/09/2021; to all the prospective bidders who will raise queries latest by 27/09/2021 or who will desire to attend the VC by sending a request email on our email id - [aesd\\_technical@indianoil.in](mailto:aesd_technical@indianoil.in) latest by **27/09/2021**.

- 9) Bidders also may note that after the clarifications are given in Pre-Bid conference, no further deviation shall be entertained in general. All decisions taken by Bid Inviting Authority in the pre-bid conference & thereafter (on need basis) shall be binding on all bidders. All are requested to attend the Pre-Bid conference.

**NOTE:**

- a) All parties are requested to start the submission process of bids at least 4-6 hours prior to the due date & time of bid submission to avoid any connectivity issues while submitting documents due to last minute rush.



Thanking you,

Yours faithfully

For Indian Oil Corporation Limited



General Manager (Alternate Energy)

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 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>	 <b>नएकी दिल्ली नएके दिल्ली</b> <b>INDIAN OIL CORPORATION</b> <b>तमसो मा ज्योतिर्गमय</b>	<b>Page 4 of 119</b>
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### BRIEF DESCRIPTION OF PROJECT

- 1.1 North Delhi Municipal Corporation & IndianOil Corporation Ltd. (IndianOil) have executed a Memorandum of Understanding (MoU) for development of an Integrated Waste to Energy facility (ies) at Ranikhera or alternate suitable municipal land in New Delhi. The indicative cost of the entire Project is ₹ 250 Crore or US \$ 33 million which is to be invested by the selected Bidder/ selected Concessionaire.
- 1.2 North Delhi Municipal Corporation will provide land of approx. 50 acres (in 2 parcels located nearby 33.24 Acre and 16.20 Acre) to the Concessionaire at a nominal cost of ₹ 1 per sqm per annum for setting up the Waste to Energy Plant, for a lease period of 30 (thirty) years & extendable thereafter on year to year basis with mutual agreement between the Parties subject to a maximum of 5 (five) years.

An indicative timeline chart is given for benefit of all parties:



SN	Event Description	Date (days)
a.	Bid document invitation/ publishing date	T <sub>0</sub>
b.	Award of LoA to the successful Bidder by North DMC	T <sub>0</sub> + 120 = T <sub>1</sub>
c.	Signing of Concession Agreement (Execution Date)	T <sub>1</sub> + 21 = T <sub>2</sub>
d.	Conditions Precedent to be satisfied by Concessionaire	Within (T <sub>2</sub> + 90) = T <sub>3</sub>
e.	Conditions Precedent to be satisfied by North Delhi Municipal Corporation	Within (T <sub>2</sub> + 45) = T <sub>4</sub>
f.	Conditions Precedent to be satisfied by IndianOil	Within (T <sub>2</sub> + 45) = T <sub>5</sub>
g.	Compliance Date & Commencement of Construction Activities	Greater of T <sub>3</sub> , T <sub>4</sub> & T <sub>5</sub> = T <sub>6</sub>
h.	Scheduled Construction Completion Date	T <sub>6</sub> + 730 = T <sub>7</sub>
i.	Trial Run period	T <sub>7</sub> + 90 = T <sub>8</sub>
j.	Commercial Operations Date & Commencement of Concession Period	T <sub>8</sub>

 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>	 <b>North Delhi Municipal Corporation</b> तयसो मा ज्योतिर्गमय	<b>Page 5 of 119</b>
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SN	Event Description	Date (days)
k.	Concession Period	$T_8 + 30 \text{ years} = T_9$
l.	Extension of Concession Period after $T_9$ on mutual agreement	$T_9 + 5 \text{ years}$

Note:

- a. For any delays with reasons solely not attributable to the Concessionaire substantiated with proper documentation & data, North DMC may suitably revise the project milestones & other timelines relating to setting up of the WtE plant.
  - b. The responsibility of proving the reasons for delay as not attributable to the Concessionaire shall rest upon the Concessionaire & North DMC undertakes to act reasonably as far as possible by holding good the principles & law of Natural justice.
- 1.3 A Concessionaire will be selected for this purpose through a Global Competitive Bidding process who will be required to develop, operate & maintain the entire Waste to Energy Facilities of 2500 Tonnes Per Day design capacity for processing and disposing the Municipal Solid Waste (mixed waste & free from Construction & Demolition Waste). The mix waste shall constitute approximately 1250 to 1500 MT of unsegregated Organic waste, 1000 to 1250 MT of Other combustible / RDF (Refused derived Fuel) waste, inert masses & other waste.
- 1.4 The Concessionaire selected through this bidding process is required to set up a suitable capacity Plant or Plants which can effectively address this daily mixed waste of 2500 MT. The plant may be able to produce Compressed Bio Gas and/ or Ethanol and or electricity or any other product as per the plant design and capacity and technology used. If Compressed Bio Gas and/ or Ethanol is produced in the Plant, IndianOil will provide offtake guarantee at the rates and Terms & Conditions elaborated in this tender document. Electricity produced shall be purchased by an Electricity Distribution company as per tariffs applicable to existing Waste to Energy plants and finalized by Delhi State Electricity Regulatory Commission from time to time or as per Power Purchase Agreement to be signed with a Consumer(s). If any other product is made in the proposed plant, IndianOil and North Delhi Municipal Corporation shall render all assistance in offtake of the product.
- 1.5 The disposal of all residues generated from the Waste to Energy Facilities should be carried out by the Concessionaire by Setting up a Sanitary Land Fill (SLF) facility to be developed within the Waste to Energy plant premises & in accordance with Solid Waste Management Rules 2016, Plastic Waste Management Rules 2016, Environmental Protection Act 1986 as amended from time to time. About 20% of the total supplied waste is permitted to go to the landfill. Accordingly, approximately 500 MT of inert mass can go to Sanitary landfill / Engineered landfill which is to be developed by the

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Concessionaire at their own cost & as per specifications/ guidelines contained in CPHEEO Manual at the allotted parcel of land (approximately 50 acres).

- 1.6 North Delhi Municipal Corporation also gives guarantee to provide minimum of 80% of the design capacity of 2500 MT per day mixed MSW (Municipal Solid Waste) i.e. minimum 2000 Tonnes per Day. The Concessionaire is expected to set up plant for handling total 2500 Tonnes Per Day mixed MSW (mixed Municipal Solid Waste & free from Construction & Demolition Waste) on daily basis at the Project Site.
- 1.7 The bid will be decided on the basis of Royalty rate to be quoted by the bidder towards mixed MSW (mixed Municipal Solid Waste) to be supplied by the North Delhi Municipal Corporation at the plant site. The technically qualified bidder, who has quoted the highest Royalty rate for mixed MSW (mixed Municipal Solid Waste) shall be given precedence for appointment as Concessionaire for the work for next 30 (thirty) years and shall be advised to set up the plant at their cost as per their selected technology. The selected Concessionaire/ selected Bidder has the option to set up the Plant(s) of 2500 Tonnes per day capacity in phases as detailed in the tender document.



## 2.0 Salient features:

### 2.1 Role of the Concessionaire:

- a. Development of land, construction of all plant and machinery, all non-plant & offsite facilities on Design, Build, Finance, Operate & Transfer (DBFOT) basis for producing Compressed Bio Gas or Ethanol or electricity or any others products, etc., providing technology (in-house or through technology tie-ups with a partner/ provider), arranging finance, etc. for implementation of the Plant and continuously operating and maintaining the Plant for its life at their own cost.
- b. Bidder shall be responsible for planning, preparation, engineering and execution of the project, including storage of raw material, maintaining final product output quantity and quality, managing the by-products and wastes from the plant as per statutory requirements (central / state) issued/ revised from time to time and providing performance guarantee for the project at their own cost.
- c. Payment of Royalty Charges to North Delhi Municipal Corporation for mixed MSW supplied by them as per the rates finalized in the Bid document.
- d. Supply of Compressed Bio Gas and/ or Ethanol to IndianOil and/ or electricity to IndianOil or a Consumer respectively at the rate fixed from time to time & as per technical specifications.

Note: For detailed illustration of price revision of Waste Royalty Charges, Compressed Bio Gas & Ethanol, please refer to Special Conditions (Clause 19/20 at page number 58-60).

- e. Setting up a Sanitary Land Fill (SLF) facility within the Waste to Energy plant premises for scientific & safe disposal of all residues generated from the proposed Waste to Energy plant including operation & maintenance of the facility throughout its lifetime in accordance with Solid Waste Management Rules 2016,

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Plastic Waste Management Rules 2016, Environmental Protection Act 1986 as amended from time to time.

- f. Carry out necessary activities for evacuation, selling, disposal of other end products, intermediates, by products etc from the proposed Waste to Energy plant.
- g. North Delhi Municipal Corporation would be providing mixed waste which is expected to have 50 to 60% of Organic material, 40 to 50% of Other Combustible Fraction/Inerts.
- h. The Concessionaire would have to set up the entire Plant in a phased manner & ramp up the Processing of waste in the proposed Waste to Energy Plant as given below:
  - i. 50% of Name Plate Capacity (i.e. ~ 50% of 2500 Tonnes Per Day = ~ 1250 Tonnes Per Day) - within 12 months from the Compliance date as per the Concession Agreement
  - ii. 100% of Name Plate Capacity (i.e. ~ 100% of 2500 Tonnes Per Day = 2500 Tonnes Per Day) - within 24 months from the Compliance date as per the Concession Agreement.



Note:

- The above timelines are indicative. For any delays with reasons solely not attributable to the Concessionaire substantiated with proper documentation & data, North DMC may suitably revise the project milestones & other timelines relating to setting up of the WtE plant.
  - The responsibility of proving the reasons for delay as not attributable to the Concessionaire shall rest upon the Concessionaire & North DMC undertakes to act reasonably as far as possible by holding good the principles & law of Natural justice.
- i. Carry out necessary activities to comply in line with extant guidelines of Statutory agencies such as Ministry of Environment, Forest & Climate Change, Central Pollution Control Board, Delhi State Pollution Control Board, National Green Tribunal, Supreme Court of India, Ministry of Housing & Urban Affairs & amended from time to time during the life of the Waste to Energy plant.

## 2.2 Role of IndianOil:

- a. Facilitating off-take of Compressed Bio Gas and/or Ethanol produced at the said Plant based on the technology deployed.
- b. IndianOil shall provide off-take guarantee for products like Compressed Bio Gas & Ethanol etc. which can be directly purchased by IndianOil. The long term pricing mechanism for products which may be purchased by IndianOil shall be decided based on market price, estimated cost of production, quantity and quality of the product and any other relevant factor with mutual discussion and agreement between bidder and IndianOil.



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- c. The tentative purchase price of Compressed Bio Gas & Ethanol is given in the Bid as a reference and for further discussions, deciding on the mechanism for long term pricing.
- d. In case of non-agreement between IndianOil & the bidder regarding purchase mechanism for the product being purchased by IndianOil, bidder has the option to withdraw from the bidding process without attracting any penalty like forfeiture of EMD, Security Money etc.
- e. For Electricity produced from the WtE plant, IndianOil shall reserve the first right to enter in to a Power Purchase Agreement with the Concessionaire based on requirement & prevailing guidelines on exemption of various charges under open access system for WtE projects.
- f. For any other product which is not purchased by IndianOil, IndianOil shall act as facilitator to ensure that the product like electricity, organic manure etc. made in the proposed plant is sold in the market.

### 2.3 Role of North Delhi Municipal Corporation:

- a. Providing land admeasuring 50 acres approx. (available in 2 parcels, located at Ranikhera or alternate suitable municipal land of North Delhi Municipal Corporation), at a nominal cost of ₹ 1 per sqm per annum for setting up the Waste to Energy Plant, for a lease period of 30 (thirty) years & extendable thereafter on year to year basis with mutual agreement between the Parties subject to a maximum of 5 (five) years.
- b. Providing mixed Municipal Solid Waste (free of construction debris), with minimum guarantee of 2000 Tonnes per Day & up to 2500 Tonnes Per Day on daily basis at the Project/ WtE plant site during the Concession period. The mixed waste to be supplied by North Delhi Municipal Corporation is expected to have about 50 % of Organic material, about 40 % of Other Combustible material and about 10% of Inert material.
- c. Facilitating in purchase of electricity through 30 years power purchase agreement at pre determined rate by Delhi State Electricity Regulatory Commission from time to time.
- d. Facilitating Concessionaire to obtain grants available for Waste to Energy Project from Ministry of Housing and Urban Affairs, Ministry of New & Renewable Energy, Government of India, State Government and other Central / State Ministries for the Plant.
- e. Facilitating all statutory approvals for setting up of the facilities/Plant.
- f. For any other product which is not purchased by IndianOil, North Delhi Municipal Corporation shall act as facilitator to ensure that the product like electricity, organic manure etc. made in the proposed plant is sold in the market.



**Note: For detailed roles & responsibilities of each of the above parties, draft Concession Agreement annexed with this Bid document should be referred to.**



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**NOTICE INVITING e-BID**

1.0	Bid document NO.	:	AESD/WtE/NDMC/GTE/01/2021-22												
2.0	e-Bid document ID	:	<b>2021-22-01</b>												
3.0	PROJECT DESCRIPTION	:	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>												
4.0	ESTIMATED COST	:	<b>₹ 250 Crore or US \$ 33 million (excluding Taxes)</b>												
5.0	PLACE OF WORK	:	New Delhi												
6.0	BID FEE	:	Nil												
7.0	BID SECURITY AMOUNT	:	<p><b>₹ 5,00,000/- or US \$ 6,667/-</b></p> <p><b>Mode: Net Banking / National Electronic Fund Transfer (NEFT)/ / Real-Time Gross Settlement (RTGS)/ Bank Guarantee/ Demand Draft</b></p> <p>The bank account details for submission through Net Banking/ NEFT/ RTGS / Demand Draft is as follows:</p> <table border="1" data-bbox="635 1301 1377 2033"> <tr> <td>Beneficiary</td> <td>Indian Oil Corporation Ltd.</td> </tr> <tr> <td>Beneficiary Address</td> <td>8th Floor, Business Development, Indian Oil Bhawan, No.1, Aurobindo Marg, Yusuf Sarai, New Delhi-110016</td> </tr> <tr> <td>Account Number</td> <td>00000010813605465</td> </tr> <tr> <td>Name of the Bank</td> <td>State Bank Of India</td> </tr> <tr> <td>Name of the Branch</td> <td>Corporate Accounts Group Branch II New Delhi</td> </tr> <tr> <td>Bank Address</td> <td>SBI, CAG-II,5th Floor, Red Fort</td> </tr> </table>	Beneficiary	Indian Oil Corporation Ltd.	Beneficiary Address	8th Floor, Business Development, Indian Oil Bhawan, No.1, Aurobindo Marg, Yusuf Sarai, New Delhi-110016	Account Number	00000010813605465	Name of the Bank	State Bank Of India	Name of the Branch	Corporate Accounts Group Branch II New Delhi	Bank Address	SBI, CAG-II,5th Floor, Red Fort
Beneficiary	Indian Oil Corporation Ltd.														
Beneficiary Address	8th Floor, Business Development, Indian Oil Bhawan, No.1, Aurobindo Marg, Yusuf Sarai, New Delhi-110016														
Account Number	00000010813605465														
Name of the Bank	State Bank Of India														
Name of the Branch	Corporate Accounts Group Branch II New Delhi														
Bank Address	SBI, CAG-II,5th Floor, Red Fort														

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			<table border="1"> <tr> <td></td> <td>Capital Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001</td> </tr> <tr> <td>SWIFT Code</td> <td>SBININBB824</td> </tr> <tr> <td>IFSC/RTGS Code</td> <td>SBIN0017313</td> </tr> </table> <p>The Bid Security of unsuccessful Bidders will be returned by the Bid Inviting Authority, without any interest as given below:</p> <ol style="list-style-type: none"> <li>For bidders disqualified during techno-commercial bid evaluation, Bid Security shall be released immediately after technical evaluation is approved by the competent authority.</li> <li>For bidders qualified in techno-commercial bid but unsuccessful in price bid stage, Bid Security shall be released immediately after final approval of the proposal by the competent authority.</li> <li>Reasonable efforts shall be taken to release the Bid Security within 15 working days from the respective milestones as mentioned above.</li> </ol>		Capital Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001	SWIFT Code	SBININBB824	IFSC/RTGS Code	SBIN0017313
	Capital Parsvnath Towers, Bhai Veer Singh Marg, Gole Market, New Delhi-110001								
SWIFT Code	SBININBB824								
IFSC/RTGS Code	SBIN0017313								
8.0	BID ISSUE DATE	:	09/09/2021						
9.0	PRE-BID MEETING	:	29/09/2021 @ 1100 HRS at New Delhi through video conferencing Details of virtual meeting platform link shall be communicated at an appropriate point in time						
10.0	LAST DATE FOR BID SUBMISSION	:	25/10/2021 by 1400 hrs IST.						
11.0	DATE FOR BID OPENING	:	25/10/2021 @ 1500 hrs IST.						
12.0	BID SUBMISSION MODE	:	Soft Copy in .pdf format (for Technical Bid) & .xls format (for Price Bid) through secure email id						
13.0	Work Completion	:	As per timelines & milestones mentioned in the draft Concession Agreement						

Bid document in two bid system (a) Technical bid and (b) Price Bid are invited from reputed, established and financially sound parties for the above work in two stages.

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#### 14.0 PRE-QUALIFICATION CRITERIA (PQC):

##### **Stage-I**

#### 14.1 Definition of Eligible Assignments/ Projects for Technical Evaluation:

As the first stage (Stage I Technical Evaluation), for determining Conditions of Eligibility and for evaluating the Bids submitted under this Bid document, following projects/ assignments/ works shall be deemed as Eligible Assignments/ Projects (hereinafter referred as “Eligible Projects or Eligible Assignments” interchangeably) in last 15 (FIFTEEN) years ending 31/08/2021.

“Construction or Operation of Waste to Energy (WtE) facilities which may include Municipal Solid Waste (MSW) processing with or without Material Recovery Facility (MRF) of 200 TPD capacity at a single location in India or abroad.”

**Note:** For details on proof of experience please refer to “General Instructions to bidders” section (Clause 4/ page 23) of the Bid document

#### 14.2 Financial Eligibility:

To demonstrate its financial capacity to undertake the proposed Waste to Energy facility, the Bidder must meet each of the financial qualification criteria specified in this Clause.

##### 14.2.1 Turnover:

a) At least ₹ 40 Crore or US \$ 5 million in any one year of the last Eight Financial Years preceding March 2021 i.e. between 01.04.2013 to 31.03.2021 (for Indian entities) / December 2020 i.e., between 01.01.2013 to 31.12.2020 (for other than Indian entities), the Bidder’s Turnover (as per the audited annual financial statements;

(Or)

b) At least ₹ 30 Crore or US \$ 3.75 million as the average of any three years of the last Eight Financial Years preceding March 2021 i.e., between 01.04.2013 to 31.03.2021 (for Indian entities) / December 2020 i.e., between 01.01.2013 to 31.12.2020 (for other than Indian entities), the Bidder’s Turnover (as per the audited annual financial statements).



**Note:** For definition of Turnover & documents required for proof of Turnover of a Bidder, please refer to “General Instructions to bidders” section (Clause 5/ page 24) of the Bid document

**Stage II Technical Evaluation shall be done for only those bidders, who are meeting both the eligibility criteria mentioned at Stage I, i.e. meeting the criteria, mentioned at 14.1 and 14.2 above.**

##### **Stage - II**

#### 14.3 Evaluation of Technical Proposals



14.3.1 Further evaluation of the Technical Proposal of shortlisted Bidders shall be carried out

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based on Bidder's experience. Only those Bidders whose Technical Proposals get a score of **45 (forty five)** marks or more out of **100 (one hundred)** marks shall qualify for further consideration.

14.3.2 The scoring criteria to be used for evaluation of the Technical Proposal shall be as follows:



SN	CRITERIA	MAX MARKS	SCALE OF MARKING
<b>A</b>	<b>Experience of the firm</b>	<b>40</b>	
(i)	Number of Eligible Projects completed in the last 15 years ending 31.08.2021	25	5 nos or more - 25 marks 4 nos - 20 marks 3 nos - 15 Marks 2 nos - 10 Marks 1 no - 5 marks
(ii)	Number of years of experience in any sector ending 31.08.2021	15	More than 4 years - 15 Marks > 3 to ≤ 4 years - 12 Marks > 2 to ≤ 3 years - 8 Marks > 1 to ≤ 2 years - 4 Marks up to 1 year - 2 marks
<b>B</b>	<b>Financial Credibility</b>	<b>20</b>	
i	Positive Net Worth (in last 15 years as submitted shall be considered)	20	in any of the 5 years out of last 15 years - 20 Marks any of the 4 years out of last 15 years - 16 Marks any of the 3 years out of last 15 years - 12 Marks in any of the 2 years out of last 15 years 2 years - 8 Marks in any of the 1 year out of last 15 years - 4 Marks
<b>C</b>	<b>Quality Certifications &amp; Technical competencies</b>	<b>40</b>	

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	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

SN	CRITERIA	MAX MARKS	SCALE OF MARKING
(i)	Quality Certifications	10	International Organization for Standardization (ISO) 9001 - 2 Marks  International Organization for Standardization (ISO) 14001 - 4 Marks  Occupational Health and Safety Assessment Series (OHSAS) 18001 - 3 marks  Social Accountability Certification (SA) 8000 - 1 mark
(ii)	Possessing in house technical knowhow or Tie up with technology provider on Anaerobic Digester	15	Yes - 15 marks  No - Nil marks
(iii)	Possessing in house technical knowhow or Tie up with technology provider on mass Incineration or RDF to Power or other forms of energy such as Waste to Syngas, Mixed alcohol or Methanol or Ethanol system etc	15	Yes - 15 Marks  No - Nil marks
	<b>TOTAL</b>	<b>100</b>	

Note: For explanatory notes on marking for the technical proposals, please refer to “General Instructions to bidders” section (Clause 6 to 9 in page 26 to 28) of the Bid document

14.3.3 The bidder, within suitable time limit as communicated by the bid inviting authority, will be required to submit any supporting documents/ missing documents against documentary proof submitted for evaluation of technical proposal mentioned at 14.3.3. Bid Inviting Authority also reserves the right to communicate to the client(s)/ concerned Organizations directly & obtain cross-references regarding the declarations/ certifications submitted by the bidders.

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**Stage - III**

**14.4 Evaluation for Finalization of Procurement Price of CBG & Ethanol**

- 14.4.1 Bidders who are qualified in Stage II Technical evaluation mentioned above shall be required to engage / discuss with IndianOil to offer their price for CBG and/ or Ethanol or any other product for offtake by IndianOil.
- 14.4.2 Procurement prices (tentative) and pricing mechanism (tentative) have been provided in the bid, which shall form the basis for further discussions with the qualified bidders.
- 14.4.3 Bidders who shall agree to the procurement prices & price review mechanism etc with IndianOil shall be shortlisted for submitting the price bids.
- 14.4.4 In case any bidder is not agreeing to the procurement prices & pricing mechanism offered by IndianOil for Compressed Bio Gas, Ethanol or other products, the bidder has the option to exit the financial bidding process without attracting any penalty or forfeiture of EMD etc.

Parties who shall agree with such approved prices and pricing review mechanism, shall be shortlisted for submitting of price bid for the waste to be supplied by North DMC. Before finalization of price and price review mechanism etc with the parties under Stage III, approval of competent authority shall be taken.



**14.5 Evaluation of Financial Proposal**

- 14.5.1 In the final stage, the financial evaluation will be carried on Financial Proposals, which shall be evaluated for the quoted Bid Price as under:
- Bidders are required to furnish their financial bids containing their rates for Royalty charges ( $W_{RC}$ ), (up to 2 decimal places).
  - $W_{RC}$  shall be in ₹ per tonne of mixed Municipal Solid Waste to be paid by the Bidder to North Delhi Municipal Corporation.
  - Bidder with highest value of  $W_{RC}$  shall be declared as successful bidder & shall be given precedence for award of Concession.
  - Applicable Goods & Service Tax at rates notified by Govt of India from time to time shall be applicable & shall be reimbursed to the Bidder by North Delhi Municipal Corporation over & above the rates quoted in the price bid.

**Note: For illustration of evaluation of Financial Proposal, please refer to “General Instructions to bidders” section (Clause 10/ page 28) of the Bid document.**



**15.0 EVALUATION CRITERIA:**

- 15.1 Evaluation of parties shall be carried out in 3 stages before price bids are submitted by parties:
- Bidders satisfying the requirements of Stage I shall be evaluated further under Stage II Technical qualification criteria.

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- b. Bidders scoring equal to or above 45 (forty-five) marks after the evaluation of the Stage II Technical qualification criteria, shall be short-listed for Stage III evaluation criteria.
- c. Bidders who agree to the procurement prices & price review mechanism etc. under Stage III with IndianOil shall be shortlisted for submitting the price bids
- 15.2 The bidder with the highest quote in the financial proposal to be submitted for the waste to be supplied by North DMC shall be declared as the successful bidder & shall be given precedence for award of the Concession by North DMC.
- 15.3 In case of identical financial bid, then the bidders with identical financial bid shall be informed that there is tie and they shall be given specific time and date for submission of premium bids (in percentage) over their earlier quoted rates.
- 15.4 In case of identical premium bids, then the bidder with highest technical score would be given precedence.
- 15.5 In case of identical technical scores for the bidders who have submitted identical premium bids, then the bidder with highest turnover in any of the last Eight Financial Years as per 14.2 would be given precedence.
- 15.6 In case of Bids or details of Eligible Assignments from outside India or expressed in currencies other than ₹, the values in foreign currencies shall be converted to values in ₹, based on SBI TT Selling rate as on **Technical Bid opening date**.
- Note: For illustration of Evaluation Criteria, please refer to “General Instructions to bidders” section (Clause 10/ page 28) of the Bid document.**
- 15.7 IndianOil reserves the right to accept any tender in whole or in part or reserves the right of cancellation of the Bid document without assigning any reasons whatsoever. Decision of IndianOil, in this connection shall be final & binding on all bidders.
- 15.8 **Other Requirements:**
- a. Provident Fund Code Allotment letter/ Provident Fund registration.
  - b. Independent Employees’ State Insurance Code or undertaking for Independent Employees’ State Insurance code.
  - c. Power of Attorney in favour of person authorized to submit the bid.
  - d. Copy of Permanent Account Number card
  - e. Certificate of Incorporation / Partnership deed/ Proprietor ship affidavit
  - f. Copy of Goods and Services Tax registration.
  - g. Foreign bidder may apply for Provident Fund Code Allotment letter/ Provident Fund registration, Employees’ State Insurance Code, Permanent Account Number, Goods & Service Tax registration in India, once they become the successful bidder.



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**15.9 Other Salient Points:**

- a. The bids will be summarily rejected if requisite Bid Security is not submitted as mentioned in Notice Inviting Bid document.
- b. The offers shall be scrutinized and evaluated based on the qualifying parameters mentioned above and on the basis of the uploaded documents received through the secure e-mail.
- c. The Bidders shall upload legible scanned copy of necessary documents in support of required qualification and experience along with their offer as per instruction given in the Special Instructions to Bidders.
- d. Notwithstanding any other condition/ provision in the tender documents, in case of ambiguity or incomplete documents pertaining to technical qualifications, bidders shall be given only one opportunity with a fixed deadline under each Stage of qualifications after bid opening to provide complete & unambiguous documents in support of meeting the Pre-Qualification criteria. In case the bidder fails to submit any document or submits incomplete documents within the given time, the bidders tender is liable to be rejected.
- e. Legal dispute, if any, arising during the evaluation of the tender shall be within the jurisdiction of local courts situated at New Delhi.
- f. Any Addendum/Corrigendum/Sale date extension in respect of above Tender shall be issued on our website: <https://iocl.com/suppliers-notices> & to the participating bidders through e-mail Only. No separate notification shall be issued in the press. Bidders are therefore requested to regularly visit our website to keep themselves updated. Failure of Bidder to submit tender without taking cognizance of Corrigendum / Amendment (if any) issued shall make bid liable for rejection.
- g. Bid Inviting Authority does not take any responsibility for the correctness of tender documents obtained from any other source other than our website: <https://iocl.com/suppliers-notices>. Bidders are advised to visit above mentioned website before submitting their offer for official version of the tender document including any corrigendum / amendment if any, which shall be binding to the bidder.
- h. The successful Bidder will have to present original documents for verification to the Bid inviting authority, within 21 days from date of intimation.
- i. Physical/ Manual Bids or in any other form other than that received on the secured e-mail id mentioned in this document shall not be accepted. No manual bid shall be permitted along with electronic bids. In case of receipt of manual bids apart from specifically requested offline documents in the Bid document, same shall be ignored. Additional documents received through email shall also be ignored for the purpose of evaluation, unless specifically advised by the Bid Issuing Authority.
- j. Offer from following types of bidders shall not be accepted:

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- a) Who are in the Holiday list of IndianOil or its Administrative Ministry, Ministry of Petroleum and Natural Gas.
- b) Who are under liquidation, court receivership or similar proceedings
- c) Who are in the Holiday list of North Delhi Municipal Corporation or Government of National Capital Territory of Delhi or Ministry of Housing & Urban Affairs or Ministry of New and Renewable Energy.
- k. The subject proposal is indivisible and shall be awarded to single successful bidder unless stated otherwise elsewhere in the Bid document.
- l. Bidders are to quote their most competitive rates. Negotiations will not be conducted with the bidders as a matter of routine. However, Bid Inviting Authority reserves the right to conduct negotiations if required.
- m. Bidder should make sure that their priced bid only contains the prices. Rates mentioned elsewhere shall not be taken into cognizance. Offer shall be liable for rejection if any condition directly or implied, recorded in Priced Bid.
- n. Submission of authentic documents is the prime responsibility of the bidder. Wherever Bid Inviting Authority has concern or apprehension regarding the authenticity/ correctness of any document, it reserves the right to get the documents verified from issuing authority/any relevant source. If documents (part or full) are found forged, such offers will be summarily rejected and Bid Security will be forfeited and may be debarred from future tenders.
- o. The Bid Inviting Authority reserves the right to accept any tender in whole or in part or reserves the right of cancellation of the tender without assigning any reasons whatsoever.



**General Manager (Alternate Energy)**

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## INTRODUCTION



- 1.0 **Request for Proposal (RfP):** IndianOil for & on behalf of North Delhi Municipal Corporation invites this Bid document for the Project in conformity with the Concession Agreement. North Delhi Municipal Corporation and IndianOil intend to select the Concessionaire through an open competitive Global bidding process in accordance with the procedure set out herein.
  - 2.0 **Due diligence by Bidders:** Bidders are encouraged to inform themselves fully about the Project and the local conditions before submitting the Bid by paying a visit to North Delhi Municipal Corporation and the Project Site(s), sending written queries to the Authority, and attending a Pre-Proposal Conference on the date and time specified in the document. The Bidders should make themselves well aware of the various risks (such as but not limited to Technology, Market, Finance etc) involved in the setting up the Waste to Energy Plant with MSW as feedstock and marketing of various intermediate, end & byproducts. Bidders are also advised to conduct independent due diligence before committing to any investment decision.
  - 3.0 **Obtaining Bid Document:** Bid document can be downloaded from the Official Website of North Delhi Municipal Corporation, Government of India Public Procurement Portal (<https://eprocure.gov.in/eprocure/app>) & IndianOil Corporation Ltd (<https://iocl.com/suppliers-notice>).
- Note: However, bid submission shall be possible only through the secured e-mail as mentioned in the Bid document.**
- 4.0 **Validity of the Bid document:** The Bid submitted by bidders shall be valid for a period of not less than **180 (One Hundred Eighty) days** from the Technical Bid Opening date.
  - 5.0 **Brief description of the Selection Process:** North Delhi Municipal Corporation & IndianOil shall adopt an evaluation process for evaluating the Bids comprising EMD, technical & financial bids to be submitted through the secured e-mail. For detailed evaluation criteria, Bidders are requested to refer to details provided in the Notice Inviting Bid.
  - 6.0 **Currency:** All payments to the selected Concessionaire shall be made in ₹ in accordance with the provisions of this Bid document & the Concession Agreement. The Concessionaire may convert ₹ into any foreign currency as per applicable laws and the exchange risk, if any, shall be borne by the Concessionaire.
  - 7.0 **Schedule of Selection Process:** Indicative time schedule for the Waste to Energy project activity is as given below:

SN	Event Description	Date (days)
a.	Bid document invitation/ publishing date	$T_0$
b.	Receipt of clarification from prospective Bidders	$T_0 + 18$

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SN	Event Description	Date (days)
c.	Pre-Technical Bid Conference	$T_0 + 20$
d.	Response to queries	$T_0 + 23$
e.	Technical Bid Submission Due Date & Opening of Technical Bids	$T_0 + 45 = T_1$
f.	Stage 1 Technical Evaluation	$T_1 + 20$
g.	Intimation to Bidders regarding completion of Stage 1 Technical Evaluation	$T_1 + 25$
h.	Stage 2 Technical Evaluation	$T_1 + 50$
i.	Intimation to Bidders regarding completion of Stage 2 Technical Evaluation	$T_1 + 55$
j.	Stage 3 Evaluation	$T_1 + 70$
k.	Intimation to Bidders regarding completion of Stage 2 Technical Evaluation	$T_1 + 75$
l.	Price Bid Submission Due Date	$T_1 + 90$
m.	Opening of Price Bids	$T_1 + 91 = T_2$
n.	Combined Technical & Financial Evaluation	$T_2 + 15$
o.	Intimation to shortlisted Bidders regarding completion of Combined Technical & Financial Evaluation	$T_2 + 20$
p.	Award of Letter of Acceptance to the successful Bidder	$T_2 + 30 = T_3$
q.	Signing of Concession Agreement	$T_3 + 15$



**8.0 Visit to the Site and inspection:** Prospective Bidders may visit the Site(s) and review the available data at any time prior to Technical Bid submission date. For this purpose, they are required to provide at least 2 [two] days' notice to the concerned agencies, whose details are as given below:

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SN	Name of person/ agency	Phone
a.	Sh. A. K. Gupta, Superintending Engineer, North Delhi Municipal Corporation	+91 9717788033
b.	Sh. Sunil Dawar, Assistant Engineer, North Delhi Municipal Corporation	+91 9717788415

**9.0 Communication:** All queries/ clarification from publishing of the Notice Inviting Bid till signing of Concession Agreement should be addressed to the following persons only.

SN	Name of person/ agency	Phone
a.	Sh. Bijay Kumar, GM (Alternate Energy), IndianOil	Ph: +91 11 24360282 (Direct) Ph: +91 11 71726004
b.	Sh. Manikandan CKN, Chief Manager (Alternate Energy), IndianOil	Ph: +91 11 71725149
c.	Sh. Faraz Farooqui, Manager (Alternate Energy), IndianOil	Ph: +91 11 71725264

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## GENERAL INSTRUCTIONS TO BIDDERS

### 1.0 Scope of the Bid document

- 1.1 Bidders are advised that the selection of Concessionaire shall be based on an evaluation by a Committee as per the Pre-Qualification & Evaluation Criteria specified in this Bid document. Bidders shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Pre-Qualification & Evaluation Criteria shall be given and decision of the Bid Inviting Authority shall be final & binding on the Bidders.
- 1.2 Upon selection, the Bidder shall be required to enter into the Concession Agreement with North Delhi Municipal Corporation & IndianOil as per the draft agreement provided in this Bid document.

### 2.0 Definition of Bidder

- 2.1 The term “Bidder” means a private entity, public sector undertaking or any combination of them with a formal intent to enter into an agreement or under an existing agreement to form a Consortium, a single entity or a group of entities (the Joint Venture or Consortium) as the case may be, coming together to implement the Project. However, no Bidder applying individually or as a member of a Joint Venture/Consortium as the case may be, can be a member of another Joint Venture/Consortium. The term Bidder used herein would apply to both a single entity and a Joint Venture/Consortium.
- 2.2 A Bidder should either be a company within the meaning of Companies Act, 2013 or duly incorporated under the relevant laws of its country of origin, or a registered partnership firm under Indian Partnership Act, 1932, or a limited liability partnership under Limited Liability Partnership Act, 2008, or a partnership firm registered under the relevant laws of its country of origin, or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Joint Venture/ Consortium. A Joint Venture/Consortium shall be eligible for consideration subject to the conditions set out in this Bid document.
- 2.3 Ministry of Finance, Government of India has issued order dated 23 July, 2020 for qualification of a bidder from a country which shares a land border with India (“GFR Order”). As per the GFR Order, any Bidder from a country which shares a land border with India (as defined in the GFR Order) will be eligible to bid in this tender only if the Bidder is registered with the Competent Authority as specified in the GFR Order. The GFR Order shall apply mutatis mutandis to this Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the format given in the Bid document. The Competent Authority shall be entitled to disqualify a Bidder in accordance with the provisions of the GFR Order at any stage of the Bidding Process.
- 2.4 Either an Agent on behalf of the Principal (Domestic or Foreign) or the Principal (Domestic or Foreign) directly could submit the bid & not both. In case an agent participates in the Bid on behalf of a principal, he/ she should not submit a bid on

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behalf of another principal. However, bid of a foreign party forwarded by their Indian Agent shall only be considered as valid only under cover of the foreign party's letter.



- 2.5 Foreign Bidders can operate through an Indian Office / Subsidiary / Authorized Indian Service provider in India for supply of Indigenous component and Services. i.e., for erection, commissioning, inland transportation, custom clearance and facilitating custom duty payment (if any). Such bidders to note that this Bid will be subject to Indian taxation laws and TDS as applicable will be deducted. All taxes, stamp duties and other levies imposed outside India shall be the responsibility of the Bidder and charges thereof shall be deemed to have included.

Note: Foreign bidder may apply for Provident Fund Code Allotment letter/ Provident Fund registration, Employees' State Insurance Code, Permanent Account Number, Goods & Service Tax registration in India, once they become the successful bidder.



### 3.0 Bid Security

- 3.1 In case Bid Security is submitted by way of Bank Guarantee (from Nationalized/ Scheduled Bank as per the format enclosed in the tender document), having a net worth of at least [₹ 1,000 crores (Rupees one thousand crore)], the validity of the same should be 06 (SIX) Months from the last date of submission of the tender. If needed, validity of Bank Guarantee should be extended further by the bidder on request from IndianOil.
- 3.2 The rating of bank sanctioning the Bank Guarantee should not fall below the rating of 'A' from Moody's or equivalent (from other renowned rating agencies) in case of foreign bank and rating of at least 'AA' from CRISIL or equivalent (from other rating agency) in case of Indian banks during the tenor of the Bank Guarantee. In case the rating falls below threshold level during the tenor of Bank Guarantee, the Bidder shall promptly arrange to replace the Bank Guarantee, at its own cost through bank acceptable to IndianOil.
- 3.3 In case of Bank Guarantee, bidder shall upload scanned copy of Bank Guarantee. Original Bank Guarantee shall be sent by the bank to Bid Issuing Authority as mentioned in the tender & it should reach to Bid Issuing Authority within 7 working days of IndianOil from the date of opening of technical bids. For the purpose of receipt of Bank Guarantee, the time recorded in the receipt/DAK section against receipt shall also be considered as receipt time. Only those Original Bank Guarantee instruments found matching with the copy submitted in the e-mail shall be considered as valid. If the original Bank Guarantee instrument is not received by the due date and time as specified above, the bid shall be summarily rejected.
- 3.4 Bank Guarantee should be submitted only in a sealed envelope of the issuing Bank and should not be in open condition. If instrument towards Bid Security is submitted in any manner other than aforesaid in the Bid Document, the Bid is liable to be rejected.
- 3.5 Since, this is not a procurement tender, there is no exemption to MSME or any sector from EMD.



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- 3.6 Bidders not submitting original Bid Security instrument, on or before the due date and time mentioned above shall be rejected outright.
- 3.7 Bidders not paying Bid Security on or before RfP submission date and time will be summarily rejected.
- 3.8 Requests for payment of pending dues towards Bid Security shall not be entertained.
- All parties are requested to start the submission process at least 4-6 hours prior to the submission end date to avoid connectivity issues while submitting documents due to last minute rush.
- 4.0 Proof of Experience of the Bidder**
- 4.1 For Eligible Projects, proof of experience by the parent/ holding company of the bidder or subsidiaries of parent/ holding company of the bidder or subsidiary of the bidder shall also be accepted. The arrangement permitting the Bidder to quote and rely upon Experience of the Parent/ Holding Company (or) Subsidiary of the bidder (or) Subsidiaries of the Parent/Holding Company through an authorization specific to the Bid document needs to be submitted along with the bid.
- 4.2 The authorization shall also confirm that required technical support would be extended to the bidder to deliver the project obligations if the bidder is not in possession of the same at the time of bidding. In the absence of an authorization, such documents of the parent/ holding company of the bidder or subsidiaries of parent/ holding company of the bidder or subsidiary of the bidder shall not be considered.
- 4.3 Documentary evidence: Work Orders/ Completion Certificate / Commissioning Certificate or any other document in support of execution of the Plant to be submitted.
- 4.4 In case the Bidder has set up their own Plant, value of Fixed Assets forming part of the plant/ as per the Balance Sheet of the Firm duly certified by an Independent Auditor shall be considered.
- 4.5 In case of running/ active operations & maintenance contracts or orders which does not include construction orders or contracts, the experience towards operations & maintenance should be at least 3 (Three) years or more in last 15 (FIFTEEN) years ending 31/08/2021.
- 4.6 In case of Operation & Maintenance Contracts, which are running under extension after original contractual completion period, suitable document (certified by “WO issuing authority” / Engineer-In-Charge) indicating executed value up to the original/extended completion period along with extension letter will be treated as proof of successful completion of work.
- 4.7 In case of construction of the plant, if the construction orders are not including the operations & maintenance of the plant, then also, the construction contracts or orders shall be valid and acceptable.
- 4.8 EPC/ LSTK/ BOO/ BOT/ BOOT orders for any Waste to Energy or / any Chemical or / any Industrial Plant or / any Infrastructure Project in India or outside India shall also be acceptable.
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Legend:

- EPC - Engineering, Procurement & Construction
- LSTK - Lump Sum Turn Key
- BOO - Build Own & Operate
- BOT - Build Operate & Transfer
- BOOT - Build Own Operate & Transfer

4.9 In case where the bidder cites the reasons of Non-Disclosure Agreement (NDA) for its inability to submit necessary documents in support of meeting the experience criteria, a certificate, in original, certifying all the required information, issued by Chief Executive Officer/ Chief Finance Officer of the company along with a declaration that the bidding company is not in a position to submit the required documents owing to the NDA with an endorsement by Chartered Accountant/ Statutory Auditor/ Certified Public Accountant (not being an employee or a Director or not having any interest in the bidder(s) company / firm) would be accepted. Wherever Chartered Accountant/ Statutory Auditor/ Certified Public Accountant (not being an employee or a Director or not having any interest in the bidder(s) company/ firm) is not in a position to endorse such Chief Executive Officer/ Chief Finance Officer's certificate due to local regulations, Chief Executive Officer/ Chief Finance Officer's certificate without endorsement would be accepted provided a reference of the local regulation restricting this endorsement is given in the Chief Executive Officer/ Chief Finance Officer certificate.



#### 5.0 Definition of Turnover & Documentary proof for 'Turnover' of Bidder

##### 5.1 "Turnover" means

For Indian entities: Total Revenue as per Schedule III of Companies Act, 2013 (Earlier Revised Schedule VI of Companies Act, 1956) shall be considered as Turnover. Turnover for this purpose shall be as per audited Balance Sheet including P&L Statement/ Published Account/ Profit & Loss Account statement (as applicable) of the Bidder. However, if the Bidder is not required to get its accounts audited under Section 44AB of The Income Tax Act, 1961, certificate from a Practicing Chartered Accountant towards the turnover of the Bidder along with copies of its Income Tax Return shall be submitted.



For foreign entities: Turnover for this purpose shall be as per audited financial statements and in compliance with IFRS & certified by an independent, Practicing Chartered Accountant.

5.2 The Bidder shall enclose with its Proposal, certificate(s) from its statutory auditors stating its Financial Capacity. If the Bidder is a Consortium, then Turnover, as required shall be demonstrated cumulatively, i.e., the Consortium as a whole should meet the requirement. In case the Bidder is a Joint Venture/Consortium, the Proposal must be accompanied with the details of each Member and Associate of the Joint Venture/Consortium whose Financial Capacity is considered for evaluation. If the

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Bidder does not have a statutory auditor, it shall provide the requisite certificate(s) from the firm of chartered accountants that ordinarily audits the annual accounts of the Bidder. In case of PSUs (Central & State), a certificate from an officer in rank of GM or above shall suffice.

- 5.3 For Bidders from outside India, certificate prepared according to the International Financial Reporting Standards (“IFRS”) from a reputed auditor specifying the Net Worth of the Bidder to be submitted.
- 5.4 The Bid must be accompanied by a certificate for long-term Credit Rating of CRISIL AA+ or ICRA AA+ + (in case the Bidder is incorporated in India) and/or S&P BB+ or FITCH BB+ or Moody’s Ba1 from at least 2 (two) credit rating agencies (if the Bidder is incorporated in a jurisdiction other than India).
- 5.5 If the Bidder is a Consortium, then the Net Worth, as required shall be demonstrated cumulatively, i.e., the Consortium as a whole should meet the requirement.
- 5.6 A Bidder or a Member of a Consortium may rely on the Net Worth of its Associate(s) for demonstrating its Financial Capacity. In such a case, the Bidder or a Member of a Consortium shall submit an undertaking from the Associate(s) stating that the necessary proportionate equity for the project will be provided for successful implementation of the project. In addition to this, during Financial Closure, necessary board resolution from the Associate(s) has to be submitted to the extent of equity contribution.
- 5.7 The Bidder (and in case of a Consortium, any Member) and its Associate(s) (in case the Net Worth of the Bidder is being claimed) is not affected by and has not been affected by any of the following events, conditions or circumstances in the [5 (five)] Financial Years immediately preceding the Bid Submission Due Date, as certified by the statutory auditor of the Bidder (and in case of a Consortium, the statutory auditor of a Member) and its Associate(s) (if applicable):
- (i) the Bidder (and the Associate(s), if applicable) having been categorized as a willful defaulter in accordance with Applicable Laws or laws of the country of its incorporation.
  - (ii) the Bidder (and the Associate(s), if applicable) being subject to proceedings for declaration of or being declared bankrupt, being wound up, or having its affairs administered or conducted by any court, administrator, receiver; or
  - (iii) the Bidder (and the Associate(s), if applicable) having been declared by a court or other competent authority as being unable to pay its debts, or having made any composition or arrangements with creditors or having had the repayment of its debts suspended.
- 5.8 The Bidder (and in case of a Consortium, any Member) and its Associate(s) (if applicable) has not been convicted or otherwise being found responsible (or having any of its directors, partners, trustees, officers or managers convicted or being found responsible) by any court, tribunal, regulatory, public or other competent authority for

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a breach of any laws or regulations which:

- (i) related to any act of fraud or dishonesty for which a fine, penalty, damages, compensation or other payment was levied against the Bidder (and the Associate(s), if applicable) or any of its directors, partners, trustees, officers or managers; or
- (ii) resulted in the permanent or temporary suspension of the rights of the Bidder (and the Associate(s), if applicable) to provide any service or carry on any type of business or operations.

#### 6.0 Explanatory Notes on marking for Experience of the firm under Technical Proposal:

6.1 Experience other than in bidder's name & offered by the parent/ holding company of the bidder or subsidiaries of parent company of the bidder or subsidiary of the bidder shall also be acceptable. In such cases, the computed scores shall be reduced by 25%.



##### Illustration

For example, in case a bidder submits 1 order in the name of bidder & 2 other orders either in parent company/ subsidiary of the parent company/ subsidiary of bidder, the score computation under A (i) (mentioned in the below table) shall be as given below:



$$1 \times 5 + 10 \times 0.75 = 12.5$$

Similar methodology shall also be applicable for the purpose of A (ii) (mentioned in the below table).

SN	CRITERIA	MAX MARKS	SCALE OF MARKING
<b>A</b>	<b>Experience of the firm</b>	<b>40</b>	
(i)	Number of Eligible Projects completed in the last 15 years ending 31.08.2021	25	5 nos or more - 25marks 4 nos - 20 marks 3 nos - 15 Marks 2 nos - 10 Marks 1 no - 5 marks
(ii)	Number of years of experience in any sector ending 31.08.2021	15	More than 4 years - 15 Marks > 3 to ≤ 4 years - 12 Marks > 2 to ≤ 3 years - 8 Marks > 1 to ≤ 2 years - 4 Marks up to 1 year - 2 marks

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- 6.2 In case of non-disclosure agreements, client certificate/ mail on broad scope of services, successful completion & value shall suffice. The certificate from client should preferably indicate details such as brief scope of works, date of completion, approximate project value wherever applicable.
- 6.3 For A(ii), Certificate of Incorporation or registered agreements (for Partnership, JV etc) or equivalent document to be submitted.
- 7.0 Explanatory Notes on marking for Financial Credibility of the firm under Technical Proposal:**
- 7.1 Net worth (in case of a Company): “**Net Worth**” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.
- 7.2 Net Worth (in case of any other entity/ body Corporate): the aggregate value of the paid-up capital and reserves of such entity, after deducting the aggregate value of the intangible assets.
- 7.3 Under this item, financial credibility other than in bidder’s name & offered by the parent/ holding company of the bidder or subsidiaries of parent company of the bidder or subsidiary of the bidder shall also be acceptable. In such cases, the computed scores shall be reduced by 25%.
- 8.0 Explanatory Notes on marking for Quality Certification of the firm under Technical Proposal:**
- 8.1 All certificates mentioned under this criterion should be valid as on the date of Technical Bid.
- 8.2 Quality Certificates issued by recognized agencies in the country of operation shall only be considered (Ex: International Organization for Standardization (ISO), Technischer Überwachungsverein-Technical Inspection Association (TUV), Bureau Veritas Quality International (BvQI), etc.)
- 9.0 Documentary proof for ‘Technical Competencies’ of Bidder**
- 9.1 For technical competencies or knowhow, Bidder to submit relevant technical documents such as:
- MoU with technical partner / service provider or
  - Letter / E-mail of confirmation on technology-tie-ups or
  - MoU with consultant facilitating technology for the Plants
  - MoU stating that technology for the entire Plant / production of Compressed Bio Gas shall be considered as technical tie-ups for digester, purification system & compressor, even if it is not mentioned separately.
-

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9.2 For Bidders possessing in-house technical know-how, the following will be considered during evaluation:

- Self-declaration stating possession of in-house technical know-how.
- If the Party has their own Plant producing Electricity or Compressed Bio Gas or Syngas or Mixed alcohol or Ethanol or Methanol and declared in the application, the same shall be considered for the clause Possessing in-house technical know-how.
- Patent letter, if any, shall also be considered.

#### 10.0 Illustration for Bid Evaluation:

SN	Bidder	Technical Score	Waste Royalty Charges payable per tonne of mixed waste ( $W_{RC}$ )	Remarks
1.	A	65	₹ 10	
2.	B	75	₹ 9	
3.	C	55	₹ 15	
4.	D	55	₹ 20	Will be declared as successful bidder & shall be given precedence for Concession
5.	E	85	₹ 5	
6.	F	40	-	Since technical score is less than 45, price bid not opened



Note

- Waste Royalty Charges payable ( $W_{RC}$ ) shall be as per the quoted rates in Bill of Quantities (BoQ)1 of price bid.

#### 11.0 Conflict of Interest



11.1 A Bidder shall not have a conflict of interest that may affect the Selection Process or the Project (the “Conflict of Interest”). Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Bid Inviting Authority reserves the right to forfeit and appropriate the Bid Security for, inter alia, the time, cost and effort of the Bid Inviting Authority. Without prejudice, any other right or remedy that may be available to the Bid Inviting Authority shall also be exercised.



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- 11.2 The Concessionaire is required & agrees unconditionally to provide professional, objective and impartial advice and at all times hold the interests of North Delhi Municipal Corporation & IndianOil paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Concessionaire shall not accept or engage in any other project or assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the current project or assignment in the best interests of the North Delhi Municipal Corporation & IndianOil.
- 11.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Bid document. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Selection Process, if:
- a. the Bidder, its Joint Venture/ Consortium Member (the “Member”) or Associate (or any constituent thereof) and any other Bidder, its consortium member or Associate (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of a Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its consortium member or Associate is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section(72) of section 2 of the Companies Act, 2013. For the purposes of this Clause, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (“the Subject Person”) shall be taken in to account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (twenty six per cent) of the subscribed and paid up equity shareholding of such intermediary; or
  - b. a constituent of such Bidder is also a constituent of another Bidder; or
  - c. such Bidder or its Associate receives or has received any direct or indirect subsidy or grant from any other Bidder or its Associate; or
  - d. such Bidder has the same legal representative for purposes of this Bid as any other Bidder;



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- e. or such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each other's information about or to influence the Bids of either or each of the other Bidder: or
- f. there is a conflict among this and other ongoing Projects of the Bidder (including its personnel of the proposed team) and any subsidiaries or entities controlled by such Bidder or having common controlling shareholders. The duties of the Concessionaire will depend on the circumstances of each case. During the implementation of this Project, the Concessionaire shall not take up any Project that by its nature will result in conflict with the present Project; or
- g. the Bidder, its Member or Associate (or any constituent thereof) for the Project, its contractor(s) or sub-contractor(s) (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding or ownership interest of an Bidder, its Member or Associate (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be,) in the Bidder, or its contractor(s) or sub-contractor(s) is less than 5% (five per cent) of the paid up and subscribed share capital of such Concessionaire or its contractor(s) or sub- contractor(s); provided further that this disqualification shall not apply to ownership by a bank, insurance company, pension fund or a Public Financial Institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this sub-clause (h), indirect shareholding shall be computed in accordance with the provisions of sub-clause (a) above.



For purposes of this Bid document, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the Associate). As used in this definition, the expression "Control" means, with respect to a person which is a company corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract. For the avoidance of doubt, an entity affiliated with the Concessionaire shall include a partner in the Concessionaire's firm or a person who holds more than 5% (five per cent) of the subscribed & paid up share capital of the Concessionaire, as the case may be, and any Associate thereof.

#### **12.0 Number of Bids:**

No Bidder or its Associate shall submit more than one Bid for the Project. A Bidder applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any Joint Venture/Consortium, as the case may be.

#### **13.0 Cost of Proposal:**

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Selection Process including subsequent

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negotiation, visits to the Site(s), translation, certification, accreditation etc. The Bid Inviting Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bid document.

**14.0 Site(s) visit and verification of information:**

Bidders are encouraged/ advised to submit their respective Bids after visiting the Site(s) and ascertaining for themselves the Site(s) conditions, traffic, location, surroundings, climate, access to the Site(s), availability of drawings and other data with North Delhi Municipal Corporation, applicable Laws and regulations or any other matter considered relevant by them. Visits shall be permitted for the benefit of prospective Bidders after giving advance intimation on dates, time as specified in the Bid document.

**15.0 Acknowledgement by Bidder:**

15.1 It shall be deemed that by submitting the Proposal, the Bidder has:



- a. made a complete and careful examination of the Bid document.
- b. received all relevant information requested from the Bid Inviting Authority & North Delhi Municipal Corporation.
- c. acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bid document or furnished by or on behalf of North Delhi Municipal Corporation by the Bid Inviting Authority or relating to any of the matters related to the Bid document.
- d. Satisfied itself about all matters, things and information, including matters and required for submitting an informed Bid and performance of all of its obligations thereunder.
- e. acknowledged that it does not have a Conflict of Interest; and
- f. agreed to be bound by the undertaking provided by it under and in terms hereof.

15.2 The Bid Inviting Authority or North Delhi Municipal Corporation shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to Bid document or the Selection Process, including any error or mistake therein or in any information or data given by the Bid Inviting Authority.



**16.0 Right to reject any or all Bids**

16.1 Notwithstanding anything contained in this Bid document, the Bid Inviting Authority & North Delhi Municipal Corporation reserve the right to accept or reject any Bid and to annul the Selection Process and reject all bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

16.2 Without prejudice to the generality of the above Clause, the Bid Inviting Authority & North Delhi Municipal Corporation reserve the right to reject any Bid if:



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- a. at any time, a material misrepresentation is made or discovered, or
  - b. the Bidder does not provide, within the time specified by the Bid Inviting Authority, the supplemental information sought it for evaluation of the Bid document.
- 16.3 Misrepresentation/ improper response by the Bidder may lead to the disqualification of the Bidder. If the Bidder is a Joint Venture/Consortium, then the entire Joint Venture/Consortium may be disqualified / rejected. If such disqualification / rejection occurs after the Bids have been opened and the highest ranking Bidder gets disqualified / rejected, then the Bid Inviting Authority reserves the right to consider the next best Bidder or take any other measure as may be deemed fit, including annulment of the Selection Process.
- 17.0 Amendment to the Bid document:**
- 17.1 At any time prior to the due date for submission of the Bid document, the Bid Inviting Authority may, for any reason, whether at their own initiative or in response to clarifications requested by a prospective Bidder, modify the Bid document by the issuance of Addendum/ Amendment and posting it through e-mail for the participating bidders & uploading in the website <https://iocl.com/suppliers-notices>. No separate communications or press releases shall be made related to this.
- 17.2 The amendments will also be posted on the Official Website of North Delhi Municipal Corporation along with the revised Bid document containing the amendments and will be binding on all Bidders.
- 17.3 To afford the Bidders a reasonable time for taking an amendment into account, or for any other reason, the Bid Inviting Authority may, at their discretion, extend the Bid submission due Date.
- 18.0 Language**
- The Bid with all accompanying documents (the “Bid Documents”) & all communications in relation to or concerning the Bid document shall be in English language and strictly on the forms/ formats provided in this Bid document. Any supporting document or printed literature is in a language other than English must be accompanied by an accurate translation of the relevant passages in English done by a Sworn Translator or Local Chamber of Commerce or Notary or equivalent as per the country of operation of the Bidder. For all purposes of interpretation of the Bid, the translation in English shall prevail.
- 19.0 Format and signing of Bid:**
- 19.1 The Bidder undertakes & shall provide all the information sought under this Bid document. The Bid Inviting Authority would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 19.2 The Bid shall be typed and all supporting documents shall be digitally signed by the authorized representative (the “Authorized Representative) of the Bidder who shall

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initial in blue ink / digitally sign each page (as applicable). For the purposes of this Bid document, the Authorized Representative shall be:

- a. a partner, in case of a partnership firm and/or a limited liability partnership; or
  - b. a duly authorized person holding the Power of Attorney, in case of a limited company or a corporation; or
  - c. the authorized representative of the Joint Venture/Consortium.
- 19.3 A copy of the Power of Attorney certified under the hands of a Partner or Director of the Bidder and notarized by a notary public or equivalent person in the country or operation of the Bidder in the form specified shall be annexed to the Bid.
- 19.4 Bidders should note the Bid Submission Due Date, as specified in the Bid document for submission of Bids. Except as specifically provided in this Bid document, no supplementary material will be entertained by the Bid Inviting Authority, and that evaluation will be carried out only on the basis of Documents received by the due date & time of Bid document.
- 19.5 Additional requirement/ information for submission of Proposal by Joint Venture/Consortium:
- a. The ceiling on the number of members of Joint Venture/ Consortium is 3 (THREE).
  - b. Bid should contain the information required for each Member of the Joint Venture/Consortium.
  - c. Members of the Joint Venture/ Consortium shall nominate one member as the lead member (the “Lead Member”) who shall have **26% or more equity stake**/voting rights in the Joint Venture/ Consortium. The nomination of the Lead Member shall be supported by a Power of Attorney, as per the format provided in the Bid document, signed by all the other members of the Joint Venture/Consortium. The Members of the Joint Venture/Consortium shall cumulatively/ collectively fulfill all the Conditions of Eligibility.
  - d. In the event, the Joint Venture/Consortium has been declared as the Selected Bidder and issued Letter of Award, all Members of the Joint Venture/Consortium shall sign the Concession Agreement with North Delhi Municipal Corporation & IndianOil. In this regard, it is clarified that all the Members of the Joint Venture/ Consortium shall be jointly and severally liable towards North Delhi Municipal Corporation & IndianOil to execute the Project during the Concession Period and irrespective of the failure of any particular Member of the Joint Venture/Consortium, the North Delhi Municipal Corporation & IndianOil shall be entitled to call upon the Lead Member or other Member(s) of the Joint Venture/Consortium to discharge the obligations of the Joint Venture/Consortium.
  - e. The Bid should include a brief description of the roles and responsibilities of each Member of the Joint Venture/Consortium, particularly with reference to financial and technical obligations under the Concession Agreement; and

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- f. Members of the Joint Venture/Consortium shall be required to enter into a binding Joint Bidding Agreement (the “Joint Bidding Agreement”) as per the format provided in the Bid document for the purpose of submitting the bid, inter alia:
- i. in case the Joint Venture/Consortium is declared as the Successful Bidder, ensure that its shareholding/ownership equity commitments are clearly set out, and state that the Joint Venture/Consortium shall act through the Lead Member in accordance with this Bid document, and subsequently carry out all the responsibilities as Concessionaire in terms of the Concession Agreement;
  - ii. clearly outline the proposed roles and responsibilities of each Member at each stage.
  - iii. commit the minimum equity shares to be held by each Member in the special purpose vehicle; and include a statement to the effect that all Members of the Joint Venture/Consortium shall during the Concession Period, subject to the provisions of the Concession Agreement, be liable jointly and severally for all obligations of the Concessionaire in relation to the Project.
- g. Except as provided under the bidding documents including the Bid document, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of Bid Inviting Authority, North Delhi Municipal Corporation.
- h. Joint Bidding Agreement should be submitted along with the Bid. The Joint Bidding Agreement entered between the members of the Joint Venture/Consortium should be specific to the Project and should fulfill the above requirements, failing which the Bid shall be liable for rejection or considered non-responsive.
- i. No change in the composition of the Joint Venture/Consortium will allowed subsequent to the submission of the Proposal during the Bid evaluation Process.

By submitting the Bid, the Bidder shall be deemed to have acknowledged and agreed that in the event of a change in control or management of a Member or an Associate whose Technical Capacity and/or Financial Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the Bid document which adversely impacts the Project, the Bidder shall inform North Delhi Municipal Corporation & IndianOil forthwith along with all relevant particulars about the same and North Delhi Municipal Corporation & IndianOil may, at their discretion, disqualify the Bidder or withdraw the Letter of Award from the Successful Bidder, as the case may be. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, Bid Inviting Authority shall forfeit and appropriate the Bid Security or North Delhi Municipal Corporation shall forfeit & appropriate the Performance Security, as the case may be, as compensation and damages payable for, inter alia, time, cost and effort of the Bid Inviting Authority, without prejudice to any other right or remedy that may be available to the Bid Inviting Authority hereunder or otherwise.

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## 20.0 Confidentiality:

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising North Delhi Municipal Corporation and/ or IndianOil. in relation to matters arising out of or concerning the Bid document. North Delhi Municipal Corporation & IndianOil shall treat all information, submitted as part of the Proposal, in confidence and shall require all those who have access to such material to treat the same in confidence. North Delhi Municipal Corporation and IndianOil shall not divulge any Confidential information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the North Delhi Municipal Corporation or as may be required by law or in connection with any legal process.

## 21.0 Negotiations

- 21.1 As a matter of routing, Negotiations are not resorted to. However, the Successful Bidder may, if necessary, be invited for negotiations for reducing the quoted price, for re-confirming the obligations, changes to conditions etc.
- 21.2 In case the Successful Bidder fails to accept the terms & issues brought out during negotiations, the Bid Inviting Authority reserves the right to cancel the Bid document or take other actions as deemed fit by it.



## 22.0 Indemnity

The Bidder shall, subject to the provisions of the Agreement, indemnify the Bid Inviting Authority, North Delhi Municipal Corporation for an amount not exceeding 3 (three) times the value of the Agreement for any direct loss or damage that is caused due to any deficiency in services.

## 23.0 Fraud and Corrupt Practices

- 23.1 The Bidders and their respective officers, employees, agents and advisers are expected/ required to & shall observe the highest standard of ethics. Notwithstanding anything to the contrary contained in this Bid document, the Bid Inviting Authority shall reject a bid without being liable in any manner whatsoever to the Bidder, if it determines that the Bidder has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively referred as “Prohibited Practices”) such an event, the Bid Inviting Authority, North Delhi Municipal Corporation as the case may be shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security (as the case may be) payable to North Delhi Municipal Corporation & IndianOil for, inter alia, time, cost and effort of in regard to the Bid document.
- 23.2 Without prejudice to the rights of the Bid Inviting Authority, North Delhi Municipal Corporation under the above mentioned Clause hereinabove and the rights and remedies which North Delhi Municipal Corporation & IndianOil may have under the





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Letter of Acceptance or the Concessionaire Agreement, if a Bidder or Bidders, as the case may be, is found to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid document selection/ evaluation process, or after the issue of the Letter of Acceptance or the execution of the Concessionaire Agreement, such Bidder or Bidders shall be liable for Holiday listing & other penal actions.

23.3 For the purposes of this section, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. corrupt practice means i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Bid document (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of North Delhi Municipal Corporation, IndianOil who is or has been associated in any manner, directly or indirectly with the Bid document or the Letter of Acceptance or has dealt with matters concerning the Concessionaire Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of North Delhi Municipal Corporation, IndianOil, as the case may be, shall be deemed to constitute influencing the actions of a person connected with the Bid document); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Bid document evaluation or after the issue of the Letter of Acceptance or after the execution of the Concessionaire Agreement, as the case may be, any person in respect of any matter relating to the Project or the Letter of Acceptance or the Concessionaire Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of North Delhi Municipal Corporation, IndianOil in relation to any matter concerning the Project.
- b. “fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts in order to influence the evaluation of this Bid document.
- c. “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the evaluation of this Bid document.
- d. “undesirable practice” means establishing contact with any person connected with or employed or engaged by North Delhi Municipal Corporation, IndianOil with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- e. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the evaluation of this Bid document.





 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 37 of 119</b></p>
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#### 24.0 Miscellaneous



- 24.1 The evaluation process of this Bid document shall be governed by, and construed in accordance with, the laws of India and the Courts in New Delhi, Government Of National Capital Territory Of Delhi shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Bid document.
- 24.2 The Bid Inviting Authority, North Delhi Municipal Corporation at their discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- suspend and/or cancel the Bid document and/or amend and/or supplement the evaluation process of this Bid document or modify the dates or other terms and conditions relating thereto;
  - consult with any Bidder in order to receive clarification or further information;
  - retain any information and/or evidence submitted to North Delhi Municipal Corporation, IndianOil, Government of National Capital Territory of Delhi, Govt of India or its departments on behalf of and/or in relation to any Bidder; and/or
  - independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Bidder.
- 24.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases North Delhi Municipal Corporation, IndianOil as the case may be, their employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 24.4 All documents and other information supplied by North Delhi Municipal Corporation, IndianOil or submitted by any Bidder shall remain or become, as the case may be, the property of North Delhi Municipal Corporation, IndianOil. North Delhi Municipal Corporation, IndianOil will not return any submissions made hereunder. Bidders are required to treat all such documents and information as strictly confidential.
- 24.5 North Delhi Municipal Corporation, IndianOil reserve the right to make inquiries with any of the clients listed by the Bidders in their previous experience record.
- 24.6 All the formats mentioned in the Appendixes which are not applicable are to be struck off and duly signed along with company seal.

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### ABBREVIATIONS



₹ or INR or Rs	Indian National Rupee
BG	Bank Guarantee
Bid document	Request for Proposal
Billion	10 <sup>9</sup>
CBG	Compressed Bio Gas
CNG	Compressed Natural Gas
COD	Commercial Operation Date
CPCB	Central Pollution Control Board
Crore/ Cr	10 <sup>7</sup>
DD	Demand Draft
DISCOM	Electricity Supply & Distribution Entity
EMD	Earnest Money Deposit or Bid Security
GFR	General Financial Rules
GNCTD	Government of National Capital Territory of Delhi
Gol	Government of India
Govt	Government
GST	Goods & Service Tax
IOC/ IOCL/ IndianOil	IndianOil Corporation Ltd
Lakh/ Lac	10 <sup>5</sup>
LoA	Letter of Acceptance
Million	10 <sup>6</sup>
MNRE	Ministry of New & Renewable Energy
MoEF & CC	Ministry of Environment, Forest & Climate Change

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#### ABBREVIATIONS

MoF	Ministry of Finance
MoHUA	Ministry of Housing & Urban Affairs
MoPNG	Ministry of Petroleum & Natural Gas
MRF	Material Recovery Facility
MSW	Municipal Solid Waste
MT/ Ton/ Tonne	Metric Tonne
NDMC/ North DMC	North Delhi Municipal Corporation
NGT	National Green Tribunal
PPP	Public Private Partnership
RO	Retail Outlet
SPCB	State Pollution Control Board
SWM	Solid Waste Management
TPD	Tonnes per Day
US \$ or \$	United States Dollar
WPF	Waster Processing Facility
WtE	Waste to Energy



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### DEFINITIONS

The following expressions hereunder and elsewhere in the Bid document used and their grammatical variations shall unless repugnant to the subject or context thereof, have the following meanings hereunder respectively assigned to them, namely:

1. “Anaerobic digestion” means a controlled process involving microbial decomposition of organic matter in absence of oxygen.
2. “Authorization” shall mean the permission given by the State Pollution Control Board or Pollution Control Committee, as the case may be, to the operator of a facility or urban local authority, or any other agency responsible for processing and disposal of solid waste.
3. “Biodegradable waste” shall mean such waste materials which are and can be degraded by natural factors like microbes (e.g. bacteria, fungi and few more), abiotic elements like temperature, UV, oxygen, etc.
4. “Bio-methanation” shall mean a process which entails enzymatic decomposition of the organic matter by microbial action to produce methane rich biogas.
5. “Buffer Zone” means zone of no development to be maintained around solid waste processing and disposal facility, exceeding 5 TPD of installed capacity. This will be maintained within total area allotted for the solid waste processing and disposal facility.
6. “Business Day: means any day (other than 2nd and 4th Saturday, Sunday, Gazetted holidays and holidays declared as per Negotiable Instruments Act-1881) on which nationalized Banks are open for business in New Delhi.
7. “Bye-laws” means regulatory framework notified by local body, census town and notified area townships for facilitating the implementation of these rules effectively in their jurisdiction.
8. “Cascades” means group of cylinders (that may be mounted on a trailer/tractor) used for carrying/transportation of Compressed Bio Gas from the Compressed Bio Gas Plant to the Retail Outlet(s).
9. “CBG” means Compressed Bio Gas as defined in Indian Standards (IS) 16087:2016 of Bureau of Indian Standards (BIS) specifications or any of its revised version.
10. “Compressed Bio Gas Plant” means the Compressed Bio Gas production unit of the Concessionaire constructed/proposed to be constructed and located at \_\_\_\_\_ from where Compressed Bio Gas shall be supplied to IndianOil as per the Concession Agreement.
11. “combustible waste” means non-biodegradable, non-recyclable, non-reusable, non-hazardous solid waste having minimum calorific value exceeding 1500 kcal/kg and excluding chlorinated materials like plastic, wood pulp, etc.
12. “Composting” means a controlled process involving microbial decomposition of organic matter.



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13. “Contractor” means a person or firm that undertakes a contract to provide materials or labour to perform a service or do a job for service providing authority.
14. “co-processing” means use of non-biodegradable and non-recyclable solid waste having calorific value exceeding 1500k/cal as raw material or as a source of energy or both to replace or supplement the natural mineral resources and fossil fuels in industrial processes;
15. “Disposal” means the final and safe disposal of post processed residual solid waste to prevent contamination of ground water, surface water, ambient air and attraction of animals or birds.
16. “dry waste” means waste other than bio-degradable waste and inert street sweepings and includes recyclable and non-recyclable waste, combustible waste and sanitary napkin and diapers, etc
17. “Dump sites” means a land utilized by local body for disposal of solid waste without following the principles of sanitary land filling.
18. “Facility” means any establishment wherein solid waste management processes namely segregation, recovery, storage, collection, recycling, processing, treatment or safe disposal are carried out.
19. “Financing Documents” means the agreements, deeds and other documents executed by the Concessionaire in respect of financial assistance/credit facilities availed/to be availed from the Lender(s).
20. "Fine" means penalty imposed on waste generators or operators of waste processing and disposal facilities under the bye-laws for non-compliance of the directions contained in these rules and/or bye- laws
21. “Handling” includes all activities relating to sorting, segregation, material recovery, collection, secondary storage, shredding, baling, crushing, loading, unloading, transportation, processing and disposal of solid wastes
22. “Inert” means wastes which are not bio-degradable and recyclable.
23. “Incineration” means an engineered process involving burning or combustion of solid waste to thermally degrade waste materials at high temperatures.
24. "leachate" means the liquid that seeps through solid waste or other medium and has extracts of dissolved or suspended material from it.
25. “Local body” for the purpose of these rules means and includes the municipal corporation, nagar nigam, municipal council, nagarpalika, nagar Palikaparishad, municipal board, nagar panchayat and town panchayat, census towns, notified areas and notified industrial townships with whatever name they are called in different States and union territories in India
26. “materials recovery facility” (MRF) means a facility where non-compostable solid waste can be temporarily stored by the local body or any other entity mentioned in rule 2 or any person or agency authorised by any of them to facilitate segregation, sorting and

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recovery of recyclables from various components of waste by authorised informal sector of waste pickers, informal recyclers or any other work force engaged by the local body or entity mentioned in rule 2 for the purpose before the waste is delivered or taken up for its processing or disposal;



27. “Non-biodegradable waste” means any waste that cannot be degraded by micro organisms into simpler stable compounds
28. “Operator of a facility” means a person or entity, who owns or operates a facility for handling solid waste which includes the local body and any other entity or agency appointed by the local body
29. “Processing” shall mean any scientific process by which segregated solid waste is handled for the purpose of reuse, recycling or transformation into new products.
30. “Recycling” means the process of transforming segregated non-biodegradable solid waste into new material or product or as raw material for producing new products which may or may not be similar to the original products
31. “refused derived fuel”(RDF) means fuel derived from combustible waste fraction of solid waste like plastic, wood, pulp or organic waste, other than chlorinated materials, in the form of pellets or fluff produced by drying, shredding, dehydrating and compacting of solid waste.
32. “Residual solid waste” means and includes the waste and rejects from the solid waste processing facilities which are not suitable for recycling or further processing
33. “Retail Outlet” means the retail outlet(s) of IndianOil used for dispensing Motor Spirit and/or High Speed Diesel, as may be identified, within a radius of 25 km (twenty-five kilometers) from any periphery of the Compressed Bio Gas Plant, for the purpose of marketing/retailing of Compressed Bio Gas.
34. “Safety Procedures” mean the procedures, directions, guidelines, rules, regulations and measures as prescribed by government/statutory bodies/ or as communicated by IndianOil for safe handling, transport, storage, supply and/or sale/dispensation of Compressed Bio Gas.
35. “Sanitary Land filling” means the final and safe disposal of residual solid waste and inert wastes on land in a facility designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, greenhouse gas emissions, persistent organic pollutants slope instability and erosion.
36. “Sanitary waste” means wastes comprising of used diapers, sanitary towels or napkins, tampons, condoms, incontinence sheets and any other similar waste
37. “Segregation” means sorting and separate storage of various components of solid waste namely biodegradable wastes, non-biodegradable wastes, sanitary wastes, etc.
38. “Service provider” means an authority providing public utility services like water, sewerage, electricity, telephone, roads, drainage, etc;

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39. "Solid waste" means and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radio-active waste generated in the area under the local authorities
40. "Sorting" means separating various components and categories of recyclables such as paper, plastic, cardboards, metal, glass, etc., from mixed waste as may be appropriate to facilitate recycling
41. "Standards" shall inter-alia include, Indian Standards (IS) 15130 (Part 3), International Organization for Standardization (ISO) 6326-3, Indian Standards (IS) 15319, Automotive Industries Standards (AIS) 024, Petroleum and Explosives Safety Organization (PESO) Standards, safety Standards as per Indian Standards (ISO) 16087 : 2016, Indian Standards (IS) 15464:2004 and any other applicable national or international standards relevant to the Compressed Bio Gas & Ethanol.
42. "Taxes" means all forms of taxation and statutory, governmental, supra-governmental, state, principal, local governmental or municipal impositions, duties, contributions and levies, imposts, tariffs and rates and all penalties, charges, costs and interest payable in connection with any failure to pay or delay in paying them and any associated deductions or withholdings of any sort, and as may revised from time to time by statutory authorities.
43. "Transportation" means conveyance of solid waste, either treated, partly treated or untreated from a location to another location in an environmentally sound manner through specially designed and covered transport system so as to prevent the foul odour, littering and unsightly conditions.
44. "Treatment" means the method, technique or process designed to modify physical, chemical or biological characteristics or composition of any waste so as to reduce its volume and potential to cause harm.
45. "Waste to Energy" or "WtE" means all activities, processes and technologies of converting mixed MSW for production of valuable fuels, products but not limited to Electricity, CBG and Ethanol, low carbon fuels, fertilizers, recoverable/ reusable resources & materials including but not limited to plastics, paper/ pulp, metal, glass, wood etc & other refuse derived fuels.

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### SPECIAL CONDITIONS

#### 1.0 Bid Security:

- 1.1 The Bidder shall furnish as part of its Bid, a Bid Security in the form of a Bank Guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least [₹ 1,000 crores (Rupees one thousand crore)], in favour of IndianOil Corporation Ltd, New Delhi in the format annexed to this Bid document (the “Bank Guarantee”) and having a validity period of not less than [180 (one hundred eighty)] days from the Technical Bid Due Date, inclusive of a claim period of [90 (ninety)] days, and may be extended as may be mutually agreed between IndianOil Corporation Ltd and the Bidder from time to time. The bid security can also be submitted through Net Banking
- 1.2 In case of Bank Guarantee, bidder shall upload scanned copy of Bank Guarantee. Original Bank Guarantee shall be sent by the bank to Bid Issuing Authority as mentioned in the tender & it should reach to Bid Issuing Authority within 7 working days of IndianOil from the date of opening of technical bids. For the purpose of receipt of Bank Guarantee, the time recorded in the receipt/DAK section against receipt shall also be considered as receipt time. Only those Original Bank Guarantee instruments found matching with the copy submitted in the e-mail shall be considered as valid. If the original Bank Guarantee instrument is not received by the due date and time as specified above, the bid shall be summarily rejected.
- 1.3 Bank Guarantee should be submitted only in a sealed envelope of the issuing Bank and should not be in open condition. If instrument towards Bid Security is submitted in any manner other than aforesaid in the Bid document, the Bid is liable to be rejected.
- 1.4 Scanned copy of the Bid Security instrument must be uploaded in the in the e-mail.
- 1.5 Bidders not submitting original Bid Security instrument, on or before the due date and time mentioned above shall be rejected outright.
- 1.6 Bidders not paying Bid Security on or before Bid document submission date and time will be summarily rejected.
- 1.7 Requests for payment of pending dues towards Bid Security shall not be entertained.
- 1.8 All parties are requested to start the submission process at least 4-6 hours prior to the submission end date to avoid connectivity issues while submitting documents due to last minute rush.
- 1.9 The rating of bank sanctioning the Bank Guarantee should not fall below the rating of ‘A’ from Moody’s or equivalent (from other renowned rating agencies) in case of foreign bank and rating of at least ‘AA’ from CRISIL or equivalent (from other rating agency) in case of Indian banks during the tenor of the Bank Guarantee. In case the rating falls below threshold level during the tenor of Bank Guarantee, the Bidder shall promptly arrange to replace the Bank Guarantee, at its own cost through bank acceptable to IndianOil.

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- 1.10 In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required.
- 1.11 For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 1.12 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Bid Inviting Authority as non-responsive.
- 1.13 Mode of submission of Bid Security:
- Net Banking / National Electronic Fund Transfer (NEFT)/ / Real-Time Gross Settlement (RTGS)/Bank Guarantee/ Demand Draft
  - Bank Guarantee from a scheduled bank in India acceptable to the owner & strictly as per the format enclosed with this tender document.
- 1.14 The Bid Security of unsuccessful Bidders will be returned by the Bid Inviting Authority, without any interest as given below:
- For bidders disqualified during techno-commercial bid evaluation, Bid Security shall be released immediately after technical evaluation is approved by the competent authority.
  - For bidders qualified in techno-commercial bid but unsuccessful in price bid stage, Bid Security shall be released immediately after final approval of the proposal by the competent authority.
  - Reasonable efforts shall be taken to release the Bid Security within 15 working days from the respective milestones as mentioned above.
- 1.15 The Successful Bidder's Bid Security will be returned, without any interest, upon the signing of the Concessionaire Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 1.16 North Delhi Municipal Corporation & IndianOil, upon request from Successful Bidder, at their discretion, may agree to adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concessionaire Agreement.
- 1.17 Bid Inviting Authority shall be entitled to forfeit and appropriate the Bid Security as damages inter alia in any of the events specified herein below.
- Bidder submits a non-responsive Bid.
  - Bidder engages in a corrupt, fraudulent, coercive, undesirable or restrictive practices as specified in relevant clauses of this Bid document.
  - Canvassing of information or submission of forged/ false documents/ information by tenderers.
  - Failure to get the documents against qualification criteria verified with originals (if applicable as per the Bid conditions) as per time limits specified.

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- e. a Bidder withdraws its Bid during the period of validity as specified in this Bid document and as extended by mutual consent of the respective Bidder(s) and IndianOil.
- f. the Successful Bidder fails within the specified time limit -
  - to sign and return the duplicate copy of the LETTER OF ACCEPTANCE; or
  - to sign the Letter of Acceptance and/ or Concessionaire Agreement; or
  - to furnish the Performance Security or any other Security as required under Bid document conditions or the Concession Agreement within the period prescribed as the case may be.
- g. Backing out after placement of Letter of Acceptance / signing of Concession Agreement.
- h. the Successful Bidder, having signed the Concessionaire Agreement, commits any breach thereof prior to furnishing the Performance Security.

In such cases, the Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to IndianOil, North Delhi Municipal Corporation under the Bidding Documents and/ or under the Concessionaire Agreement, or otherwise.

1.18 The Bidder, by submitting its Bid pursuant to this Bid document, shall be deemed to have acknowledged and confirmed that the Bid Inviting Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this Bid document. No relaxation of any kind on Bid Security shall be given to any Bidder. The Bid Security shall be forfeited as damages without prejudice to any other right or remedy that may be available to the Bid Inviting Authority under the Bidding Documents and/ or under the Concession Agreement.

## **2.0 Pre-Bid Conference:**

- 2.1 A Pre-Bid Conference of the interested parties shall be convened at the designated date, time and place (physical and/or virtual mode).
- 2.2 A maximum of 2 (two) representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 2.3 During the course of Pre-Bid Conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Bid Inviting Authority.
- 2.4 The Bid Inviting Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.
- 2.5 The Bidders shall undertake & confirm that the decisions, clarifications communicated via e-mail by the Bid Inviting Authority shall be final & binding on all Bidders.

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### 3.0 Late Proposals:

- 3.1 Bids cannot be submitted to the secured e-mail id after the Bid submission due date for whatsoever reasons.
- 3.2 All bidders are advised to commence bid submission activities at least 4-6 hours before the bid submission due date. IndianOil shall not be responsible for the delays (if any) at the end of bidders.

### 4.0 Modification/ substitution/ withdrawal of Bids:

- 4.1 There shall be no alterations, omissions, additions, or any other amendments made to the Bids once submitted on the secured e-mail id, except arising due to issuance of amendments, Corrigendum etc by the Bid Inviting Authority.
- 4.2 Any alteration / modification in the Bid or additional information or material supplied after the Bid submission Due Date, unless the same has been expressly sought for by the Bid Inviting Authority, shall be disregarded.
- 4.3 Suo moto price changes received after submission of bid shall be checked and treated as per the following matrix.

Stage of Bidding	Price Decrease	Price Increase
Before opening of price/ financial bid	<p>Not acceptable. Bidder shall be advised to withdraw the price increase. In case the bidder refuses to withdraw the price increase, their bid shall be liable for rejection. Bid Security shall be forfeited.</p> <p>Other actions such as Holiday Listing etc available under the provisions of the Bid document shall also be considered without any prejudice to other rights available to the Bid Inviting Authority.</p>	<p>In case of suo motto price decrease:</p> <p>a. Bid evaluation shall be done without suo motto price decrease.</p> <p>b. Concessionaire Agreement shall be signed considering the suo motto price decrease.</p>
After opening of price/ financial bid	Same as above	If any bidder offers suo moto reduction in the prices after opening the price bid, the Bid shall be rejected outrightly& Bid Security

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Stage of Bidding	Price Decrease	Price Increase
		shall be forfeited.  Other actions such as Holiday Listing etc available under the provisions of the Bid document shall also be considered without any prejudice to other rights available to the Bid Inviting Authority.

**5.0 Performance Security, ESHS Performance Security and O&M Security:**

- 5.1 An amount as specified in the Article 9 of the Concession Agreement shall be deemed & provided by the Successful Bidder as Performance Security, Environmental, Social, Health & Safety (ESHS) Performance Security, Operations & Maintenance (O&M) Security. All the Performance securities to be clubbed and provided together and not separately.
- 5.2 The Bidder, by submitting its Bid pursuant to this Bid document, shall be deemed to have acknowledged that without prejudice to the any right or remedy hereunder or in law or otherwise available to IndianOil and/or North Delhi Municipal Corporation, the Performance Security, ESHS Performance Security or O&M Security shall be forfeited and appropriated by North Delhi Municipal Corporation as the mutually agreed pre-estimated compensation and damages payable to them for, inter alia, the time, cost and effort of IndianOil and/ or North Delhi Municipal Corporation in regard to the Bid document, including the consideration and evaluation of the Proposal, under the following conditions:
- If a Bidder engages in any of the Prohibited Practices specified in this Bid document.
  - if the Bidder is found to have a Conflict of Interest as specified in the Bid document.
  - if the Selected Bidder commits a breach of the Concession Agreement.
- 5.3 In addition to the above, the Performance Security, ESHS Performance Security or O&M Security may also be forfeited and appropriated in accordance with the any other provisions of the Concession Agreement.

**6.0 Compressed Bio Gas, Ethanol Sales & Purchase Security:**

- 6.1 The Bidder upon signing the Concession Agreement shall furnish Security Deposit to IndianOil as per the sum/ amount mentioned in the CBG & Ethanol Sales Purchase Agreement.



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- 6.2 Such Security (ies) shall be submitted as per the format of Bank Guarantee provided in the Concession Agreement.
- 6.3 The Bank Guarantee should be submitted on or before the Compliance Date as per Concession Agreement & should be valid for a period of 6 months after the scheduled Commercial Operation Date as per the Concession Agreement.
- 6.4 The Bank Guarantee submitted by the successful bidder shall not carry any interest. It shall be held by IndianOil as security for the due performance of the successful Bidder as per the Concession Agreement.
- 6.5 PROVIDED that nothing herein stated shall make it incumbent upon IndianOil to utilize the Security in preference to any other remedy, which IndianOil may have, nor shall be construed as confining the claims of the IndianOil against the successful Bidder to the quantum of the Security.
- 6.6 In case of revision of schedule timelines of the milestones mentioned in the Concession Agreement, the Bank Guarantee should also be extended by equivalent period by the successful Bidder.
- 7.0 Specifications and other requirements of supplied Compressed Bio Gas (CBG):**
- 7.1 Compressed Bio Gas (CBG) to be supplied shall meet IS 16087:2016 specifications of BIS (detailed below) and any other further revisions in the said specifications.

SN	Characteristic	Requirement
a.	Methane percentage (CH <sub>4</sub> )	90% minimum
b.	Only Carbon Dioxide percentage (CO <sub>2</sub> )	4% maximum
c.	Carbon Dioxide (CO <sub>2</sub> ) + Nitrogen (N <sub>2</sub> ) + Oxygen (O <sub>2</sub> ) percentage	10% maximum
d.	Oxygen (O <sub>2</sub> ) percentage	0.5% maximum
e.	Total sulphur (including H <sub>2</sub> S) mg/m <sup>3</sup>	20 mg/m <sup>3</sup> maximum
f.	Moisture mg/m <sup>3</sup>	5 mg/m <sup>3</sup> maximum



- 7.2 As per the IS 16087:2016 specifications, the following shall also be met:
- Compressed Bio Gas shall be free from liquids over the entire range of temperature and pressure encountered in storage and dispensing system
  - The Compressed Bio Gas shall be free from particulate matter such as dirt, dust, etc.
  - Compressed Bio Gas delivered shall be odorized similar to a level found in local distribution (ref. IS 15319)



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- 7.3 The Compressed Bio Gas is to be compressed at 250 Bar and supplied through Cascades to IndianOil Retail Outlets (ROs) within 25 km radius. Alternately, the Compressed Bio Gas can also be supplied through pipeline to be laid by the successful bidder at nearby Retail Outlet of IndianOil situated within 2 km radius from any periphery of the Compressed Bio Gas plant.
- 7.4 Additional transportation cost for supply to ROs beyond 25 km shall be mutually discussed & agreed rates depending on actual expenses would be considered for reimbursement. Similarly, mutual discussions & agreement shall be arrived for supply of Compressed Bio Gas through pipeline beyond 2 km radius from the periphery of the proposed plant.
- 7.5 The Compressed Bio Gas quality parameters, quality and quantity produced, amount of feedstock handled & other important operational parameters shall be made available through web-based applications by the successful bidder/ Concessionaire to IndianOil.
- 7.6 In case the Bidder exercises the option of injecting the Compressed Bio Gas produced in to a CGD entity's nearest gas pipeline network at a later date during the Concession Period, following shall be the operational arrangement:
- a. Compressed Bio Gas supplied shall meet the PNGRB gas quality specifications for CGD networks.
  - b. Discount on the finalized purchase as per this Bid for CBG to be pumped in to the CGD network shall be mutually decided & based on guidelines prevalent at that time.
  - c. Technical specification for gas pipelines as required by PNGRB shall be adhered to.
  - d. Pipeline connectivity to relevant CGD network, including (but not limited to)
    - Custody Transfer Metering System
    - Online Gas Chromatograph
    - Sulphur Analyzer
    - Moisture Analyzer
    - Odourizer
    - Decompression Units
    - Necessary pressure control & online data sharing devices for ensuring quality compliance & custody transfer shall be installed & operated by the successful bidder/ Concessionaire.
  - e. CGD entity may also lay & install the relevant pipelines & above stated facilities on behalf of the successful Bidder/ Concessionaire at the cost of the successful Bidder/ Concessionaire based on their mutual agreement.
  - f. It shall be the responsibility of the successful Bidder/ Concessionaire to obtain necessary permissions/ approvals, statutory clearances, No Objection Certificates
-



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from concerned authorities/ agencies to lay the tie-in pipeline to the CGD network.



- g. The Compressed Bio Gas to be injected in to the CGD entity's gas pipeline grid shall be delivered at a pressure marginally higher than the CGD entity's pipeline pressure. The details of the CGD entity's gas pipeline pressure shall be advised to the successful bidder/ Concessionaire after signing of the Concession Agreement.
- h. Quantities & calorific value of supplied Compressed Bio Gas would be jointly verified by CGD producer, IndianOil & CGD entity on a fortnightly joint ticket with daily gas quantity & calorific value would be provided to the CGD entity.
- i. CGD entity and/or IndianOil shall have the rights to check specification of the Compressed Bio Gas at any point in time & reject the off-spec gas.
- j. A separate agreement would be signed for the above purpose between the successful Bidder/ Concessionaire, GAIL, CGD Entity & IndianOil based on mutual discussions.

#### 8.0 Specifications and other requirements of supplied Ethanol (Denatured Anhydrous):

8.1 Oil Industry Specifications of Denatured Anhydrous Ethanol as per IS 15464:2004 and revision from BIS from time to time:

#### 8.2 SPECIFICATIONS FOR ANHYDROUS ETHANOL:

SN	Characteristics	Specification	Methods of Test as per Annex of IS 15464 : 2004
1.	Relative density at 15.6 C / 15.6 C max.	0.7956	A
2.	Ethanol content % by volume at 15.6 C / 15.6 C min.	99.6	B
3.	Miscibility with water	Miscible	C
4.	Alkalinity	Nil	D
5.	Acidity (as CH <sub>3</sub> COOH), mg/l, Max.	30	D
6.	Residue on evaporation, percent by mass, Max.	0.005	E
7.	Aldehyde content (as	60	F

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SN	Characteristics	Specification	Methods of Test as per Annex of IS 15464 : 2004
	CH <sub>3</sub> CHO) mg / l, Max		
8.	Copper, mg/kg, Max	0.1	G
9.	Conductivity, S/m, Max	300	H
10.	Methyl alcohol, mg/litre, Max	300	J
11.	Appearance	Clear & bright and free from suspended matter	Visual



### 8.3 DENATURANTS:

- The denaturant should be added with Ethanol in suitable dosage as per IS: 4117 in line with IS-15464 and as per prescribed Excise regulation from time to time conforming to the automotive fuel requirements. Denaturants may be considered as a part of Ethanol and component of the fuel. Ethanol should not have more than 0.4% max impurities including permitted denaturants. These denaturants should not have detrimental effect on specification and stability of MotorGasoline.
- Some of the Prohibited denaturants for Ethanol that cannot be used are Pyroles, Methanol, Turpentine, Ketones, Tar, Benzene, Organo-metallic compounds.
- The denaturants should be pre mixed at Ethanol manufacturer end before transporting the Ethanol to Oil Company premises. The name and dosage of the denaturants used should be clearly mentioned on the delivery documents duly endorsed by State Excise Authorities where ever state excise control exists, or otherwise by the authorized person in the distillery.

8.4 Ethanol to be delivered at IndianOil Tikrikalan Terminal, New Delhi in bulk Tank Trucks of capacity 20 KL or more. The Tank Trucks used for delivery of Ethanol shall have valid approvals/ certifications from PESO, other regulatory agencies (as applicable).

### 9.0 Award of Project

9.1 After selection of the Successful Bidder, the Bid Inviting Authority shall recommend issuance of Letter of Acceptance (LoA) to the Selected Bidder by North Delhi Municipal

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Corporation. North Delhi Municipal Corporation in the capacity as Owner of the project shall confirm/ communicate:

- (a) declaring it as the Successful Bidder.
- (b) requesting it to sign and return, as acknowledgement, a copy of the Letter of Acceptance within 7 (seven) days of receipt of the Letter of Acceptance.
- (c) requesting it to submit the Performance Securities and O&M Security in accordance with relevant clauses of the Bid document; and
- (d) execute the Concession Agreement within 21 (Twenty One) days from the date of acceptance of Letter of Acceptance.

9.2 If the Successful Bidder fails to return a duly signed copy of the Letter of Acceptance to North Delhi Municipal Corporation, within 7 (seven) days of receipt of the Letter of Acceptance, then Bid Inviting Authority may, unless consent to an extension, without prejudice to any of its rights under the Bid document or law, disqualify the Successful Bidder, revoke the Letter of Acceptance, and forfeit the Bid Security.

#### **10.0 Execution of the Concession Agreement**



10.1 After acknowledgement of the Letter of Acceptance as aforesaid by the Successful Bidder, the Successful Bidder shall execute the Concession Agreement within the period prescribed in the Bid document.

10.2 If the Successful Bidder fails to execute the Concession Agreement on or before the date specified in the Bid document, North Delhi Municipal Corporation & IndianOil may, unless they consent to an extension, without prejudice to any of their rights under the Bid document or law, disqualify the Successful Bidder, revoke the Letter of Acceptance and forfeit the Bid Security.

10.3 The Successful Bidder shall not be entitled to seek any deviation in the Concession Agreement except the amendments to reflect facts or to correct minor errors.

10.4 If the Successful Bidder seeks to materially negotiate or seeks any material deviations from the final execution draft of the Concession Agreement, IndianOil at the recommendation of North Delhi Municipal Corporation may elect to disqualify the Successful Bidder and revoke the Letter of Acceptance issued.

10.5 If North Delhi Municipal Corporation elect to disqualify such Successful Bidder and revoke the Letter of Acceptance, the North Delhi Municipal Corporation & IndianOil will not be liable in any manner whatsoever to the Successful Bidder. Additionally, Bid Inviting Authority will have the right to forfeit and appropriate the Bid Security or appropriate an equivalent amount from the Performance Security or any other Security payable to North Delhi Municipal Corporation & IndianOil as the case may be, if the Concession Agreement has been executed, as a mutually agreed genuine pre-estimate of the loss suffered by them for, amongst others, the loss of time, money, efforts in conducting the Bid document.

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10.6 Such forfeiture shall be without prejudice to any other right or remedy that North Delhi Municipal Corporation, IndianOil may have under the Bid document, the Concession Agreement or Applicable Laws.

10.7 If North Delhi Municipal Corporation and/ or IndianOil elect to disqualify such Successful Bidder and revoke the Letter of Acceptance (as the case may be), they reserve the right to take any such measure as may be deemed fit in the discretion of North Delhi Municipal Corporation & IndianOil, including annulling the entire Selection Process & inviting fresh Bid document.

#### 11.0 Commencement of Project

The Bidder shall commence the implementation of the Project at the Site(s) within [7 (seven)] days of the execution date of the Concession Agreement, or such other date as may be mutually agreed. If the Bidder fails to either sign the Concession Agreement as specified in the Bid document or commence the Project as specified herein, North Delhi Municipal Corporation & IndianOil reserve the right to take any such measure as may be deemed fit, including annulling the entire Selection Process & inviting fresh Bid document. In such an event, the Bid Security of the successful bidder shall be forfeited and appropriated in accordance with the provisions of the relevant clauses mentioned in the Bid document.



#### 12.0 Time of Completion:

12.1 Entire work should be completed in a duration, timelines & milestones as mentioned in the Concession Agreement.

#### 13.0 Key Personnel, their responsibilities & substitution:

13.1 The Successful Bidder shall offer and make available all Key Personnel meeting the requirements specified in the Bid document. The said Key Personnel will continue to be available during the Concession Period as agreed under the Concession Agreement.

Key Personnel	Responsibilities
[Team Leader]	Will lead, co-ordinate and supervise the multidisciplinary team for implementation of the Project. He shall spend at least [30 (thirty) days per quarter] at the Site(s).
[Safety Expert]	Will be responsible to ensure compliance of the Project with the safety standards under applicable laws and good industry practice. He shall spend at least [10 (ten) days per month] at the Site(s).
[Financial Analyst]	Will be responsible for financial analysis and modeling of the proposed Project. He shall spend at least [2 (two) per month] days at the Site(s).

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Key Personnel	Responsibilities
[Environmental Expert]	Will be responsible for Environmental Impact Assessment of the Project. He shall spend at least [7 (seven) days per month] at the Site(s).

13.2 In the event of any such Key Personnel leaving the Bidder selected under this Bid document during the Concession Period, he/she shall be replaced by a person with equivalent qualification and experience.

13.3 Normally any request of the for substitution of Key Personnel during the course of the project construction & operation phase shall not be entertained.

13.4 North Delhi Municipal Corporation expects all the Key Personnel to be available as per the during implementation of the Concessionaire Agreement.

13.5 Substitution will, however, be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of North Delhi Municipal Corporation.

#### 14.0 Methodology and Work Plan:

14.1 The Bidders shall submit their methodology (not more than 2 pages) for carrying out the Project, outlining its approach toward achieving the key performance indicators laid down in the Concession Agreement.



14.2 The Bidders should specify the sequence and locations of important activities and provide a quality assurance plan for carrying out the Project.

14.3 The Bidder shall clearly state its understanding of the terms and conditions of the Concession Agreement and also highlight its important aspects in not more than 2 pages.

#### 15.0 Proprietary data

Subject to the provisions of Confidentiality Clause, all documents and other information provided by the North Delhi Municipal Corporation, IndianOil or submitted by any Bidder to the Bid Inviting Authority, North Delhi Municipal Corporation & IndianOil shall remain or become the property of the North Delhi Municipal Corporation & IndianOil. Bidders are to treat all information as strictly confidential. The Bid Inviting Authority will not return any bid/ bid documents or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Bidder to the Bid Inviting Authority, North Delhi Municipal Corporation & IndianOil in relation to the Project shall be the property of North Delhi Municipal Corporation & IndianOil.

#### 16.0 Performance parameters:



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- 16.1 The bidders shall have the option to choose suitable combination of machineries for MSW separation, screening & processing as per the technology (one or more) required for efficient performance.
- 16.2 Bidder shall provide optimized plant layout covering plant, aesthetics, odour control equipment, pre-processing section, civil infrastructure, waste to energy section, reject management etc.
- 16.3 Bidder to design & operate the proposed Waste to Energy plant & associated Sanitary Land Fill according to Solid Waste Management Rules 2016. The proposed Waste to Energy plant shall comply with all safety, environmental, operational requirements specified by concerned Authorities & Statutory Agencies from time to time & not limited to Central Pollution Control Board, Delhi State Pollution Control Board, Hon'ble National Green Tribunal, Hon'ble Supreme Court, Factories Dept, Fire Dept, Labour Dept, Healthcare dept, Ministry of Environment, Forest & Climate Change, MoHUA etc.
- 16.4 The Waste to Energy plant shall allow only the non-usable, non-recyclable, non-biodegradable, non-combustible and non-reactive inert waste and pre-processing rejects and residues from waste processing facilities to go sanitary landfill.
- 16.5 The aspects relating to employee and worker safety, control mechanisms of litter, pest, odour, fire, surface runoffs etc need to be adequately taken care.
- 16.6 The objective of the project being waste utilization, value creation & disposal, the bidder shall ensure that there is minimal reject out of the process and the reject is disposed off in a sustainable safe manner instead of direct land filling.
- 16.7 The Bidder shall also allow in his process design for the full usage of received MSW including but not limited to the reject waste from the MSW treatment processes in addition to any other relevant design parameters not specifically identified here.
- 16.8 The rejects arising from pre-processing and processing (inerts, ash, sludge etc) shall be treated, utilized and disposed off by the bidder as per statutory standards on a periodic basis in the site allocated for the sanitary landfill.
- 16.9 The Bidder is encouraged to produce saleable products from the rejects as per SWM Rules 2016 and applicable norms and take the complete revenue coming from the sale of these products.
- 16.10 However, every effort shall be made to recycle or reuse the rejects to achieve the zero-waste going to sanitary landfill.
- 17.0 Waste Quality, Availability & Transportation:**
- 17.1 The collection, segregation transportation of MSW from various locality under jurisdiction of North Delhi Municipal Corporation to the proposed Waste to Energy facility is envisaged by trucks of different capacities owned and/ or managed and/ or contracted by North Delhi Municipal Corporation through road.
- 17.2 Indicative waste characterization of the MSW is as given under:









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part and shall be read with and into the contract so far as it may be practicable to do so.

- 19.0 Tentative Procurement Price & Mechanism / Methodology for fixing the procurement price of Compressed Biogas and Ethanol etc. which shall be directly purchased by IndianOil**
- 19.1 The procurement price offered for CBG, Ethanol along with the price review mechanism is tentative in nature and shall form the basis for further discussions with the bidders after mutual discussions and agreement between IndianOil & the Bidders qualified under Stage III.
- 19.2 “R<sub>CBG</sub>” = ₹ 35 per kg shall be the tentative procurement price of Compressed Bio Gas (CBG) delivered at an identified IndianOil RO during Stage III discussions.
- 19.3 “R<sub>Eth</sub>” = ₹ 46.24 per litre shall be the tentative procurement price of Ethanol by IndianOil delivered at IndianOil Tikrikalan Terminal, New Delhi .
- 19.4 The mutually agreed prices shall be offered to all the bidders uniformly. Applicable Goods & Service Tax shall be paid extra on R<sub>CBG</sub> & R<sub>Eth</sub>.
- 19.5 In case any bidder is not agreeing to final offered price & pricing review mechanism of Compressed Bio Gas and Ethanol, other terms & conditions such as Performance Security for CBG &/or Ethanol supplies, the bidder has option to come out of the bidding process without attracting any penalty or forfeiture of EMD etc.
- 19.6 There shall be periodic revision in procurement price of Compressed Bio Gas (CBG) and Ethanol to be procured by IndianOil for the first 3 years from the date of commencement of supplies:
- For CBG, based on revision in selling price of CNG in the nearest IndianOil RO from the proposed WtE plant.
  - For Ethanol, the revision in weighted avg. purchase price of ethanol (for the quarter of Ethanol supply year i.e. Dec to Nov period) by Mktg. division, IndianOil delivered at Tikrikalan.
  - If the selling price of CNG in the nearest IndianOil RO from the proposed WtE plant is increased by 1% (One percentage) or more over a period, then the fixed Compressed Bio Gas procurement price shall be increased by the same percentage increase.
  - Similarly, if the weighted avg. purchase price of Ethanol delivered at IndianOil Tikrikalan, is increased by 1% (One percentage) or more over a period, and the fixed Ethanol procurement price shall be increased by the same percentage increase.
  - Till the cumulative increase in the selling price of CNG at the nearest IndianOil RO from the proposed WtE plant is less than 1%, there shall be no revision in the price of Compressed Bio Gas for the bidder.

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- f) Till the cumulative increase in the weighted avg. purchase price of Ethanol delivered at IndianOil Tikrikalan is less than 1%, there shall be no revision in the price of Ethanol for the bidder.
- 19.7 Upon completion of every 3 years after commencement of supplies, there will be a review of the pricing mechanism of Compressed Bio Gas ( $R_{CBG}$ ) and Ethanol ( $R_{Eth}$ ) based on mutual agreement between IndianOil and the Concessionaire. Applicable Goods & Service Tax shall be paid extra.
- 19.8 Currently the selling price of CNG at the nearest IndianOil Retail Outlet inclusive of all taxes in New Delhi is ₹ 44.30/kg and of the price of Ethanol delivered at IndianOil, Tikrikalan Terminal for Q1 of Ethanol Supply year (ESY) i.e. Dec 2020 to Feb 2021 is ₹ 54.40/l.

Illustration:

- i. Selling price of CNG at nearest IndianOil Retail Outlet in Delhi: ₹ 44.30/kg
  - ii. Weighted average Purchase price of Ethanol at IndianOil, Tikirkalan: ₹ 54.40/l
  - iii. Let us assume Revised selling price of CNG at nearest IndianOil Retail Outlet in Delhi will be ₹ 44.70/kg in Dec 2022 and the purchase price of Ethanol delivered at IndianOil, Tikrikalan Terminal be ₹ 54.65/l for Q1 2022-23 of ESY i.e. Dec'22-Feb'23
  - iv. The increase is less than 1% ₹ 44.30/kg as well as of ₹ 54.40/l
  - v. Hence, the value of  $R_{CBG}$  and  $R_{Eth}$  will not undergo any upward revision.
  - vi. Let us assume revised selling price of CNG at nearest IndianOil Retail Outlet in Delhi will be ₹ 46.79/kg in May 2023 and the purchase price of ethanol delivered at IndianOil, Tikrikalan Terminal be ₹ 54.85/l
  - vii. The increase is 5.6% over ₹ 44.30/kg. However, the increase is less than 1% over ₹ 54.40/l.
  - viii. Accordingly, revised value of  $R_{CBG}$  will be ₹ 36.97/kg (i.e. 5.6% increased on ₹ 35/kg), while there will be no change in the value of  $R_{Eth}$ .
- 20.0 **Firm Price Revision of Waste Royalty charges to be paid to North Delhi Municipal Corporation.**
- 20.1 Upon completion of every 5 years from the Commercial Operation Date, there will be an increase of 10% in the finalized Waste Royalty Charges ( $W_{RC}$ ) payable by the Concessionaire to North Delhi Municipal Corporation for the entire life of the Plant.

Year	Waste Royalty Charges in ₹ per ton	Remarks
COD + 1 year	$W_{RC}$	Nil



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Year	Waste Royalty Charges in ₹ per ton	Remarks
Up to COD + 5 years	$W_{RC}$	Nil
COD + 6 years	$W_{RC} \times 1.10$	$W_{RC}$ increased by 10%
Up to COD + 10 years	$W_{RC} \times 1.10$	Nil
COD + 11 years	$W_{RC} \times 1.21$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 15 years	$W_{RC} \times 1.21$	Nil
COD + 16 years	$W_{RC} \times 1.33$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 20 years	$W_{RC} \times 1.33$	Nil
COD + 21 years	$W_{RC} \times 1.48$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 25 years	$W_{RC} \times 1.48$	Nil
COD + 26 years	$W_{RC} \times 1.62$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 30 years	$W_{RC} \times 1.62$	Nil



20.2 For the period beyond 30 (thirty) years & extendable thereafter on year to year basis with mutual agreement between the Parties subject to a maximum of 5 (five) years., the Waste Royalty Charges payable to North DMC shall also be finalized on mutual agreement.

#### 21.0 Specific Clauses on Taxation:

21.1 Contractual period / Work Completion Period /Contractual Delivery Date / Contractual Completion Period shall mean the Scheduled Delivery / Completion Period as mentioned in the Letter of Acceptance (Letter of Acceptance) or Concession Agreement and shall also include approved extensions, if any.



21.2 Where any portion of the Bid document, is repugnant to or at variance with any provision of the Standard Taxation Condition (STC), then the provision of the STC shall be deemed to override the provisions of the other conditions on tax related matters and shall, to the extent of such repugnance or variations, prevail.

21.3 For the purpose of this STC, the term "tax" in addition to tax imposed under CGST (Central Tax)/SGST (State Tax)/IGST (Integrated Tax)/UTGST (Union Territory Tax)/



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Goods and Services Tax Compensation Cess Acts, also includes any duties, cess or statutory levies levied by central or state authorities.

- 21.4 Rate variation in Taxes and any new promulgated taxes after last date of the submission of price bid only on the final product and/or services (applicable to invoices raised on Buyer) within the delivery date /period mentioned in Concession Agreement (including extension approved if any) shall be on Buyer's Account against submission of documentary evidence.
- 21.5 Further, in case of delay in delivery of goods and/or services, any upward rate variation in Taxes and any new promulgated taxes imposed after the delivery date mentioned in Concession Agreement shall be to the Bidder's / Concessionaire's Account.
- 21.6 Similarly in case of any reduction in the rate(s) of the Taxes between last date of submission of price bid relevant to the Bid document and the date of execution of activities under the Concession Agreement, the Concessionaire shall pass on the benefit of such reduction to IndianOil with the view that IndianOil shall pay reduced duty/Tax to Govt.
- 21.7 It would be the responsibility of the Bidder/ Concessionaire to get the registration with the respective Tax authorities. Any taxes being charged by the Concessionaire would be claimed by issuing proper TAX Invoice indicating details /elements of all taxes charged and necessary requirements as prescribed under the respective tax laws and also to mention his correct and valid registration number(s) along with Buyer's registration number as applicable for particular supply on all invoices raised on Buyer.
- 21.8 Concessionaire to provide the GSTIN number from where the supply is proposed to be under taken. Further the HSN Code / Service Accounting Code (SAC) as applicable for the subject tender needs to be provided in the columns provided in the technical bid.
- 21.9 In case the Concessionaire is opting for Composition scheme under the Goods and Services Tax laws (i.e. Section 10 of the CGST Act, 2017 and similar provisions under the respective State / UT law), the Concessionaire should confirm the same. Further the Concessionaire to confirm the issuance of Bill of Supply while submission of Bid documents and no Goods and Services Tax will be charged on IndianOil.
- 21.10 In case the Concessionaire is falling under Unregistered category, the Concessionaire should confirm the same.
- 21.11 The Concessionaire would be liable to reimburse or make good of any loss/claim by Buyer towards tax credit rejected /disallowed by any tax authorities due to non deposit of taxes or non updation of the data in GSTIN network or non filling of returns or non compliance of tax laws by the Concessionaire by issuance of suitable credit note to Buyer. In case, Concessionaire does not issues credit note to Buyer, Buyer may resort to recover the amount including interest payable along with Statutory levy/Tax, if any, payable on such recovery.

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 62 of 119</b></p>
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- 21.12 Tax element on any Debit Note / Supplementary invoice, raised by the Concessionaire will be reimbursed by Buyer as long as the same is within the permissible time limit as per the respective taxation laws and also permissible under the Concession Agreement's terms and conditions. Concessionaire to ensure that such debit Notes are uploaded while filing the Statutory returns as may be prescribed from time to time.
- 21.13 Price Adjustment (if any & as applicable) shall be passed on through Invoice or Credit note.
- 21.14 The Concessionaire will be under obligation for quoting/charging correct rate of tax as prescribed under the respective Tax Laws. Further the Concessionaire shall avail and pass on benefits of all exemptions/concessions/benefits/waiver or any other benefits of similar nature or kind available under the Tax Laws. In no case, differential Tax Claims due to wrong classification of goods and/or services or understanding of law or rules or regulations or any other reasons of similar nature shall be entertained by IndianOil.
- 21.15 In case, Buyer's Input Tax Credit (ITC) is rejected on account of wrong levy of tax i.e. payment of Integrated Tax in place of Central Tax+ State/Union Territory Tax or vice versa, the contractor is liable to make good the loss suffered by Buyer by issuance of suitable credit note to Buyer. In case, contractor does not issue credit note to Buyer, Buyer would be constrained to recover the amount including interest payable along with Statutory levy, if any, payable on such recovery.
- 21.16 In case the Bidder is opting for Composition scheme under the Goods and Services Tax laws, in such event the evaluation of his bid will be based on the Quoted Price.
- 21.17 In case the Bidder is falling under Unregistered category, then Goods and Services Tax liability, if any, on Buyer will be included for the purpose of evaluation.
- 21.18 In case, Buyer is eligible to avail Input TAX Credit (ITC), the same shall be reduced from the delivered price to arrive at the net landed cost.
- 21.19 Buyer shall reimburse Goods and Services Tax levied as per invoice issued by the Contractor as prescribed under section 31 of the CGST Act and respective states and Rules.
- 21.20 To enable Buyer to avail ITC, the contractor/supplier shall furnish/submit any and all certificates, documents and declarations as are required by Buyer to avail of the ITC with respect to Goods and Services Tax reimbursed by Buyer on materials sold to Buyer.
- 21.21 Invoice should be raised as per Tax Rates mentioned in the BID and in case at the time of raising Invoice if the invoices raised are not as per Tax rates mentioned in the bid, payment will be limited to the rate quoted as per BID subject to increase /decrease in Rates after last date of submission of Bid provided delivery is within the Concession Agreement period.

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 63 of 119</b></p>
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**21.22 ROAD PERMIT /WAY BILL:**

- a. Bidder / Concessionaire shall procure Road Permit/Way Bill, by whatever name it is called, which is statutorily required to move goods.
- b. Bidder/ Concessionaire shall be wholly responsible for delay or hold up due to the timely non availability of Road Permit/Way bill, by whatever name it is called.



**21.23 CLAUSES SPECIFIC TO WORKS CONTRACT:**

- a. Works contracts as defined under the Goods and Services Tax law includes Contracts for Building, Construction, Fabrication, Completion, Erection, Installation, Fitting out, Improvement, Modification, Repair, Maintenance, Renovation, Alteration or Commissioning of any immovable property wherein transfer of goods is involved in the execution of such contracts.
- b. Composite Supply has been defined as supply in which two or more supply of goods or service or both or any combination are naturally bundled and supplied in conjunction with each other in the ordinary course of Business, and then the rate as applicable for principal supply will be applicable on the entire transaction.
- c. Mixed supply has been defined as supplies of goods or service or both which are made in conjunction with each other for a single price and which does not constitute a composite supply then the rate as applicable for the highest rate will be applicable.
- d. In view of the above various definitions under Goods and Services Tax law, bidders are required to evaluate the jobs to be undertaken covered under the tender and quote accordingly by taking in to account the nature of Job read with the legal provision.
- e. The place of supply in relation to an immovable property shall be the location at which the immovable property is located or intended to be located.
- h. Invoice should be raised as per Tax Rates mentioned and in case at the time of raising Invoice if the invoices raised are not as per Tax rates mentioned in the bid, payment will be limited to the rate quoted as per BID subject to increase /decrease in Rates after last date of submission of Price Bid provided delivery is within the Concession Period.
- i. Bidder/ Concessionaire confirms they are solely responsible for obtaining customs/excise duty waivers (if applicable) which have been considered (if any) in their Bid and in case of failure to receive such waivers for reasons whatsoever, they shall not seek any compensation or revision in the quote prices.

**21.24 INCOME TAX:**

- a. The Bidder/ Concessionaire shall be exclusively responsible and liable to pay Taxes on Income arising out of payment made out of the contract.
- b. Wherever withholding tax i.e. Tax deduction at source (TDS) is applicable under the Income tax Act, 1961 the same will be deducted from the Invoices raised and



 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 64 of 119</b></p>
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TDS Certificate as per provision of the Income tax Act and Rules shall be issued to the contractor.

- c. Permanent Account Number is mandatory. If Permanent Account Number is not provided TDS would be deducted at higher rate as per the provisions of Income Tax Act.



## 22.0 Grievance Redressal

- 22.1 Any dispute arising out of this Bid document shall be resolved amicably through discussions in good faith with a view to expeditiously resolve such dispute.
- 22.2 In the event the dispute persists, the Parties agree to resolve the dispute by conciliation in accordance with provisions of Indian Oil Conciliation Rules, if applicable.
- 22.3 In the event of non-resolution of dispute by Conciliation within a period of 60, the Parties agree to settle the dispute by arbitration in accordance with Arbitration & Conciliation Act 1996.
- 22.4 For matters between IndianOil & North Delhi Municipal Corporation, it shall be as per Administrative Mechanism for Resolution of Commercial Disputes (AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE (GM)/FTS 1835 dated 22-05-2018 & DPE-GM-12/0005/2019-GM-FTS-10714 dated 27.03.2020 in line with Govt guidelines
- 22.5 The venue for arbitration shall be New Delhi and the language of arbitration shall be English.
- 22.6 The arbitrator is expected to pass a reasoned award and the award of arbitrator shall be final and binding on the Parties.

## 23.0 INTEGRITY PACT

- 23.1 Bidder shall sign and submit along with the technical bid in all respects the enclosed Integrity Agreement, which is an integral part of Bid documents, failing which the bidder will stand disqualified from the bid evaluation process.

\*\*\*\*\*

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 65 of 119</b></p>
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**FORMATS & APPENDICES**

**APPENDIX - I**

Letter Comprising the Bid

Dated:

To,



.....  
.....  
.....

Sub: Bid for the ..... Project

Dear Sir,

With reference to your Bid document dated ....., I/we, having examined the document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.



1. I/ We acknowledge that the Bid Inviting Authority will be relying on the information provided in the Bid and the documents accompanying such Bid of the Bidders for the aforesaid Project, and we certify that all information provided in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals. I/We will be solely responsible for any errors, omissions, or misstatements in our Bid submission.
2. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project.
3. I/ We shall make available to the Bid Inviting Authority any additional information it may find necessary or require supplementing or authenticate the qualification statement.
4. I/ We acknowledge the right of the Bid Inviting Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. I/ We certify that in the last three years, we/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
6. I/ We declare that:
  - (a) I/ We have examined and have no reservations to the Bid document, including any Addendum issued by the Bid Inviting Authority;
  - (b) I/ We do not have any Conflict of Interest in accordance with relevant Clause ..... of the Bid documents;

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 66 of 119</b></p>
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(c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in relevant clauses of the Bid document, in respect of any tender or request for proposal issued by or any agreement entered into with the Bid Inviting Authority or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of the Bid document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

7. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with relevant Clause ..... of the Bid document.
8. I/ We believe that we/ our Consortium/ proposed Consortium satisfy(s) the qualification criteria and meet(s) all the requirements as specified in the Bid document and am/ are qualified to submit a Bid.
9. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium applying for pre-qualification.
10. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a court or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a court.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our Chief Executive Officer or any of our directors/ managers/ employees.
13. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government or any entity controlled by it, from participating in any project, and no bar subsists as on the date of Bid.
14. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this Bid document, we shall intimate the Bid Inviting Authority of the same immediately.
15. The Statement of Legal Capacity as per format provided of the Bid document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format of the Bid document, are also enclosed.

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 67 of 119</b></p>
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16. I/ We offer a Bid Security of ₹ \_\_\_\_\_/- or US \$ \_\_\_\_\_/- (Rupees / US Dollar ..... only) to the Bid Inviting Authority in accordance with the Bid Document.
17. The Bid Security in the form of a Bank Guarantee is attached.
18. The Financial Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the Bid document, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
19. In the event of my/our firm/ Joint Venture/Consortium being selected as the Concessionaire, I/we agree to enter into the Concession Agreement in accordance with the draft format provided the Bid document. We agree not to seek any changes in the aforesaid form and agree to abide by the same.
20. I/ We understand that the selected Bidder is an existing [individual / LLP / fund / private entity / public entity / other international entities] incorporated under applicable law.
21. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the State Government and / or the Government of India and / or North Delhi Municipal Corporation and /or Bid Inviting Authority in connection with the selection of Bidders, selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
22. I/ We agree and undertake to abide by all the terms and conditions of the Bid document.
23. I/ We certify that in terms of the Bid document, my/our Net Worth (in accordance with the Bid document) is ₹ \_\_\_\_\_/- or US \$ \_\_\_\_\_/- (Rupees/ US Dollar ..... ) and the Credit Rating as issued by ..... is .....

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

Yours faithfully,

Date: (Signature, name and designation of the Authorized Signatory)



Place: Name and seal of the Bidder/ Lead Member

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 68 of 119</b></p>
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## APPENDIX - II

### Particulars of the Bidder

1. Details of Bidder
    - (a) Name:
    - (b) Country of incorporation and Memorandum of Association/Permanent Account Number
    - (c) Address of the corporate headquarters and its branch office(s), if any, in India:
    - (d) Date of incorporation and/ or commencement of business and Goods & Service Tax certificate details:
  2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
  3. Details of individual(s) who will serve as the point of contact/ communication by Bid Inviting Authority:
    - (a) Name:
    - (b) Designation:
    - (c) Company:
    - (d) Address:
    - (e) Telephone Number:
    - (f) E-Mail Address:
  4. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
    - (a) Name:
    - (b) Designation:
    - (c) Company:
    - (d) Address:
    - (e) Telephone Number:
    - (f) E-Mail Address
  5. Particulars of the Authorized Signatory of the Bidder:
    - (a) Name:
    - (b) Designation:
    - (c) Address:
    - (d) Phone Number:
  6. In case of a Joint Venture/Consortium:
-

 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 69 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

- (a) The information above should be provided for all the Members of the Joint Venture/Consortium.
- (b) A copy of the Joint Bidding Agreement should be attached to the Proposal
- (c) Information regarding the role of each Member should be provided as per table below:

SN	Name of Member	Role	Percentage of equity in the Joint Venture/Consortium
1.			
2.			
3.			
4.			



- (d) The following information shall also be provided for each Member of the Joint Venture/ Consortium:

**Name of Bidder/Member of Joint Venture or Consortium**

SN	Criteria	Yes	No
(1)	Has the Bidder constituent of the Joint Venture/Consortium been barred by the [Central/ State] Government, or any entity controlled by it from participating in any project (BOT or otherwise)?		
(2)	If the answer to (1) is yes, does the bar subsist as on the Bid Submission Due Date?		
(3)	Has the Bidder/Joint Venture/Consortium paid liquidated damages of more than 5% (five per cent) of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		



7. A statement by the Bidder and each of the Members of its Joint Venture/Consortium



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(where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/arbitration in the recent past is given below (Attach extra sheets, if necessary).

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 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 71 of 119</b></p>
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**APPENDIX - III**

**Statement of Legal Capacity**

*(To be forwarded on the letter head of the Bidder)*

Ref.

Date:

To,

.....  
.....  
.....

Dear Madam/Sir,

Subject: Bid document for ..... Project



1. I/We hereby confirm that we, the Bidder (along with other Members in case of Joint Venture/Consortium, the constitution of which has been described in the Bid), satisfy the terms and conditions laid down in the Bid document.
2. I/ We have agreed that..... Will act as Lead Member of the Joint Venture/Consortium.
3. I/ We have agreed that..... will act as the Authorized Representative of the Joint Venture/Consortium on our behalf and has been duly authorized to submit our Bid. Further, the authorized signatory is vested with requisite powers by way of a Board resolution vide ..... dated accorded specific to this Bid document to furnish such proposal and all other documents, information or communication and authenticate the same.

*(strike out whichever is not applicable)*

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....  
.....

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 72 of 119</b></p>
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**APPENDIX - IV**

**Undertaking Statement of Legal Capacity**

*(To be forwarded on the letterhead of the Bidder/ Lead Member of Consortium)*

Ref.

Date:

To,

.....

.....

.....



Dear Sir,

1. I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We hereby certify that this bidder is not from such a country and is eligible to be considered. OR
2. I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India; I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority. I hereby certify that this Bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached]OR
3. I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries; I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority and will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority. I hereby certify that this bidder fulfills all requirements in this regard and is eligible to be considered. [Where applicable, evidence of valid registration by the Competent Authority shall be attached].

Yours faithfully,

(Signature, name, and designation of the authorized signatory)

For and on behalf of.....

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 73 of 119</b></p>
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**APPENDIX - V**

Power of Attorney for signing of Bid.

Know all men by these presents, We..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), ..... son/daughter/wife of ..... and presently residing at ....., who is presently employed with us/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our application for pre-qualification and submission of our bid for the ..... by the ..... (the “Bid Inviting Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/ responses to the Bid Inviting Authority, representing us in all matters before the Bid Inviting Authority, signing and execution of all contracts including the undertakings consequent to acceptance of our bid, and generally dealing with the Bid Inviting Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE-NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2....

For ..... (Signature, name, designation, and address)

Witnesses:

1. \_\_\_\_\_ (Notarized)

2.



Accepted

..... (Signature)

(Name, Title and Address of the Attorney)



Note:

*f. The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the*

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 74 of 119</b></p>
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*executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- g. Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- h. For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.*
- i. Power of Attorney executed abroad should conform to the provisions of Notaries Act, 1952 and Indian Stamp Act, 1899.*

 <p>IndianOil</p>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 75 of 119</b></p>
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#### APPENDIX - VI

##### Power of Attorney for Lead Member of Consortium

Whereas the ..... (“the Bid Inviting Authority”) for & on behalf of North Delhi Municipal Corporation has invited Bids from interested parties for the ..... Project (the “Project”).

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS



We, ..... having our registered office at ..... ,  
M/s. .... having our registered office at ..... ,  
M/s. .... having our registered office at ..... , and  
..... having our registered office at ..... ,

(hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s ..... having its registered office at ..... , being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”).

We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the pre-qualification of the Consortium and submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in Bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Bid Inviting Authority and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project.

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



 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 76 of 119</b></p>
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IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

For .....  
(Signature)

.....  
(Name & Title)

Witnesses:

1.



2.

..... (Executants)



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

Notes:

- a. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- b. *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- c. *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Apostille certificate.*

 IndianOil	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 77 of 119</b></p>
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- d. *Power of Attorney executed abroad should conform to the provisions of Notaries Act, 1952 and Indian Stamp Act, 1899.*
-

 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 78 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		



**APPENDIX - VII**

**Financial Capacity of the Bidder**



Bidder Type	Member Code	Net Worth (avg for Past 5 Years) (in ... currency)	Net worth (in....currency) (5 Years)				
			Year 1	Year 2	Year 3	Year 4	Year 5
Single entity Bidder							
Joint Venture / Consortium Member 1							
Joint Venture / Consortium Member 2							
Joint Venture / Consortium Member 3*							
<b>TOTAL</b>							

\* More rows may be added as per requirement Instructions:

1. The Bidder/ its constituent Joint Venture/Consortium Members shall attach copies of the balance sheets, financial statements and annual reports for 5 years preceding the Bid submission Due Date. The financial statements shall:
  - (a) Reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials.
  - (b) Be audited by a statutory auditor.
  - (c) Be complete, including all notes to the financial statements; and
  - (d) Correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. For the purpose of this Bid document, Net Worth shall be computed as per the definition provided in the Notice Inviting Bid.

 IndianOil	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 79 of 119</b></p>
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3. The Bidder shall provide Statutory Auditor's/ Chartered Accountant's certificate specifying the Net Worth and also confirming the methodology adopted for calculating such net worth as per the definition provided in the Bid document.
-

 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 80 of 119</b></p>
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**APPENDIX - VIII**

**Format for Technical Bid**

Dated:

To

.....  
.....  
.....

Sub: "Bid for Qualification: \*\*\*\* Project"

Dear Sir,

1. With reference to your Bid document dated [\_\_\_], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We hereby submit our Technical Bid, details of which have been provided in the Bid documents submitted by us in relevant Appendices.
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Technical Bid Opening Date specified in the Bid document.
4. I/We agree and undertake to abide by all the terms and conditions of the Bid document.
5. In witness thereof, I/we submit this Bid under and in accordance with the terms of the Bid document.

Yours faithfully,



Date:

(Signature of the Authorized signatory)

Place:

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder/Lead Member

 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 81 of 119</b></p>
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**APPENDIX - IX**

**Format for Financial Bid**

Dated:

To

.....  
.....  
.....

Sub: "Bid for Qualification: \*\*\*\* Project"

Dear Sir,

1. With reference to your Bid document dated [\_\_\_], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We hereby submit our Price Bid and as per the rate quoted and e-mailed on the secured e-mail id.
3. I/We agree to keep this offer valid for 180 (one hundred and eighty) days from the Technical Bid Opening Date specified in the Bid document.
4. I/We agree and undertake to abide by all the terms and conditions of the Bid document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the Bid document.

Yours faithfully,

Date:



(Signature of the Authorized signatory)

Place:

(Name and designation of the of the Authorized signatory)

Name and seal of Bidder/Lead Member





 IndianOil	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 82 of 119</b></p>
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**APPENDIX - X**

**Credit Rating**

[Bidder to provide Credit Rating in accordance with the format of the respective Credit Rating Agency.]

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 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 83 of 119</b></p>
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#### APPENDIX - XI

#### Bank Guarantee for Bid Security

B.G. No.



Dated:

1. In consideration of you, ....., having its office at ....., (hereinafter referred to as the “Bid Inviting Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of [name of the Bidder]a [individual / LLP / fund / private entity / public entity / other international entity as registered under applicable law]and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the ..... project (hereinafter referred to as “the Project”) pursuant to the Bid Document dated ..... issued in respect of the Project and other related documents including without limitation the draft Concession Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at ..... and one of its branches at ..... (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the Bid Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Bid Inviting Authority an amount of ₹ \_\_\_\_\_/- or US \$ \_\_\_\_\_/- (Rupees / US Dollar ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Bid Inviting Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Bid Inviting Authority is disputed by the Bidder or not, merely on the first demand from the Bid Inviting Authority stating that the amount claimed is due to the Bid Inviting by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding ₹ \_\_\_\_\_/- or US \$ \_\_\_\_\_/- (Rupees / US Dollar ..... only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Technical Bid Opening Date plus claim period of 90 (ninety) days or for such extended period as may be mutually agreed between the Bid Inviting Authority

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 84 of 119</b></p>
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and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Bid Inviting Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Bid Inviting Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Bid Inviting Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.



6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Bid Inviting Authority shall be entitled to treat the Bank as the principal debtor. The Bid Inviting Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Bid Inviting Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Bid Inviting Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Bid Inviting Authority or any indulgence by the Bid Inviting Authority to the said Bidder or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorized to receive the said notice of claim.

10. It shall not be necessary for the Bid Inviting Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Bid Inviting Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 85 of 119</b></p>
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11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Bid Inviting Authority in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.



13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to ₹ \_\_\_\_\_/- or US \$ \_\_\_\_\_/- (Rupees / US Dollar ..... only). The Bank shall be liable to pay the said amount or any part thereof only if the Bid Inviting Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Technical Bid Opening Date)].

Signed and Delivered by ..... Bank

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

(Signature of the Authorized Signatory)

(Official Seal)

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 86 of 119</b></p>
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**APPENDIX - XII**

**GFR Order Undertaking by Bidders**

1. I/ We ..... (Bidder/ Consortium name) have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India & on sub-contracting to contractors from such countries.
2. I/ We ..... (Bidder/ Consortium name) certify that this bidder is not from such a country or if from such a country, has been registered with the Competent Authority & will not sub-contract any work to a contractor from such countries unless such sub-contractor is registered with the Competent Authority.
3. I/ We ..... (Bidder/ Consortium name) certify that this bidder fulfils all requirements in this regard & is eligible to be considered.

**(Note:** where applicable, copy of valid registration by the Competent Authority shall be attached)



(Authorized Signatory of the Bidder/ Member)

(Name of the Bidder/ Member)

(Seal of the Bidder/ Member)

Definition for Bidder from a country which shares land border with India for the purpose of this undertaking:

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country; or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner (with 26% or more controlling stake) is situated in such a country; or
- e. An Indian (or other) agent of such an entity; or
- f. A natural person who is a citizen of such a country; or
- g. A Consortium or Joint Venture where any member of such consortium or Joint Venture falls under any of the above.

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 87 of 119</b></p>
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### APPENDIX - XIII

#### Joint Bidding Agreement

*(To be executed on Stamp paper of appropriate value)*

THIS JOINT BIDDING AGREEMENT is entered into on this the ..... day of.....20..... AMONGST

1. ...., a (individual / LLP / fund / private entity / public entity / other international entity) incorporated under applicable law and having its registered office at ..... (hereinafter referred to as the “First Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) AND
2. ...., a (individual / LLP / fund / private entity / public entity / other international entity) incorporated under applicable law and having its registered office at..... (hereinafter referred to as the “Second Part” which expression shall, unless repugnant to the context include its successors and permitted assigns) AND
3. {..... (individual / LLP / fund / private entity / public entity / other international entity) incorporated under applicable law and having its registered office at (hereinafter referred to as the “Third Part” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

The above-mentioned parties of the FIRST, SECOND, {THIRD} PART is collectively referred to as the “Parties” and each is individually referred to as a “Party”

WHEREAS, (A) [IndianOil Corporation Ltd on behalf of North Delhi Municipal Corporation for the Waste to Energy project at \_\_\_\_\_, New Delhi and having its principal offices at [●] \_\_\_\_\_ & \_\_\_\_\_ respectively (hereinafter referred to as the “Project Proponent(s)” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) has invited Bids (“the Bids”) by its Request for Proposal (Bid document) No.....dated .....(the “Bid document”) for pre-qualification and shortlisting/selection of bidders for the .....Project (the “Project”).



(B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the Bid document and other bid documents in respect of the Project, and

(C) It is a necessary condition under the Bid document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the Bid document.
2. Consortium
  - 2.1 The Parties do hereby irrevocably constitute a consortium (the “Consortium”) for the purposes of jointly participating in the Bidding Process for the Project.



 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 88 of 119</b></p>
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2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

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

4. Role of the Parties

The Parties hereby undertake to perform the roles that the Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process` and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective.

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Bid document and the Concession Agreement, till such time as the Appointed Date for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

6.1 The Parties agree that the proportion of shareholding, roles among the Parties in the SPV shall be as follows:



- a. First Party:
- b. Second Party:
- c. {Third Party:}
- d. Fourth Party:

6.2 The Parties undertake that a minimum of 26% (twenty-six per cent)of the subscribed and paid up equity share capital of the SPV shall, at all times till the 5 th (fifth) anniversary of the date of commercial operation of the Project, be held by the Party of the First Part whose qualification under the qualification criteria has been reckoned for the purposes of qualification and short listing of Bidders for the Project in terms of the Bid document.

6.3 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

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

(a) Such Party is duly organized, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 89 of 119</b></p>
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(b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:

- i. require any consent or approval not already obtained;
- ii. violate any Applicable Law presently in effect and having applicability to it;
- iii. violate the memorandum and articles of association, by-laws or other applicable organizational documents thereof;
- iv. any clearance, permit, concession, grant, license or other governmental authorization, approval, judgment, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
- v. create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

(c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.



## 8. Termination

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

## 9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of India.

9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Project Proponent(s).

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 90 of 119</b></p>
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IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of LEAD MEMBER by:

(Signature)

(Name)

(Designation)

(Address)

**SECOND PART**

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED SIGNED, SEALED AND DELIVERED

For and on behalf of THIRD PART

(Signature)

(Name)

(Designation)

(Address)

(Signature)

(Name)

(Designation)



(Address)

In the presence of witnesses:

1.



2.

---

 IndianOil	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b> <b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		<b>Page 91 of 119</b>
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**Notes:**

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

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 92 of 119</b></p>
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**APPENDIX - XIV**

**Format of Self-Attested Certificate regarding Associate**

**Self-Attested Certificate regarding Associate**

Based on the authenticated record of [Insert name of the Company], this is to certify that [more than 50% (fifty percent) of the subscribed and paid-up voting equity of..... (name of the Bidder/ Member/ Associate) is held directly or indirectly, by ..... (name of the Bidder/ Member/ Associate).

By virtue of the aforesaid, the latter exercises control over the former, who is an Associate.

..... (name of the Bidder/ Member/ Associate) has the power directly or indirectly, to direct or influence the management & policies of ..... (name of the Bidder/ Member/ Associate) by operation of law, contract or otherwise.

By virtue of the aforesaid, the former exercises control over the latter, who is an Associate.



A brief description of the said equity held, directly or indirectly, is given below:

{Describe the shareholding of the Bidder/ Member & the Associate. In the event the Associate is under common control with the Associate/ Consortium Member or the control is exercised by operation of law, the relationship may be suitably described & similarly certified}

(Authorized Signatory of the Bidder/ Member)

(Name of the Bidder/ Member)

(Seal of the Bidder/ Member)

 <b>IndianOil</b>	<p align="center"><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 93 of 119</b></p>
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**APPENDIX - XV**

Letter of Declaration

*(The Letter of Declaration is to be submitted by EACH Member in case of Joint Venture/Consortium)*

Date: \_\_\_\_\_

Place: \_\_\_\_\_

To,

.....

.....



Dear Sir/ Madam,

**Sub:**

This has reference to the Bid being submitted by (mention the name of the Bidder/ Lead Member of the Joint Venture/Consortium), as single entity/ Lead Member of the Joint Venture/Consortium comprising(mention name(s) of the Members) in respect of Selection of Concessionaire for ..... in response to the Bid document issued by IndianOil (Bid Inviting Authority)

We hereby confirm the following:

1. We(name of the Bidder/ Member furnishing the Letter of Declaration),have examined in detail and have understood and satisfied ourselves regarding the contents including in respect of the following:
  - a. For the purpose of all subsequent communications with the Bid Inviting Authority, the Bidder shall be represented by (mention name of the authorized representative of the Bidder/ Lead Member);
  - b. The Joint Bidding Agreement has been signed between/among (names of the Members), as members of the Joint Venture/Consortium; and the Bid is being submitted on behalf of the Joint Venture/Consortium (name of the Lead Member).

 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 94 of 119</b></p>
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2. We have satisfied ourselves regarding our role as (here give a brief description of the role) in the Project as specified in the Bid. If the Bidder/Joint Venture/Consortium is awarded the Project, we shall perform our role as outlined in the Bid. We have examined the Bid in detail and the commitments made in the same. We agree and undertake to abide by the Bid and the commitments made therein.
3. We authorize (name of the authorized representative of the Bidder/Lead Member), as the Lead Member and authorize the same to perform all tasks including, but not limited to providing information, responding to enquiries, entering into contractual commitments etc. on behalf of the Joint Venture/Consortium, in respect of this Project.
4. We understand that, no change in the membership in the Joint Venture/Consortium, in the role and form of responsibility of any Member shall be permitted after submission of the Bid. The Bid Inviting Authority would reserve the right to reject such requests for a change of Joint Venture/Consortium structure, if in its opinion; it would adversely affect the same.

For and on behalf of:



[Signature]

(Authorized Representative and Signatory)

Name of the Person:

Designation



 <b>IndianOil</b>	<p><b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p><b>Page 95 of 119</b></p>
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**APPENDIX - XVI**

Undertaking by the Bidder(s) for document uploading on secured e-mail

NAME OF WORK:

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Bid document No.: \_\_\_\_\_

We confirm that we have quoted the rates in the Bid document considering Inter-alia the Bid Document (119 pages)

Draft Concession Agreement (242 pages)

Additional Document(s) (if any with \_\_ pages)

Corrigendum (if any with \_\_pages)

Pre-Bid Meeting Minutes (if any with \_\_pages)

We \_\_\_\_\_ (Name of the Bidder) hereby certify that we have fully read and thoroughly understood the tender requirements and accept all terms and conditions of the tender including all corrigendum/addendum issued, if any. Our offer is in confirmation to all the terms and conditions of the tender including all corrigendum/addendum, if any and minutes of the pre-bid meeting. In the event our offer is found acceptable and contract is awarded to us, the complete tender document shall be considered for constitution of Concession Agreement.

**SIGNED FOR AND ON BEHALF OF BIDDER(S)**

Name of Bidder(s)



Date : \_\_/\_\_/\_\_\_\_

Place:

Seal & Signature of Bidder

NOTE: This declaration should be signed by the Bidder's authorized representative on COMPANY LETTERHEAD who is signing the Bid and scanned copy to be uploaded.

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 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 96 of 119</b>
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**APPENDIX - XVII**

**PROFORMA OF DECLARATIONS TO BE FURNISHED BY THE TENDERERS**

**DECLARATION - 'A'**

We declare that we have complied with all the conditions of the tender including technical specifications, drawings, special conditions & all the documents etc., forming part of tender.

Date :

Place :

Tenderer's signature

Seal

**DECLARATION - 'B'**

We declare that we do not have any employee who is related to any officer of the Corporation/ Central/ State Governments of India.

OR

We have the following employees working with us who are near relatives of the Officer/ Director of the Corporation/ Central/ State Government in India.



Name of the employee of the Tenderer	Name & designation of the Officer of the Corporation/ Central/ State Governments

Date :

Place :

Tenderer's Signature

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 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 97 of 119</b>
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Seal

#### DECLARATION - 'C'

The Tenderer is required to state whether he is a relative of any Director of Indian Oil Corporation/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation or the Tenderer is a firm in which any Director of IndianOil/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation or his relative is a partner or any other partners of such a firm or alternately the Tenderer is a private company in which Director of Indian Oil Corporation/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation is a member or Director.



S/N	PARTICULARS	DETAILS
1	Name of the Tenderer and his relations with the Director/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation in our Corporation.	
2	Name of the Director/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation of the Corporation who is related to the Tenderer.	
3	Name of the Director/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation of the Corporation who is a member or a Director of the firm.	

Date : Tenderer's

Place : Signature & Seal

#### DECLARATION - 'D'

Tenderer is required to state whether they have employed any retired Director and above rank officer of Indian Oil Corporation Limited/ Chief Engineer or any Municipal Commissioner of North Delhi Municipal Corporation in their firm. If so, details hereunder to be submitted.

 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 98 of 119</b>
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S/N	PARTICULARS	DETAILS
1	Name of the person	
2	Post last held in IOC/ North Delhi Municipal Corporation	
3	Date of retirement	
4	Date of employment in the firm	

Date :Tenderer's

Place : Signature & Seal



Note:

A separate sheet may be attached, if the above is not sufficient.

Strike out whichever is not applicable. If the tenderer employs any person subsequent to signing the above declaration and the employee/s so appointed happens to be the near relatives of the Officer/Director of the Corporation/Central/State Governments, the tenderer should submit another declaration furnishing the name/s of such employee/s who is/are related to the officer/s of the Corporation/ Central/ State Governments.

List of Directors of IOC board can be seen from [www.iocl.com](http://www.iocl.com)

[List of Officials of North Delhi Municipal Corporation can be seen from North Delhi Municipal Corporation \(mcdonline.nic.in\)](http://mcdonline.nic.in)



 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>	 <b>रानिकहेरा नगरपालिका</b> <b>RANIKHERA MUNICIPAL CORPORATION</b> <b>तयसो मा ज्योतिर्मय</b>	<b>Page</b> <b>99 of</b> <b>119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

**APPENDIX - XVIII**

Ready Reckoner for Quality & Cost Based Selection (QCBS)

**TECHNICAL PROPOSAL**

SN	Criteria	Max. Marks	Marks					Remarks
1	Experience of the firm	40						
i	Number of Eligible Projects completed in the last 15 years ending	25	25	20	15	10	5	Experience other than in bidder's name & offered by the parent/ holding company of the bidder or subsidiaries of parent company of the bidder or subsidiary of the bidder shall also be acceptable. In such cases, the computed scores shall be
			> 4	4	3	2	1	
ii	Number of years of experience in any sector ending 31.08.2021	15	15	12	8	4	2	
			> 4	> 3 to < 4	> 2 to < 3	> 1 to < 2	<=1	
2	Financial Credibility	20	20	16	12	8	4	
i.	Positive Net Worth (in last 15 years as submitted shall be considered) in any of the XX years	20	> 4	4	3	2	1	Financial credibility other than in bidder's name & offered by the parent/ holding company of the bidder or subsidiaries of parent company of the bidder or subsidiary of the bidder shall also be acceptable. In such cases,
3	Quality Certifications & Technical competencies	40						
i.	Quality Certifications	10						All certificates mentioned under this criterion should be valid as on the date of Technical Bid. Quality Certificates issued by recognized agencies in the country of operation shall only be considered (Ex:
a	International Organization for Standardization (ISO) 9001	2	If Yes, then 2 or else, Zero					



 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>		<b>Page 100 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

SN	Criteria	Max. Marks	Marks	Remarks
b	International Organization for Standardization (ISO)	4	If Yes, then 4 or else, Zero	International Organization for Standardization (ISO), Technischer Überwachungsverein-Technical Inspection Association (TUV), Bureau Veritas Quality International (BvQI), etc.)
c	Occupational Health and Safety Assessment Series (OHSAS) 18001	3	If Yes, then 3 or else, Zero	
d	Social Accountability Certification	1	If Yes, then 1 or else, Zero	
ii	Possessing in house technical knowhow or Tie up with technology provider on Anaerobic Digester	15	If Yes, then 15 or else, Zero	

1. Bidder to submit relevant technical documents such as MoU with technical partner / service provider or Letter / E-mail of confirmation on technology-tie-ups or MoU with consultant facilitating technology for the Plants

2. MoU stating that technology for the entire Plant / production of Compressed Bio Gas shall be considered as technical tie-ups for digester, purification system & compressor, even if it is not mentioned separately



3. For Bidders possessing in-

 <b>IndianOil</b>	<b>Bid document No: AESD/WtE/NDMC/GTE/01/2021-22</b>	 <b>NEW DELHI MUNICIPAL CORPORATION</b> तयसो मा ज्योतिर्गमय	<b>Page 101 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

SN	Criteria	Max. Marks	Marks	Remarks
iii	Possessing in house technical knowhow or Tie up with technology provider on mass Incineration or RDF to Power or other forms of energy such as Waste to Syngas, Mixed alcohol or Methanol or Ethanol system etc.	15	If Yes, then 15 or else, Zero	<p>house technical know-how, the following will be considered during evaluation:</p> <p>a) Self-declaration stating possession of technical know-how / mentioned</p> <p>b) If the Party has their own Plant producing Electricity or Compressed Bio Gas or Syngas or Mixed alcohol or Ethanol or Methanol and declared in the application, the same shall be considered for the clause Possessing in-house technical know-how</p> <p>c) Patent letter, if any, shall also be considered</p>

Note: Only those Bidders whose Technical Proposals get a score of [45 (forty-five) marks] or more out of 100 (one hundred) shall qualify for further consideration of Financial Proposal.



 <b>IndianOil</b>	<b>Bid document No:</b>	 <b>MUNICIPAL CORPORATION</b> तयसो मा ज्योतिर्गमय	<b>Page 102 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

**SELF DECLARATION TABLES TO BE FILLED BY BIDDER FOR TECHNICAL EVALUATION**

Table 1

SN 1 (i): Number of Eligible Projects completed in the last 15 years ending 31.08.2021						
SN	Job/ Assignment Title	Value (₹ / \$)	Client Name or Description	Year of completion of Assignment	Reference Page No. in submitted Bid	Self-Assessed Score

SN 1 (ii): Number of years of experience in any sector ending 31.08.2021				
SN	Name of Sector	Experience	Reference Page No. in submitted Bid	Self-Assessed Score

Authorized Signatory to be Country Head/CEO/MD or equivalent)

Name:

Designation:

Date:

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Table 2

SN 2: Positive Net Worth (in last 15 years as submitted shall be considered)				
SN	Year	Net Worth	Reference Page No. in submitted Bid	Self-Assessed Score

Authorized Signatory to be Country Head/CEO/MD or equivalent)

Name:

Designation:

Date:





 <b>IndianOil</b>	<b>Bid document No:</b>		<b>Page 104 of 119</b>
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Table 3

SN 3 i): Quality Certifications				
SN	Certification name	Yes/No	Reference Page No. in submitted Bid	Self-Assessed Score
a	International Organization for Standardization (ISO) 9001			
b	International Organization for Standardization (ISO) 14001			
c	Occupational Health and Safety Assessment Series (OHSAS) 18001			
d	Social Accountability Certification			

SN 3 ii): Possessing in house technical knowhow or Tie up with technology provider on Anaerobic Digester				
SN	Particulars	Yes/No	Reference Page No. in submitted Bid	Self-Assessed Score
a	Possessing in house technical knowhow on Anaerobic Digester			
b	Tie up with technology provider on Anaerobic Digester			



SN 3 iii): Possessing in house technical knowhow or Tie up with technology provider on Anaerobic Digester				
SN	Particulars	Yes/No	Reference Page No. in submitted Bid	Self-Assessed Score
a	Possessing in house technical knowhow on mass Incineration or RDF to Power or other forms of energy such as Waste			

 <b>IndianOil</b>	<b>Bid document No:</b>		<b>Page 105 of 119</b>
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	to Syngas, Mixed alcohol or Methanol or Ethanol system etc.			
b	Tie up with technology provider on mass Incineration or RDF to Power or other forms of energy such as Waste to Syngas, Mixed alcohol or Methanol or Ethanol system etc.			

Note for Tables 1 to 3:

- a. In case where the bidder cites the reasons of Non-Disclosure Agreement (NDA) for its inability to submit necessary documents in support of meeting the experience criteria, a certificate, in original, certifying all the required information, issued by Chief Executive Officer/ Chief Finance Officer of the company along with a declaration that the bidding company is not in a position to submit the required documents owing to the NDA with an endorsement by Chartered Accountant/ Statutory Auditor/ Certified Public Accountant (not being an employee or a Director or not having any interest in the bidder(s) company / firm) would be accepted.
- b. Wherever Chartered Accountant/ Statutory Auditor/ Certified Public Accountant (not being an employee or a Director or not having any interest in the bidder(s) company/ firm) is not in a position to endorse such Chief Executive Officer/ Chief Finance Officer's certificate due to local regulations, Chief Executive Officer/ Chief Finance Officer's certificate without endorsement would be accepted provided a reference of the local regulation restricting this endorsement is given in the Chief Executive Officer/ Chief Finance Officer certificate

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### INTEGRITY AGREEMENT

Covering Letter required to be signed and submitted by the tenderer along with the Bid.

Ref:

Dated:

To,

Indian Oil Corporation Limited

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Sub: Submission of Offer for Tender no. \_\_\_\_\_ for

Dear Sir,

1. The Bidder acknowledges that Indian Oil Corporation Limited (IOCL) has signed the MOU with Transparency International India for the adoption of the Integrity Pact Program and stands committed to following the principles thereof as enumerated in the Integrity Agreement enclosed with the tender document.
2. The Bidder agrees that the Notice Inviting Tender (NIT) is an invitation to offer made on the condition that the Bidder will sign the enclosed Integrity Agreement, which is an integral part of tender documents, failing which the tenderer will stand disqualified from the tendering process. The Bidder acknowledges that the Bid would be kept open in its original form without variation or modification for a period of \_\_\_\_\_ days (state the number of days from the last date for the receipt of tenders stated in the NIT) AND THE MAKING OF THE BID SHALL BE REGARDED AS AN UNCONDITIONAL AND ABSOLUTE ACCEPTANCE of this condition of the NIT.
3. Bidder confirms acceptance and compliance with the Integrity Agreement in letter and spirit and further agrees that execution of the said Integrity Agreement shall be separate and distinct from the main contract, which will come into existence when bid is finally accepted by IndianOil. The Bidder acknowledges and accepts the duration of the Integrity Agreement, which shall be in line with Article 8 of the enclosed Integrity Agreement.
4. Bidder acknowledges that in the event of Bidder's failure to sign and accept the Integrity Agreement, while submitting the Bid, IndianOil shall have unqualified, absolute and unfettered right to disqualify the tenderer and reject the Bid in accordance with the terms and conditions of the tender.



Yours faithfully,

(Duly authorized Signatory of the Bidder)

 IndianOil	<p style="text-align: center;"><b>Bid document No:</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p style="text-align: center;"><b>Page 107 of 119</b></p>
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(Note - One copy of this letter along with the Integrity Agreement duly signed must be returned along with the offer).

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 <b>IndianOil</b>	<p style="text-align: center;"><b>Bid document No:</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p style="text-align: center;"><b>Page 108 of 119</b></p>
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( \_\_\_\_\_ Division)

Tender no. : \_\_\_\_\_

### INTEGRITY AGREEMENT

This Integrity Agreement is made at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2016  
BETWEEN

Indian Oil Corporation Limited, a company duly incorporated and validly existing under the provisions of Companies Act, 1956 and having its registered office at Indian Oil Bhavan, 9, Ali Yavar Jung Marg, Bandra (East), Mumbai 400051 (hereinafter referred as the 'Principal/Owner', which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns) And ..... (name and address of the Individual/firm/Company/consortium members through \_\_\_\_\_(mention details of duly authorized signatory) hereinafter referred to as the "Bidder/Contractor" and which expression shall unless repugnant to the meaning or context hereof include its successors and permitted assigns.

#### Preamble

WHEREAS the Principal/Owner has floated a tender (Tender No. : \_\_\_\_\_) (hereinafter referred to as "Tender") and intends to award, under laid down organizational procedures, contract/s purchase order/work order for .....(name of contract/order) or items covered under the tender hereinafter referred to as the "Contract".

AND WHEREAS the Principal/Owner values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relation with its Bidder(s) and Contractor(s).

AND WHEREAS, in order to achieve these goals, the Principal/Owner has appointed Independent External Monitors (IEM), to monitor the Tender process and the execution of the Contract for compliance with the principles as laid down in this Agreement.

AND WHEREAS to meet the purpose aforesaid both the parties have agreed to enter into this Integrity Agreement (hereinafter referred to as "Integrity Pact" or "Pact"), the terms and conditions of which shall also be read as integral part and parcel of the Tender documents and Contract between the parties.



NOW, THEREFORE, in consideration of mutual covenants contained in this Pact, the parties hereby agree as follows and this Pact witnesseth as under:

#### Article 1: Commitment of the Principal/Owner

The Principal/Owner commits itself to take all measures necessary to prevent corruption and to observe the following principles:

1. No employee of the Principal/ Owner, personally or through any of his/her family members, will, in connection with the Tender, or the execution of the Contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.





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2. The Principal/Owner will, during the Tender process, treat all Bidder(s) with equity and reason. The Principal/Owner will, in particular, before and during the Tender process, provide to all Bidder(s) the same information and will not provide to any Bidder(s) confidential / additional information through which the Bidder(s) could obtain an advantage in relation to the Tender process or the Contract execution.
3. The Principal/Owner shall endeavor to exclude from the Tender process any person, whose conduct in the past has been of biased nature.
4. If the Principal/Owner obtains information on the conduct of any of its employees which is a criminal offence under the Indian Penal Code (EPC) /Prevention of Corruption Act, 1988 (PC Act) or is in violation of the principles herein mentioned or if there be a substantive suspicion in this regard, the Principal/Owner will inform the Chief Vigilance Officer and in addition can also initiate disciplinary actions as per its internal laid down policies and procedures.

#### **Article 2-Commitments of the Bidder(s)/Contractor(s)**

1. The Bidder(s)/Contractor(s) commits himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the Tender process and during the Contract execution:
2. The Bidder(s)/Contractor(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal/Owner's employees involved in the Tender process or execution of the Contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the Tender process or during the execution of the Contract.
3. The Bidder(s)/Contractor(s) will not enter with other Bidder(s) into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to cartelize in the bidding process.
4. The Bidder(s)/Contractor(s) will not commit any offence under the relevant EPC/PC Act. Further the Bidder(s)/Contractor(s) will not use improperly, (for the purpose of competition or personal gain), or pass on to others, any information or document provided by the Principal/Owner as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
5. The Bidder(S)/Contractor(s) of foreign origin shall disclose the names and addresses of agents/representatives in India, if any. Similarly Bidder(S)/Contractor(s) of Indian Nationality shall disclose names and addresses of foreign agents/representatives, if any. Either the Indian agent on behalf of the foreign principal or the foreign principal directly could bid in a tender but not both. Further, in cases where an agent participates in a tender on behalf of one manufacturer, he would not be allowed to quote on behalf of another manufacturer along with the first manufacturer in a subsequent/ parallel tender

 <b>IndianOil</b>	<b>Bid document No:</b> <b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>	 <b>RANIKHERA MUNICIPAL CORPORATION</b> <b>तयसो मा ज्योतिर्गमय</b>	<b>Page 110</b> <b>of 119</b>
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for the same item. Copy of CVC guidelines dated 21/4/2004 is annexed hereto as **Annexure A**.

6. The Bidder(s)/Contractor(s) will, when presenting his bid, disclose (with each tender as per proforma enclosed) any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the Contract.
7. The Bidder(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.



### **Article 3. Disqualification from Tender Process and exclusion from future contracts**

1. If the Bidder(s)/Contractor(s), either before award or during execution of Contract has committed a transgression through a violation of Article 2 above or in any other form, such as to put his reliability or credibility in question, the Principal/Owner is entitled to disqualify the Bidder(s)/Contractor(s) from the Tender process or terminate the Contract, if already executed or exclude the Bidder/ Contractor from future contract award processes. The imposition and duration of the exclusion will be determined by the severity of transgression and determined by the Principal/Owner. Such exclusion may be for a period of 1 year to 3 years as per the procedure prescribed in the guidelines for holiday listing of the Principal/Owner.
2. The Bidder/ Contractor accepts and undertakes to respect and uphold the Principal/Owner's absolute right to resort to and impose such exclusion.
3. Apart from the above, the Principal/Owner may take action for banning of business dealings/holiday listing of the Bidder/Contractor as deemed fit by the Principal/Owner.

### **Article 4-Consequences of Breach**

1. Without prejudice to any rights that may be available to the Principal/Owner under law or the Contract or its established policies and laid down procedures, the Principal/Owner shall have the following rights in case of breach of this Integrity Pact by the Bidder(/Contractor(s):
2. **Forfeiture of EMD/Security Deposit:** If the Principal/Owner has disqualified the Bidder(s) from the Tender process prior to the award of the Contract or terminated the Contract or has accrued the right to terminate the Contract according to Article 3, the Principal/Owner apart from exercising any legal rights that may have accrued to the Principal/Owner, may in its considered opinion forfeit the Earnest Money Deposit/ Bid-Security amount of the Bidder/Contractor.
3. **Criminal Liability:** If the Principal/Owner obtains knowledge of conduct of a Bidder or Contractor, or of an employee or a representative or an associate of a Bidder or Contractor which constitutes corruption within the meaning of PC Act, or if the Principal/Owner has substantive suspicion in this regard, the Principal/Owner will inform the same to the Chief Vigilance Officer.

### **Article 5- Previous Transgression**

 <b>IndianOil</b>	<b>Bid document No:</b> <b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		<b>Page 111 of 119</b>
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1. The Bidder declares that no previous transgressions occurred in the last 3 years with any other Company in any country confirming to the anti-corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the Tender process.
2. If the Bidder makes incorrect statement on this subject, he can be disqualified from the Tender process or action can be taken for banning of business dealings/ holiday listing of the Bidder/ Contractor as deemed fit by the Principal/ Owner.
3. If the Bidder/Contractor can prove that he has resorted \recouped the damage caused by him and has installed a suitable corruption prevention system, the Principal/Owner may, at its own discretion as per laid down organizational procedures, revoke the exclusion prematurely.

**Article 6- Equal Treatment of all Bidders/Contractors/Subcontractors**

1. The Bidder(s)/Contractor(s) undertake(s) to demand from all subcontractors a commitment in conformity with this Integrity Pact. The Bidder/Contractor shall be responsible for any violation(s) of the principles laid down in this agreement/Pact by any of its Sub-contractors,/ sub-vendors.
2. The Principal/Owner will enter into Pacts on identical terms as this one with all Bidders and Contractors.
3. The Principal/Owner will disqualify Bidders, who do not submit, the duly signed Pact between the Principal/Owner and the bidder, along with the Tender or violate its provisions at any stage of the Tender process, from the Tender process.

**Article 7-Independent External Monitor (IEM)**

1. The Principal/Owner has appointed competent and credible Independent External Monitor(s) (IEM) for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
2. The IEM is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the Chairman, Indian Oil Corporation Limited.
3. The Bidder(s)/Contractor(s) accepts that the IEM has the right to access, without restriction, to all Project documentation of the Principal/Owner including that provided by the Contractor. The Contractor will also grant the IEM, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his or any of his Sub-Contractor's project documentation. . The IEM is under contractual obligation to treat the information and documents of the Bidder(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. In case of tenders having estimated value of Rs 150 Crores or more, the Principal/Owner will provide to the IEM sufficient information about all the meetings among the parties related to the Project and shall keep the IEM apprised of all the developments in the Tender Process.

	<b>Bid document No:</b>		<b>Page 112 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

5. As soon as the IEM notices, or believes to notice, a violation of this Pact, he will so inform the Management of the Principal/Owner and request the Management to discontinue or take corrective action, or to take other relevant action. The IEM can in this regard submit non-binding recommendations. Beyond this, the IEM has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The IEM will submit a written report to the Chairman, Indian Oil Corporation Limited within 6 to 8 weeks from the date of reference or intimation to him by the Principal/Owner and, should the occasion arise, submit proposals for correcting problematic situations.
7. If the IEM has reported to the Chairman, Indian Oil Corporation Limited a substantiated suspicion of an offence under the relevant IPC/PC Act, and the Chairman, IndianOil has not, within reasonable time taken visible action to proceed against such offence or reported it to the Chief Vigilance Officer, the IEM may also transmit the information directly to he Central Vigilance Commissioner.



The word “IEM” would include both singular and plural.

#### **Article 8 - Duration of the Pact**

1. This Pact begins when both the parties have legally signed it. It expires for the Contractor/Vendor 12 months after the completion of work under the Contract or till the continuation of defect liability period, whichever is more and for all other Bidders, till the Contract has been awarded.
2. If any claim is made/lodged during the time, the same shall be binding and continue to be valid despite the lapse of this Pact as specified above, unless it is discharged/determined by the Chairman, IndianOil.

#### **Article 9-Other Provisions**

1. This Pact is subject to Indian law, place of performance and jurisdiction is the Head Office/Head quarters of the Division of the Principal/Owner, who has floated the Tender.
  2. Changes and supplements need to be made in writing. Side agreements have not been made.
  3. If the Contractor is a partnership or a consortium, this Pact must be signed by all the partners and consortium members. In case of a Company, the Pact must be signed by a representative duly authorized by board resolution.
  4. Should one or several provisions of this Pact turn out to be invalid, the remainder of this Pact remains valid. In this case, the parties will strive to come to an agreement to their original intentions.
  5. Any dispute or difference arising between the parties with regard to the terms of this Agreement/Pact, any action taken by the Owner/Principal in accordance with this Agreement/ Pact or interpretation thereof shall **not** be subject to arbitration.
-

 <p>IndianOil</p>	<p style="text-align: center;"><b>Bid document No:</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p style="text-align: center;"><b>Page 113 of 119</b></p>
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### Article 10- LEGAL AND PRIOR RIGHTS

1. All rights and remedies of the parties hereto shall be in addition to all the other legal rights and remedies belonging to such parties under the Contract and/or law and the same shall be deemed to be cumulative and not alternative to such legal rights and remedies aforesaid. For the sake of brevity, both the Parties agree that this Pact will have precedence over the Tender/Contract documents with regard any of the provisions covered under this Pact.

IN WITNESS WHEREOF the parties have signed and executed this Pact at the place and date first above mentioned in the presence of following witnesses:

\_\_\_\_\_

(For and on behalf of Principal/Owner)

\_\_\_\_\_



(For and on behalf of Bidder/Contractor)

WITNESSES:

\_\_\_\_\_ (signature, name and address)

\_\_\_\_\_ (signature, name and address)

Note: In case of Purchase Orders wherein formal agreements are not signed references to witnesses may be deleted from the last part of the Agreement.

	<b>Bid document No:</b>		<b>Page 114 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>		

### PAYMENT TO VENDORS THROUGH ELECTRONIC MODE

Payment system to Vendors through Electronic Modes such as EFT, RTGS etc has been introduced by the Corporation. For availing this facility, a consent letter from the Vendor as also the Bank Account details of the Vendor is required.

Tenderers are requested to submit their Consent Letter as per the format given below along with the enclosures as required:-

Dated:

To,

M/s Indian Oil Corporation Ltd.

Address



Dear Sir,

With reference to your advice, we hereby agree to accept the payment of our bills through “Real Time Gross Settlement (RTGS)/National Electronic Fund Transfer (NEFT)/Electronic Mode”.

The desired bank account details are given below:

1.	Vendor Code allotted by IndianOil in SAP	
2.	Name of Beneficiary (i.e. IndianOil Vendor )	
3.	Name of the Beneficiary’s Bank	
4.	Address of the Beneficiary’s Bank Branch	
5.	Contact details of Branch with STD Code	
6.	Beneficiary’s Bank Account No. ( as per cheque copy )	
7.	Beneficiary’s Account Type (SB/CC/CA)	
8.	Beneficiary’s Bank IFSC Code ( 11 Digit)	
9.	Mobile No of Beneficiary (One Number only)	
10.	E-Mail Id of Beneficiary (One Mail Id only)	

A blank cancelled cheque leaf relating to the above bank account is enclosed for verifying the accuracy of the bank account details.

 <p>IndianOil</p>	<p align="center"><b>Bid document No:</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>		<p align="center"><b>Page 115 of 119</b></p>
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I hereby declare that the particulars given above are correct and complete. I agree to receive transactional SMS / E-Mail Alerts from IndianOil with regard to my bill payments.

(Signature of Account Holder)

Seal of the Vendor

Encl.: Cancelled Cheque



\*\*\*\* We hereby confirm that the above bank account details of beneficiary are correct in all respects and the account of Beneficiary (IndianOil vendor) is maintained at our bank branch.

(Name of Bank & Branch)

Authorized Signatory



\*\*\*\* Verification required only in case vendors name is not printed/appearing on the cancelled cheque leaf being submitted to IndianOil office.



 <p>इंडियनऑयल IndianOil</p>	<p style="text-align: center;"><b>Bid document No:</b></p> <p><b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b></p>	 <p>दिल्ली नगर निगम DELHI MUNICIPAL CORPORATION तयसो मा ज्योतिर्गमय</p>	<p><b>Page 116 of 119</b></p>
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**DRAFT CONCESSION AGREEMENT (Enclosed separately)**

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 <b>IndianOil</b>	Bid document No:	 <b>Page 117 of 119</b>
	<b>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</b>	

**PRICE BID (Sample Format)**

**Item Rate BoQ**

Tender Inviting Authority: General Manager(AE),BD-SCOPE, Corporate Office, Indian Oil Corporation Ltd.

Name of Work: Selection of Concessionaire for Processing and Disposal of municipal solid waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi



Contract No:

Name of the Bidder/

**PRICE SCHEDULE**



**(This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevent columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only )**

Sl. No.	Item Description	Quantity	Units	Quoted Currency	BASIC RATE In Figures To be entered by the Bidder in ₹. P	GST Rate	TOTAL AMOUNT (exclusive of Taxes) ₹. P	TOTAL AMOUNT (inclusive of Taxes) ₹. P	TOTAL AMOUNT In Words
1	Royalty charges payable to North DMC by the bidder for the mixed Municipal Solid Waste in "as is where is condition"	1	MT	INR		0%	0.00	0.00	INR Zero Only
<b>Total in Figures</b>							<b>0.00</b>	<b>0.00</b>	INR Zero Only

 <p>IndianOil</p>	<p>Bid document No:</p> <p>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</p>		<p>Page 118 of 119</p>
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 <p>इंडियनऑयल IndianOil</p>	<p style="text-align: center;">Bid document No:</p> <p>Selection of Concessionaire for Processing and Disposal of Municipal Solid Waste (mixed waste) by establishing Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.</p>	 <p>रानिकहेरा नगरपालिका RANIKHERA MUNICIPAL CORPORATION तयसो मा ज्योतिर्गमय</p>	<p>Page 119 of 119</p>
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**Processing, Disposal & generating value from Municipal Solid Waste on Design, Build, Finance, Operate & Transfer basis for a Waste to Energy plant including Processing Facility(ies) through Public Private Partnership at Ranikhera or alternate suitable municipal land, New Delhi**

**DRAFT CONCESSION AGREEMENT**

**\*\* [Month], 20\*\***

**Between**

**[North Delhi Municipal Corporation]**

**[IndianOil Corporation Ltd]**

**&**

**[Concessionaire]**

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## CONCESSION AGREEMENT

This CONCESSION AGREEMENT (Agreement) is entered into on this ..... day of ....., 20.....

### BETWEEN

1. North Delhi Municipal Corporation a body duly constituted under ..... and having its Headquarters at Dr. S.P. Mukherjee Civic Centre, JLN Marg, New Delhi (hereinafter referred to as the “NORTH DMC” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its administrators, successors, and permitted assigns)

AND

2. Indian Oil Corporation Limited a company duly registered and validly existing under the laws of India and having its registered office at [•] and Business Development Office at ..... (hereinafter referred to as the “IndianOil” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its, successors and permitted assigns)

AND

3. XXXX XXXX XXXX, a company incorporated under the provisions of the ..... and having its registered office(s) at [•], (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors and permitted assigns and substitutes).

### WHEREAS:

- (A) NORTH DMC aims to utilize Municipal Solid Waste (MSW) to produce valuable products including but not limited to Compressed Bio-Gas (CBG), Ethanol, electricity etc., thereby reducing landfill emissions and pollution from MSW, which inter-alia shall include the development of solid waste management projects;
- (B) NORTH DMC is desirous of implementing such development and operation of Waste to Energy plant (the “Project”) by seeking private sector participation;
- (C) IndianOil a fortune 500 and a Maharatna company under the administrative control of Ministry of Petroleum and Natural Gas, Government of India and is engaged in refining, pipeline transportation and marketing of petroleum products, natural gas, CBG and petrochemicals. IndianOil is pursuing greater reliance on renewable energy sources towards the commitment to contribute to the reduction of carbon footprint by expanding its renewable energy portfolio of solar, wind and bio-fuels and towards that end is engaged in the development of waste to energy projects in collaboration with municipalities;
- (D) IndianOil has agreed to collaborate with NORTH DMC for development of a Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi.
- (E) IndianOil for & on behalf of NORTH DMC had invited a Global Bid for short-listing of bidders for undertaking the development, operation and maintenance of the Project on Design, Build, Finance, Operate and Transfer (the “DBFOT”) basis and
- (F) After evaluation of the bids received, based on the recommendation of IndianOil, NORTH DMC had accepted the bid of the {selected bidder/ Consortium} (the “Selected Bidder”/

“Concessionaire”)) and North DMC issued a Letter of Award (hereinafter called the “LOA”) No. .... dated ..... to the Selected Bidder/Concessionaire requiring, inter alia, the execution of this Agreement within 30 (thirty) days of the date of issue thereof to undertake and perform the obligations under the Concession Agreement for implementing the Project.

- (G) NORTH DMC and INDIANOIL has agreed to the said request of the Selected Bidder and the Parties have accordingly agreed to enter into this Agreement with the Concessionaire for Development and Operation of the Waste to Energy Plant at Ranikhera or alternate suitable municipal land, New Delhi on basis, subject to and on the terms and conditions set forth hereinafter.

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

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

### 1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 32) 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. The words and expressions used but not defined in this Agreement and defined in the Environment Protection Act, 1986 (the “EPA”), Solid Waste Solid Waste Management Rules, 2016 (the “SWM Rules”), Plastic Waste Management Rules, 2016 (the “PWM Rules”) shall have the respective meanings as are assigned to them, respectively, in the EPA, the SWM Rules, the PWM Rules.

### 2. Interpretation

2.1 In this Agreement, unless the context otherwise requires,

- i. the words, phrases and expressions defined hereinabove in this Article 1 or Article 32 or defined elsewhere by description in this Agreement, together with their respective grammatical variations and cognate expressions shall carry the respective meanings assigned to them in the said Article or in this Agreement and shall be interpreted accordingly. Expressions which have not been defined in this Agreement shall carry the respective meanings assigned to them in their ordinary applicability read in context with the manner of their usage in this Agreement or in their respective technical sense, as the case may be;
- ii. 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 in to hereunder;
- iii. references to laws of the State, 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;
- iv. 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;
- v. 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;
- vi. 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;
- vii. references to “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning, trial runs and other activities incidental to the construction, and “construct” or

- “build” shall be construed accordingly;
- viii. 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;
  - ix. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
  - x. any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
  - xi. any reference to day shall mean a reference to a calendar day;
  - xii. reference to a “business day” shall be construed as reference to a day (other than a 2nd and 4th Saturday, Sunday and public holiday or holiday declared under Negotiable Instruments Act, 1881 in NCT of Delhi) on which banks in NCT of Delhi are generally open for business;
  - xiii. any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
  - xiv. any reference to “quarter” shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;
  - xv. 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;
  - xvi. 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;
  - xvii. the words importing singular shall include plural and vice versa;
  - xviii. references to any gender shall include the other and the neutral gender;
  - xix. “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
  - xx. “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;
  - xxi. references to the “winding-up”, “dissolution”, “insolvency”, or “re-organization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organization, dissolution, arrangement, protection or relief of debtors;
  - xxii. save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, li-

cense or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub- clause (u) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- xxiii. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party in this behalf and not otherwise;
  - xxiv. 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;
  - xxv. 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; reference 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 reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
  - xxvi. 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.
- 2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to NORTH DMC shall be provided free of cost and in three copies, and if NORTH DMC is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 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.
- 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.
- 2.5 The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Delay Liquidated Damages, the Performance Liquidated Damages, the Availability Liquidated Damages, and any other form, nature of Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.
- 2.6 Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and indemnify, INDIANOIL and NORTH DMC for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and NORTH DMC shall indemnify the Concessionaire for the acts and omissions of the NORTH DMC Related Parties, as if they were the acts and omissions of INDIANOIL and NORTH DMC, as the case may be.

2.7 Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the NORTH DMC and or INDI-ANOIL as the case may be nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

### **3. Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

### **4. Priority of agreements, clauses and schedules**

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).

Subject to the provisions of above Clause 4, 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.

## ARTICLE 2 SCOPE OF WORK

### 1. Scope of Work

The scope of work of the Concessionaire under this Agreement (the “Scope of Work”) shall mean and include, during the Concession Period:

- 1.1. Design, Build, Finance, Operate and Maintain (DBFOM) Waste to Energy Plant, Processing facility(ies), Material Recovery Facility(ies), Sanitary Landfill Site (SLF) and other facilities of similar nature, as per requirement, of design capacity of 2500 tonnes per day (TPD) at the site identified and provided by NORTH DMC for daily processing/recycling/disposal of the mixed Municipal Solid Waste (MSW) & free from Construction & Demolition Waste in compliance with the this Agreement EPA, the SWM Rules, the PWM Rules as amended from time to time as well as the instructions/ orders/ advise issued by bodies like Supreme Court, National Green Tribunal, State Pollution Control Bodies or any other Statutory agencies and all other Applicable Laws.
- 1.2. To produce CBG and/or Ethanol from the said Waste to Energy Plant including other valuable energy products.
- 1.3. To sell CBG and Ethanol to IndianOil at rate of ..... per kg for CBG & at rate of ..... per litre of Ethanol & as per technical specifications, modalities mentioned in CBG Sale Purchase Agreement (**Schedule 18**) & Ethanol Sale Purchase Agreement (**Schedule 19**).
- 1.4. Dispose/sell processed waste, by-products, recycled products, etc.; and
- 1.5. Discharge the Scope of Services more specifically set out in **Schedule1**.

## ARTICLE 3 THE CONCESSION

### 1. Grant of Concession

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, NORTH DMC, awards to the Concessionaire the concession set forth herein including exclusive right, license and authority to construct and develop the Project Facilities, and Operate and Maintain the Project for a period of 30 (Thirty) years commencing from Scheduled Commercial Operation Date (the “COD”) of the Processing Facilities, and sell the entire CBG and Ethanol produced to IndianOil at the Price as set forth in Article ..... and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Agreement.

Provided that the Concessionaire may seek extension of the Concession Period in accordance with the provisions of Clause 4 in this Article.

### 2. Rights Associated with the Grant of Concession

Without prejudice to the generality of foregoing, the Concession hereby granted to the Concessionaire shall oblige or entitle (as the case may be) the Concessionaire to:

- i. the Right of Way, access and license rights to use the Site for the purpose of and to the extent conferred by the provisions of this Agreement upon payment of a nominal land rental of ₹ 1 per sqm per annum;
- ii. access to the Site from the Compliance Date, for the sole purpose of implementing the Project, provided, however, to the extent of applicability of Article 14, the Concessionaire shall be entitled to access the Site prior to the Compliance Date;
- iii. To design, engineer, finance, procure, construct, install, commission, operate and maintain the Project either itself or through such Person/Sub-Contractor as may be selected by it in such a manner so as to maximize yield of CBG, Ethanol and other valuable streams from the Project & minimize disposal of residual waste to Sanitary Land Fill;
- iv. Upon achieving COD of the Project, forming part of the Project, to manage, operate and maintain the same till the Termination Date of the Project;
- v. Upon achieving COD of the Project, forming part of the Project, to sell the entire produce of CBG and/or Ethanol from the Plant to IndianOil under the CBG Sale and Purchase Agreement and Ethanol Sale and Purchase Agreement;
- vi. To obtain financing for the Project in the form of equity or debt, from domestic and from recognized foreign sources, through public issues, private placements or direct borrowings or investment from the capital markets, banks, lending institutions, mutual funds, insurance companies, pension funds, provident funds and any other source as it may deem necessary for implementing the Project; and

Provided that NORTH DMC shall be informed by the Concessionaire as to the creation of any security interest in favour of the Lenders within a period of 14 (fourteen) days from the date such security interest comes into existence and the Concessionaire shall provide to the NORTH DMC within such



time, notarized true copies of any and all documents/ agreements relating thereto.

Provided further, nothing contained herein shall (i) absolve the Concessionaire from its responsibilities to perform/dischage any of its obligations under and in accordance with the provisions of this Agreement; (ii) authorize or be deemed to authorize the Lenders to implement and execute Project themselves; and (iii) under any circumstances amount to any guarantee from or recourse to NORTH DMC;

- vii. To Process entire (up to the maximum quantity agreed under the scope of work) mixed Municipal Solid Waste delivered at the WtE plant area by NORTH DMC and/or its contracted agencies, dispose the residual inert matter and rejected waste/ processing rejects and air pollution control residue at the Sanitary Land Fill (SLF) facility to be developed by the Concessionaire in accordance with the Applicable Laws.
- viii. Apart from selling CBG and/or Ethanol to IndianOil, Concessionaire to store, use, appropriate, market and sell or dispose-off all the constituents / products / by- products from the mixed MSW (free from Construction & Demolition Waste), including but not limited to electricity, bio manure, other chemicals such as sulphuric acid, carbon dioxide, residual inert waste and to further retain and appropriate any revenues generated from the sale of such products/ by-products in accordance with this Agreement;
- ix. To retain the fiscal incentives from Central Government and State Government schemes and benefits accruing in respect of or on account of the Project including Certified Emission Reductions (CERs) or Verified Emission Reductions (VERs) under Kyoto Protocol / Climate Change initiative or any other Global/ National Climate Change initiative or incentive;
- x. To obtain the utilities required for enabling the construction of the Project, by fulfilling eligibility conditions (if any) and paying the applicable charges for the utilities;
- xi. To hold, possess, control the Sites, in accordance with the terms of the Concession Agreement, for the purposes of the due implementation of the Project;
- xii. To develop the Project using such technology to establish Waste to Energy plant(s) having a processing capacity of 2500 TPD and produce CBG, Ethanol, etc., and to retain and appropriate any revenues generated from the sale of all the constituents / products / by-products; such technology should be suitable and commercially viable for the purposes of implementing the Project, in accordance with terms of this Agreement, Applicable Laws and Good Industry Practice;
- xiii. To modify, adapt, upgrade or change the technology, from time to time, based on actual operations of the Processing Project Facility, Good Industry Practices and the requirements of the Project except in respect of the building by-laws, subject to no disruption in services and obligations;
- xiv. The Concessionaire may, as per requirement and in agreement with NORTH DMC, subject to fulfilling the eligibility conditions and procuring all required approvals from related regulatory/ statutory authorities, develop,

operate and maintain additional recycling or Processing Facilities on the Site(s), provided that the same does not cause any adverse effect on its Project related obligations or increases in any manner the financial liability (including in relation to land requirement) of NORTH DMC under the Agreement or adversely affects production of CBG and/or Ethanol from the Project. In the event and so long as the Concessionaire meets the foregoing conditions, NORTH DMC shall render such reasonable assistance that Concessionaire requests in this connection.

**3. Concession Period**

Subject to early Termination of this Agreement in accordance with its terms, the term of this Agreement is 30 (thirty) years from the Commercial Operation Date (the “Concession Period”) during which the Concessionaire is authorized to implement the Project on DBFOT Model including management of all facilities and resources required for management of MSW in accordance with the provisions hereof:

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Commercial Operation Date and ending on the Termination Date.

NORTH DMC shall with prior consent of IndianOil, at any time prior to the date of expiry of the Concession Period, have the right to grant concession with respect to the Project for a period, which it may determine in consultation with IndianOil, after the expiry of the Concession Period, through competitive bidding amongst developers other than itself and any undertaking owned by it. NORTH DMC further agrees that the Concessionaire shall have the right to participate in such competitive bidding and make its offer in accordance with the terms thereof.

**4. Extension of Concession Period**

NORTH DMC in discussion with IndianOil & with mutual agreement with the Concessionaire, in the event the Concessionaire does not commit any Event of Default during the last 5 (five) years of the Concession Period, agree to extend the Concession after the expiry of the Concession Period on mutual terms and conditions thereafter on year to year basis with mutual agreement between the Parties subject to a maximum of 5 (five) years by issuing a notice to the Concessionaire by no later than 6 (six) months prior to the date of expiry of the Concession Period.

Provided, the Concessionaire agrees & undertakes that any such extension shall also lead to an extension of license or any other agreement(s) (if applicable) for an equal period to make such agreements co-terminus with extended Concession Period, as may be required to ensure continued performance of the obligations of the Concessionaire under this Agreement, the Ethanol Sale and Purchase Agreement and the CBG Sale and Purchase Agreement.

Provided further that any extension of Concession Agreement shall not ipso facto lead to extension of CBG Sale and Purchase Agreement, Ethanol Sale and Purchase Agreement and the same shall be extendable only at discretion of IndianOil and on such terms and conditions and for such period as may be agreed to between IndianOil and Concessionaire.

## ARTICLE 4 CONDITIONS PRECEDENT

### 1. Conditions Precedent

Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 11, 12, 19, 20, 22, 31, and 32 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4 (the “Conditions Precedent”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of this Article 4, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.

#### A. Conditions Precedent for NORTH DMC

The Concessionaire may, upon providing the Performance Security to NORTH DMC accordance with Article 9 and at any time after 15 (fifteen) days from the Execution Date or on an earlier day acceptable to NORTH DMC, by notice require NORTH DMC to satisfy any or all of the Conditions Precedent set forth in this Article 4 within a period of 30 (thirty) days of receipt of the notice, or such longer period not exceeding 45 (forty five) days as may be specified therein, and the Conditions Precedent required to be satisfied by NORTH DMC shall be deemed to have been fulfilled when the NORTH DMC shall have:

- (a) Procured for the Concessionaire the Right of Way to the Site(s) in accordance with **Article 10**;
- (b) Provided a portion of land at the designated site to the Concessionaire for setting up of Project Facilities of the WtE Plant, vacant and free from Encumbrances, up on payment of nominal land rental of ₹ 1 per sqm per annum;
- (c) Give acceptance at the request of the Concessionaire to Execute and procure execution of Substitution Agreement;
- (d) Facilitated and ensured that the Site(s) and vacant and unencumbered possession of all Site(s) handed over to the Concessionaire.
- (e) Facilitated the Concessionaire in terms of obtaining all Applicable Permits from the Departments concerned/ Competent Authority, if requested by the Concessionaire, including permits in relation to environmental protection and conservation including but not limited to those specified in **Schedule 2**;
- (f) Provided Access to the Site as per Good Industry Practices.

Provided, that upon request in writing by NORTH DMC, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Article.

#### B. Conditions Precedent for the Concessionaire

The Conditions Precedent required to be satisfied by the Concessionaire within a period of 90 (ninety) days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- a) Provided to NORTH DMC the copies (certified as true copies by an authorized officer of the Concessionaire) of the constitutional documents of the Concessionaire;

- b) Provided the Performance Security to NORTH DMC pursuant to Article 9;
- c) Prepared and submitted a detailed project report, covering technology proposed, demand assessment, technical feasibility, detailed cost estimates, capital investment plan, project financing details, revenue projections, environment & social impact assessment and detailed financial analysis, to NORTH DMC, consistent with the technical plan submitted during the bidding stage within 3 (three) months from Execution Date;
- d) Executed the Financing Agreements and delivered to NORTH DMC 3 (three) true copies thereof, duly attested by a director of the Concessionaire;
- e) Delivered to NORTH DMC, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Concessionaire, along with copies of the Financial Model in an editable version either in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- f) Achieved financial closure i.e. procured and raised all the funds (debt, equity, etc.) necessary to finance the Project as evidenced by the funding documents becoming effective and the Concessionaire having immediate access to the funds there under;
- g) Provided notarized true copies of its board resolution authorizing the execution, delivery and performance of this Agreement by the Concessionaire;
- h) Procured all Applicable Permits unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement;
- i) Delivered to NORTH DMC from the Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Article 7;
- j) Delivered to NORTH DMC a legal opinion from the legal counsel of the Concessionaire with respect to NORTH DMC of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- k) Provided proof of its shareholding pattern, evidenced by certificates from the authorized signatory of the Concessionaire.
- l) Executed and procured execution of Substitution Agreement with NORTH DMC and the Lenders in the agreed form set out in **Schedule 9**;
- m) Taken over vacant and unencumbered possession of all the Site(s) from NORTH DMC;
- n) Procured at its own cost, water connection, power connection and other service connections to the Site
- o) Executed the Power Purchase Agreement with Power Distribution Company or a Customer (as the case may be) and/ or Executed the CBG Sale & Purchase Agreement and Ethanol Sale and Purchase Agreement with IndianOil and delivered a copy thereof;
- p) Provided the CBG Security & Ethanol Security (as the case may be) to IndianOil pursuant to Schedule 18& Schedule 19.

Provided that upon request in writing by the Concessionaire, NORTH DMC may in its sole discretion, waive fully or partially any or all the Conditions Precedent set forth in this Article other than the items set forth in Clause B(o) and B(p) above. For avoidance of doubt, (x) the execution of CBG Sale & Purchase Agreement and Ethanol Sale and Purchase Agreement; and (y) the provision of the CBG Security and Ethanol Security can be waived only by IndianOil.

**C. Conditions Precedent to be satisfied by IndianOil**

IndianOil shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- (a) executed a CBG Sale & Purchase Agreement and Ethanol Sale and Purchase Agreement with the Concessionaire within a period of 30 (thirty) days of the Execution Date, or such longer period not exceeding 45 (forty five) days from the Execution Date as may be specified therein. Provided, that upon request in writing by IndianOil, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Article 4.

**2. Satisfaction of Conditions Precedent**

- i. Each Party shall make all reasonable endeavors at its respective cost and expense to procure the satisfaction in full of the Conditions Precedent relating to it within a period specified for each party from the Execution Date (the “Compliance Period”) unless specified otherwise;
- ii. The later of the date within such time when NORTH DMC or the Concessionaire fulfills its Conditions Precedent (unless NORTH DMC or IndianOil (as the case may be) waives the same for the Concessionaire) shall be the date from which the relevant and respective obligations of the Parties hereunder shall commence (the “Compliance Date”), respectively.
- iii. Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- iv. The Parties shall notify each other in writing at least once every week 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.
- v. The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, subject to confirmation by NORTH DMC, notify NORTH DMC and IndianOil of the occurrence of the Compliance Date.
- vi. North DMC and / or IndianOil shall reserve the right to extend the period of Conditions Precedent for the Concessionaire only after fully satisfying themselves that the delay for satisfying Conditions Precedent are beyond the control & after reasonable endeavour of the Concessionaire.

**3. Damages for delay by the NORTH DMC**

In the event that: (i) NORTH DMC does not procure fulfillment or waiver of the Condition Precedent set forth in this Article, within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Con-

cessionaire or due to Force Majeure Event, NORTH DMC shall pay Damages to the Concessionaire of an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the bid security.

**4. Damages for delay by the Concessionaire**

In the event that: (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Article 4 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by NORTH DMC or IndianOil or due to Force Majeure Event (as the case may be), the Concessionaire shall pay Damages to NORTH DMC 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 fulfillment of the Conditions Precedent, up to the maximum amount equal to the bid security and upon reaching such maximum amount, NORTH DMC may, in its sole discretion and subject to the provisions of Article 23, terminate the Agreement. Provided that in the event of delay by NORTH DMC in procuring fulfillment of the Conditions Precedent specified in this Article 4 or IndianOil as specified in this Article 4, no Damages shall be due and payable by the Concessionaire under this Clause until the later of the date on which the NORTH DMC and IndianOil shall have procured fulfillment of the Conditions Precedent specified in Article 4.

(b) In the event that: (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Article 4 within the period specified in that Article; and (ii) the delay has not occurred as a result of breach of this Agreement by the North DMC or failure or delay by IndianOil to execute Ethanol Sale & Purchase Agreement, CBG Sale and Purchase Agreement or due to Force Majeure Event (as the case may be), the Concessionaire shall in addition to the Damages to North DMC, pay Damages to IndianOil of an amount calculated at the rate of [0.2% (zero point two per cent)] of the CBG Security and / or Ethanol Security (as the case may be) for each day's delay until the fulfillment of the Conditions Precedent, up to the maximum amount equal to the CBG Security and / or Ethanol Security (as the case may be) and upon reaching such maximum amount, IndianOil may, in its sole discretion and subject to the provisions of Article 23, terminate this Agreement, Ethanol Sale & Purchase Agreement and CBG Sale and Purchase Agreement. Provided that in the event of delay by North DMC in procuring fulfillment of the Conditions Precedent specified in Article 4 or IndianOil as specified in Article 4, no Damages shall be due and payable by the Concessionaire under this Clause until the later of the date on which the North DMC and IndianOil shall have procured fulfillment of the Conditions Precedent specified in Article 4.

**5. Commencement of the Concession Period**

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 1 of Article 4, are satisfied or waived, as the case may be, shall be the Compliance Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Compliance Date hereunder, by notice convey the particulars thereof to NORTH DMC, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

A timeline chart is given for benefit of all parties:

SN	Event Description	Date (days)
a.	Bid document invitation/ publishing date	$T_0$
b.	Award of LoA to the successful Bidder by North DMC	$T_0 + 120 = T_1$
c.	Signing of Concession Agreement (Execution Date)	$T_1 + 21 = T_2$
d.	Conditions Precedent to be satisfied by Concessionaire	Within $(T_2 + 90) = T_3$
e.	Conditions Precedent to be satisfied by North Delhi Municipal Corporation	Within $(T_2 + 45) = T_4$
f.	Conditions Precedent to be satisfied by IndianOil	Within $(T_2 + 45) = T_5$
g.	Compliance Date & Commencement of Construction Activities	Greater of $T_3, T_4$ & $T_5 = T_6$
h.	Scheduled Construction Completion Date	$T_6 + 730 = T_7$
i.	Trial Run period	$T_7 + 90 = T_8$
j.	Commercial Operations Date & Commencement of Concession Period	$T_8$

Note:

- a. For Construction Period specific milestones, please refer to **Schedule 12**.
- b. For any delays & reasons solely not attributable to the Concessionaire substantiated with proper documentation & data, North DMC may suitably revise the project milestones & other timelines relating to setting up of the WtE plant. The responsibility of proving the reasons for delay as not attributable to the Concessionaire shall rest upon the Concessionaire & North DMC undertakes to act reasonably as far as possible & holding good the principles & law of natural justice.

#### 6. Non-Compliance with Conditions Precedent

- a. In the event the Conditions Precedent for Concessionaire have not been satisfied within the stipulated time and NORTH DMC and/or IndianOil has not waived, fully or partially, such conditions relating to the Concessionaire, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and NORTH DMC and/or INDIANOIL shall not be liable in any manner whatsoever to the Concessionaire or Persons claiming through or under it;

- b. In the event this Agreement fails to come into effect on account of non-fulfillment of the Concessionaire's Conditions Precedent, NORTH DMC and IndianOil shall be entitled to forfeit and encash the Performance Security and CBG Security, Ethanol Security (as the case may be);
- a. In the event the Conditions Precedent for NORTH DMC have not been satisfied within the stipulated time, then the Concessionaire shall have the option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for NORTH DMC or (ii) terminate this Agreement. It is specifically agreed between the Parties that no damages shall be payable by North DMC to the Concessionaire upon termination of this Agreement on account of non-fulfillment of conditions precedent by North DMC.
- b. In the event the Conditions Precedent for IndianOil have not been satisfied within the stipulated time, then the Concessionaire and North DMC shall have the option to either: (i) mutually extend the time period for satisfaction of the Conditions Precedent for IndianOil or (ii) terminate this Agreement in respect of IndianOil. It is specifically agreed between the Parties that no damages shall be payable by IndianOil to either Concessionaire or North DMC upon termination of this Agreement on account of non-fulfillment of conditions precedent by IndianOil.
- c. In the event this Agreement fails to come into effect on account of the non-fulfillment of NORTH DMC Conditions Precedent, NORTH DMC, shall return the Performance Security to the Concessionaire; provided there are no outstanding claims of NORTH DMC on the Concessionaire.
- d. In the event this Agreement fails to come into effect on account of the non-fulfillment of IndianOil Conditions Precedent by IndianOil, IndianOil shall return the CBG Security, Ethanol Security to the Concessionaire; provided there are no outstanding claims of IndianOil on the Concessionaire.

## **7. Termination upon delay**

Without prejudice to the Damages for delay prescribed in Clauses 3 and 4 above, the Parties expressly agree that in the event the Compliance Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Compliance Date is for reasons attributable to the Concessionaire, the Performance Security or the bid security together with the CBG Security and Ethanol Security, as the case may be, of the Concessionaire shall be encashed and appropriated by the NORTH DMC and IndianOil as the case may be as Damages thereof.

## **ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE**

### **1. General Obligations of the Concessionaire**

- a) Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfill, comply with and perform all its



obligations set out in this Agreement or arising hereunder.

- b) Perform and fulfill all of the Concessionaire's obligations with respect to the Project set out in **Schedule 1** and under this Agreement;
- c) The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, gas and other utilities as may be necessary or required for the operation of the Project. The Concessionaire shall obtain all Applicable Permits and comply with the conditions there under for the procurement and use of such infrastructure facilities and utilities.
- d) During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits including as specified in **Schedule 2**) and keep in force and comply with the conditions of all Applicable Permits for the development, Operation and Maintenance of the Project.
- e) The Concessionaire shall comply with all Applicable Laws (including without limitation all public and labour related laws and health, safety, and sanitation laws, as then in force) and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.
- f) The Concessionaire shall procure that its Sub-Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person. For the purpose of this Agreement, the discharge of obligations by the Sub-Contractors shall be the obligation of the Concessionaire.
- g) The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - i. procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - ii. perform and fulfill its obligations under the Financing Agreements;
  - iii. maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and be solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby agrees to keep NORTH DMC and/or INDIANOIL indemnified against any claims, damages, expenses or losses in this regard and in no case and for no purpose shall the NORTH DMC/ IndianOil be treated as the employers of the Concessionaire, in this regard;
  - iv. not do or omit to do any act, deed or thing which may in any manner violates any provision of this Agreement;
  - v. always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement

or Applicable Laws and Applicable Permits;

- vi. procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements as specified in **Schedules 3, 4 and 5** and Good Industry Practice;
- vii. support, cooperate with and facilitate the NORTH DMC and IndianOil in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- viii. to comply with the timelines for setting up the Project Facilities;
- ix. endeavour to improve the ancillary conditions and infrastructure related to the Project including assistance to informal recycling workers, procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- x. right to enter into sub-contracts for the purposes of and subject to the terms of this Agreement;
- xi. disposal of residual inert matter and rejected waste at the Sanitary Landfill Site to be developed by the concessionaire within the WtE plant site as per the applicable provisions of EPA 1986, SWM Rules 2016, PWM Rules 2016 and any amendments thereof & including the instructions/ orders/ advise issued by bodies like Supreme Court, National Green Tribunal, State Pollution Control Bodies or any other Statutory agencies & any other Applicable Laws;
- xii. be responsible for all the health, security, environment and safety aspects of the Project from Effective Date at all times during the Concession Period;
- xiii. ensure that the Project remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- xiv. upon receipt of a request thereof, afford access to the Project to the authorized representatives of NORTH DMC including IndianOil for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement;
- xv. bear all expenses towards uniforms, safety gear and waste handling equipment to all the waste lifters and drivers;
- xvi. ensure that the project is operational on all calendar days of the year subject to any Scheduled Maintenance Programme approved by North DMC;
- xvii. comply with terms and conditions of CBG Sale and Purchase Agreement and Ethanol Sale and Purchase Agreement with IndianOil.
- xviii. be responsible for the conduct of its staff employed for this project while on duty;
- xix. shall obtain approval from transport department as applicable and obtain fitness certificate for the vehicles each year before the due date and shall bear any cost or expense associated with this;
- xx. to operate, maintain, repair and renovate the project assets and project facilities, in accordance with, inter alia, the Applicable Laws, Applicable Permits

- and the requirements;
- xxi. submit the Operational Plan to the NORTH DMC (and IndianOil for CBG & Ethanol supplies related only) at least 1 (one) month before proposed Commencement Date and get the same approved;
  - xxii. procure, acquire and put into place at its own cost and expenses all the Project Assets and Project Facilities required by the Concessionaire to implement the Project during the Pre-COD Period so as to achieve COD within the time stipulated in this Agreement;
  - xxiii. promptly rectify and remedy any defects or deficiencies, at its own cost, if any pointed out by NORTH DMC and/or IndianOil in the Inspection Report and furnish a report within the stipulated time period in respect thereof to NORTH DMC and/or IndianOil;
  - xxiv. comply with all the performance parameters as specified in KPIs, set forth in **Article 18**;
  - xxv. to carry out all necessary test(s) and get the approvals as per Applicable Law and in conformity with Good Industry Practices, prior to achieving COD;
  - xxvi. pay all taxes, duties and outgoings, including utility charges relating to the Project;
  - xxvii. handover/transfer the Sites and immovable Project Facilities to NORTH DMC upon Termination of this Agreement, in accordance with the Hand-Back requirements & any other provisions thereof;
  - xxviii. provide camera feeds at weighbridge of Site to NORTH DMC, as and when sought by them;
  - xxix. be responsible and indemnify NORTH DMC and IndianOil for any accident due to negligence or otherwise in the performance of its obligations hereunder; and
  - xxx. submit compliance as required to environmental agency and shall provide all information related to project as would be required by the NORTH DMC pursuant to any RTI query or any issue raised in State Assembly/ Parliament; and

## **2. Obligations relating to Project Agreements**

- a) It is expressly agreed that the Concessionaire 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 any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- b) Before finalization, the Concessionaire shall submit to NORTH DMC, the drafts of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and NORTH DMC shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately make amendments as per review/comments/observations and re-submit the same to NORTH DMC for its review. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to NORTH DMC a true copy thereof, duly attested by a Director of the Con-

cessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by NORTH DMC on any Project Agreement or failure or omission of NORTH DMC to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by NORTH DMC. No observation and/or review of NORTH DMC and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall NORTH DMC be liable for the same in any manner whatsoever.

- c) The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of NORTH DMC if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on NORTH DMC, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the NORTH DMC. For avoidance of doubt, NORTH DMC acknowledge and agree that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- d) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of NORTH DMC, which approval NORTH DMC may, in its discretion, deny if such sub-lease, sub- license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of NORTH DMC under this Agreement or Applicable Laws.
- e) The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle NORTH DMC to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event NORTH DMC does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Termination Date, the Project Agreements shall be deemed to cease to be in force and effect on the Termination Date without any liability whatsoever on NORTH DMC and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to NORTH DMC an acknowledgment and undertaking, in a form acceptable to NORTH DMC, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from NORTH DMC in the event of Termination or Suspension.

### **3. No Breach of Obligations**

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (i) Force Majeure Event, subject to Article 20;

- (ii) NORTH DMC Event of Default;
- (iii) IndianOil Event of Default;
- (iv) Compliance with the instructions of the NORTH DMC or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

**4. Concessionaire's Representative**

To fulfill the Concessionaire's obligations and for implementation of the Project in accordance with this Agreement, the Concessionaire shall deploy representative(s) (the "Concessionaire Representative") on its behalf including a team leader (the "Team Leader"). The Team Leader shall have full authority to act on behalf of the Concessionaire for all matters relating to this Agreement and shall be an overall in charge to ensure implementation of the project in accordance with the provisions hereof. The Team Leader shall closely co-ordinate with NORTH DMC/INDIANOIL (for Ethanol & CBG supplies only) and shall be responsible to ensure redressal on an immediate basis, any objections, observations, shortcomings, defects or defaults pointed out during routine inspections and project review meetings and submit action take report to the NORTH DMC and INDIANOIL (for Ethanol & CBG supplies only) within a period not later than 7 (seven) days from the date of conveying of such defect/shortcoming. The Team Leader or its nominee shall make themselves available for meetings as and when called upon by NORTH DMC and INDIANOIL (for Ethanol & CBG supplies only).

**5. Sole purpose of the Concessionaire**

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

**6. Engagement of trained personnel**

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

**7. Equity Lock-in requirements**

The Concessionaire acknowledges that:

- a) The Selected Bidder shall hold 100% (one hundred per cent) shareholding in the paid-up Equity capital of the Concessionaire until expiration of 1 (one) year from COD, 51% (fifty one per cent) shareholding in the paid-up Equity capital until expiration of 10 (ten) years from COD and thereafter 26% (twenty six per cent) shareholding in the paid up equity capital during the remaining Concession Period.
  - i. Provided that in case the Selected Bidder is a Consortium of entities, then the lead member (the "Lead Member") of such Consortium and the member whose credentials were considered for prequalification for bid, shall have the majority equity share holding of the paid-up Equity capital of the Concessionaire and that all the members of the Consortium together shall hold [100% (one hundred per cent)] Equity capital of the Concessionaire, until

expiry of [1 (one)]year from COD, [51% (fifty one percent)] shareholding in the paid-up Equity capital until expiration of [10 (ten)] years from COD and thereafter [26% (twenty six per cent)] shareholding in the paid-up Equity capital during the remaining Concession period.

- ii. Provided further that a member of the Consortium meeting either the Technical Capacity or the Financial Capacity shall subscribe at least 26% (twenty six per cent) of the paid-up and subscribed Equity of the SPV until the 2nd (second) anniversary of the COD for member meeting the Technical Capacity and until the 1st (first) anniversary of the COD for the member meeting the Financial Capacity.
- b) Any violation in the shareholding pattern in the equity lock-in requirements would be treated as Concessionaire Event of Default.
- c) Any change in ownership of the Selected Bidder shall also be considered as breach of the equity lock-in provisions hereunder, unless such change in ownership of the Selected Bidder is undertaken after prior written concurrence of NORTH DMC and IndianOil.

#### **8. Exit from Consortium**

Any Consortium member other than the Lead Member shall be allowed to exit the Consortium anytime during the Concession Period post-COD and the Lead Member will be allowed to replace/absorb the shares and responsibilities of other Consortium members, subject to approval from NORTH DMC which will not be unreasonably withheld.

#### **9. Obligations relating to management of the Concessionaire:**

The Concessionaire shall not, without the prior written approval of NORTH DMC, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

- a) to alter or add to the provisions of the memorandum of association;
- b) to alter or add to the articles of association;
- c) to change the name of the Concessionaire;
- d) to reduce the share capital;
- e) to commence any new lines of business;
- f) to enter into any contract or agreement with a related party with respect to such related party's appointed to any office or place of profit in the company, its subsidiary company or associate company;
- g) to make inter-corporate-loans and investments or guarantee or security (except where such security or payment is to be made to the Authority) to be given, if the aggregate amount thereof, exceeds the limit of 30% (thirty per cent) of the Concessionaire's paid up share capital;
- h) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;
- i) for various other matters pertaining to the winding up of the Concessionaire; and
- j) any other matter which is required by the Companies Act to be passed by a

special resolution of the shareholders of the Concessionaire.

For the purposes of this clause, a “related party” shall have the meaning ascribed to it under the Companies Act, 2013.

**10. EHS Standards and L&FS Standards**

- i. The Concessionaire shall at all times and throughout the Concession Period (designing, development, construction, operation and maintenance) comply with Applicable Laws including the relevant Environmental, Health and Safety (the “EHS”) Rules and Regulations and life and fire safety Standards (the “L&FS Standards”).
- ii. The Concessionaire shall prepare and comply with the performance standards, including an environmental and sustainability plan stating how the Concessionaire intends to manage and mitigate risks in relation to EHS. Such performance standards shall take into consideration the principles set out in:
  - (a) National EHS regulations;
  - (b) Real Estate (Regulation and Development) Act, 2016;
  - (c) National Building Code of India published by BIS and other statutory BIS standards applicable to projects of similar nature; and
  - (d) L&FS Standards.

**11. Obligations relating to Taxes**

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project. Provided, however, that all payments made by the Concessionaire with respect to GST levied on or in respect of any services provided by the Concessionaire to the NORTH DMC for and in respect of the Project shall be paid by the NORTH DMC upon receipt of particulars thereof.

**12. Obligations relating to information**

- a) Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from NORTH DMC for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to NORTH DMC forthwith and in the manner and form required by the NORTH DMC.
- b) After receiving a notice from NORTH DMC for reasoned comments on the accuracy and text of any information relating to the Concessionaire’s activities under or pursuant to this Agreement which NORTH DMC proposes to publish, the Concessionaire shall provide such comments to NORTH DMC in the manner and form required by the NORTH DMC.

**13. Obligations relating to other charges:**

The Concessionaire shall make timely payments for all utility services in respect of the Sites, including water, sewage, electricity, telecommunication, internet and cable charges, etc.

**14. Obligations towards IndianOil**

- a) **Compressed Bio Gas** to be supplied by the Concessionaire as per technical specifications enclosed & modalities specified in **Schedule 18** to INDIANOIL at the respective price as provided for under the CBG Sale & Purchase Agreement.
- b) Supply of **Ethanol** shall be as per Technical specifications and Ethanol Sale and Purchase Agreement (**Schedule 19**) and determined in pursuance to the Tender.
- c) For Electricity produced from the WtE plant, IndianOil shall reserve the first right to enter in to a Power Purchase Agreement with the Concessionaire based on requirement & prevailing guidelines on exemption of various charges under open access system for WtE projects.
- d) The Concessionaire acknowledges that in the event CBG or Ethanol supplies are not maintained as per the satisfaction of IndianOil, INDIANOIL shall be free to encash the Bank Guarantee provided by the Concessionaire and in addition entitled to obtain CBG/CNG, Ethanol from other sources at the sole risk & cost of the Concessionaire, in terms of Schedule 18 and Schedule 19, as applicable.
- e) The Concessionaire shall lay \_\_\_\_\_ kilometer pipeline sufficient to transport \_\_\_\_\_ of CBG per day from Site as mentioned in Schedule \_\_\_\_\_ to the Retail Outlet Site or inject the CBG in to the CGD entity's gas pipeline network as mentioned in schedule \_\_\_\_\_ and achieve commissioning of the same concurrent to the Project and arrange for \_\_\_\_\_ number of cascades as per \_\_\_\_\_ standards for transportation of CBG to IndianOil. Concessionaire agrees that IndianOil at its own discretion may require either or both modes to be operational during the Term of the CBG Sale and Purchase Agreement.
- f) The Concessionaire shall take and maintain all necessary approvals, Right of Way, permits and licenses as may be required for the above.
- g) Without prejudice to any other right or obligations of the Parties, all the obligations of the Concessionaire towards NORTH DMC as mentioned in Article 5 with regard to the Concession shall apply mutatis mutandis towards IndianOil to the extent applicable with regard to the sale, supply and transportation of CBG and Ethanol to IndianOil.
- h) The CBG and Ethanol quality parameters, quality and quantity produced, amount of feedstock handled & other important operational parameters shall be made available through web-based applications by the Concessionaire to IndianOil.



## ARTICLE 6 OBLIGATIONS OF NORTH DMC

### 6.1 General Obligations of NORTH DMC

NORTH DMC shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.

Subject to and in accordance with the provisions of this Agreement and Applicable Laws, NORTH DMC agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

- (a) Identify, earmark and allocate parcel(s) of land to the Concessionaire, by itself, for the purpose of setting up of Project Facilities, Waste Processing Facility and decentralized units, for development of a Sanitary Land Fill (SLF), etc., for scientific management of MSW;
- (b) Provide and deliver mixed Municipal Solid Waste (MSW) free from Construction & Demolition waste with minimum 2000 Tonnes per Day & up to 2500 Tonnes Per Day on daily basis at the Project Site from COD till the Term of the Concession Agreement. Efforts shall be made by North Delhi Municipal Corporation to provide segregated MSW as far as possible. However, the Concessionaire shall not be eligible for any additional cost/ compensation for receiving unsegregated MSW. Necessary equipment & resources need to be planned by the Concessionaire for processing, recovering the MSW received in as is where is condition. North DMC confirms to provide the mixed MSW free from any Construction & Demolition Waste.
- (c) Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. NORTH DMC agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
- (d) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (e) provide the Sites on lease and license basis, upon payment of nominal land rental of ₹ 1 per sqm per annum, free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Sites by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, Emergency, national security, or law and order;
- (f) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (h) upon written request from the Concessionaire, execute the Substitution Agreement;

- (i) observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire;
- (j) Facilitate in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availing permits for utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by NORTH DMC within 30 (thirty) days from receipt of such request from the Concessionaire, subject to the conditions of the applications / details submitted being complete and correct.
- (k) approve the Operational Plan within 21 working days of its submission by the Concessionaire;

## **6.2 Obligations relating to refinancing**

Without prejudice to any rights or remedies of NORTH DMC under this Agreement or otherwise, upon request made by the Concessionaire to this effect, NORTH DMC shall, in conformity with any regulations or guidelines that may be notified by the Government Instrumentality, permit and enable the Concessionaire to secure refinancing on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of NORTH DMC, which consent shall not be unreasonably withheld. NORTH DMC shall endeavor to convey its decision on such request of the Concessionaire within 30 (thirty) days of receipt of the proposal by the NORTH DMC. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

## ARTICLE 7 OBLIGATIONS OF INDIANOIL

The following are the only obligations of INDIANOIL under this Agreement:

- a. To facilitate performance by NORTH DMC under the MoU signed between IndianOil & North DMC on behalf of NORTH DMC as may be required. It is agreed between the Parties and NORTH DMC and Concessionaire acknowledge that notwithstanding IndianOil carrying out certain activities for and on behalf of NORTH DMC, it shall not be liable under any circumstances towards Concessionaire, NORTH DMC or a third party, whether in law, contract or torts, for any acts of omission or commission including due to gross negligence carried out on behalf of NORTH DMC in this regard, unless due to fraud. Concessionaire and NORTH DMC hereby Indemnify IndianOil for any loss, damages, adversity that it may incur, suffer on this account.
- b. To enter into agreements for the offtake of entire quantity of Compressed Bio Gas (CBG) and Ethanol meeting the Specifications produced at the said WtE Plant in accordance with the price and other terms and conditions provided under the CBG Sale & Purchase Agreement (**Schedule 18**) and Ethanol Sale and Purchase Agreement (**Schedule 19**).
- c. Subject to Concessionaire complying with the terms and conditions of this Agreement, CBG Sale and Purchase Agreement, Ethanol Sales & Purchase Agreement and Power Purchase Agreement (if any), IndianOil agrees to offtake, during the Term of the CBG Sale and Purchase Agreement, Ethanol Sales & Purchase Agreement and Power Purchase Agreement (as the case may be) only CBG, Ethanol and Electricity as mentioned above irrespective of the fact that Concessionaire may design the plant to produce multitude of products & by products, residue etc.
- d. In case no CBG, Ethanol or Electricity is offered by the Concessionaire, at the bidding stage, IndianOil would evaluate options & decide further course of action, depending upon the response to be received in the global tender.

## ARTICLE 8 REPRESENTATIONS, WARRANTIES & UNDERTAKINGS

### 1. **Representations and Warranties of the Parties** Each Party represents and warrants to the others that:

- (a) It is duly organized, validly existing and in good standing under the laws of India;
- (b) It has full power and authority 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;
- (d) It has the financial standing and capacity to undertake the Project;
- (e) This Agreement constitutes its legal, valid and binding obligation fully enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof; and
- (g) It shall have an obligation to disclose to the other Party as and when any of its representations and warranties ceases to be true and valid.

### 2. **Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to NORTH DMC and INDIANOIL that:

- (a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) all undertakings and obligations of the Concessionaire arising from the EOI or otherwise shall be binding on the Concessionaire as if they form part of this Agreement;
- (g) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (h) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;

- (i) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (j) there are no actions, suits, proceedings, or investigations pending or, to its best of knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (k) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (l) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (m) the SPV is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested NORTH DMC to enter into this Agreement pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest with NORTH DMC on the Termination Date free and clear of all liens, claims and encumbrances without any further act or deed on its part or that of NORTH DMC, and that none of the Project Assets shall be acquired by it Subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty given by it contained herein or in any other document furnished by it to NORTH DMC or INDIANOIL, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the NORTH DMC or INDIANOIL in connection therewith;
- (q) all information provided by the Concessionaire in response to the EOI or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

- (r) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- (s) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and
- (t) the Concessionaire shall not venture into or continue any business which is in direct or indirect competition with the Project. In the event the Concessionaire engages in such activities, the same shall constitute a fundamental breach of this Agreement by the Concessionaire;
- (u) all undertakings and obligations of the Concessionaire arising from the EOI or RfP or Tender (by whatsoever name they are called) or otherwise shall be binding on the Concessionaire as if they form part of this Agreement
- (v) further representations as may be added depending on the specific circumstances of the Concessionaire.

### **3. Representations and Warranties of NORTH DMC**

NORTH DMC represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of NORTH DMC.
- (b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement.
- (c) it has the financial standing and capacity to perform its obligations under this Agreement.
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on NORTH DMC's ability to perform its obligations under this Agreement.

### **4. Representations and Warranties of IndianOil**

IndianOil represents and warrants to the Concessionaire that:

- i. it has full power and authority to execute, deliver and perform its obligations under this Agreement to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise the rights and perform the obligations specified under this Agreement on behalf of NORTH DMC.
- ii. it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement.
- iii. it has the financial standing and capacity to perform its obligations under this Agreement.

- iv. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- v. 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 its ability to perform its obligations under this Agreement.

**5. Disclosure**

- (a) 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 it. 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 a Party under this Agreement.
- (b) Neither NORTH DMC nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
  - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data disclosed by NORTH DMC to the Concessionaire in relation to the Project; and/or
  - (ii) any failure to make available to the Concessionaire any materials, documents, drawings, plans or other information relating to the Project.

## ARTICLE 8 DISCLAIMER

1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the EOI or RfP or Bid document, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by NORTH DMC or through IndianOil or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. NORTH DMC Or IndianOil makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the NORTH DMC or IndianOil in this regard.
2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 1 under Article 8 above and hereby acknowledges and agrees that NORTH DMC or IndianOil shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.
3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 1 under Article 8 above shall not vitiate this Agreement or render it voidable.
4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 1 under Article 8 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the NORTH DMC or IndianOil to give any notice pursuant to this Clause 4 under Article 8 shall not prejudice the disclaimer of the NORTH DMC or IndianOil contained in Clause 1 under Article 8 and shall not in any manner shift to NORTH DMC or IndianOil any risks assumed by the Concessionaire pursuant to this Agreement.
5. The Concessionaire accepts that it is solely responsible for the verification of any design, data, documents or information provided by NORTH DMC or IndianOil, any Government Authority or their consultants and advisors to the Concessionaire and that it shall accept and act thereon at its own cost and risk.
6. The Concessionaire shall be solely responsible for the contents, adequacy and correctness of the design, data, drawings and detailed engineering prepared or procured by the Concessionaire for implementing the Project.
7. The Concessionaire acknowledges that the only role and responsibility of IndianOil under the Concession Agreement is in respect of the execution and performance of the CBG Sale and Purchase Agreement and the Ethanol Sale and Purchase Agreement in accordance with their respective terms. Accordingly, IndianOil has no liability or obligation under this Concession Agreement and the Concessionaire and NORTH DMC acknowledge that they shall have no rights, recourse nor shall IndianOil have any liabilities other than as specifically set forth in the CBG Sale and Purchase Agreement and the Ethanol Sale and Purchase Agreement.



## ARTICLE 9 PERFORMANCE SECURITIES GUARANTEES

### 9.1 Performance Security

The Concessionaire shall for the due and punctual performance of its obligations hereunder relating to the Project simultaneously with the execution of this Agreement, furnish an unconditional and irrevocable bank guarantee, in favor of NORTH DMC, in the form as set out in Schedule 6, (the "Performance Security") for a sum of ₹ 7,50,00,000/- (Rupees Seven Crore Fifty Lakh only). A fresh bank guarantee issued 1 (one) month before construction of Processing Facilities and valid until COD. Post-COD, the Performance Security shall be reduced to [25% (twenty five per cent)] to ₹ 1,87,50,000/- (Rupees One Crore Eighty Seven Lakh Fifty Thousand only) till the end of Concession Period or till the Termination Date, as the case maybe.

The Performance Security or the amount retained by NORTH DMC as security shall be returned after the expiry of 30 (thirty) days from the COD, unless this Agreement is terminated earlier, in which case the Performance Security will be returned within 30 (thirty) days from the date of termination, subject to NORTH DMC's right to receive any amounts from the Concessionaire under this Agreement.

The Performance Security shall secure the following:

- a) the due performance of all the Concessionaire's obligations during the Construction Period.
- b) the due performance of the Concessionaire's ESHS, L&FS obligations during the Construction Period and the O&M Period, as set out in the approved ESHS Documents.
- c) the due performance of all the Concessionaire's obligations during the O&M Period.

### 9.2 Extension of Performance Security

If the Performance Security is scheduled to expire any time during the Concession Period, then the Concessionaire shall arrange for an extension of the Performance Security at least 30 (thirty) days prior to such expiration. If the Concessionaire fails to procure such extension or replacement, NORTH DMC shall be entitled to drawdown the total amount available under the Performance Security and retain such amount as security until such time that the Concessionaire submits an extension or replacement of the Performance Security, that is scheduled to expire.

### 9.3 Encashment of Performance Security by NORTH DMC

The decision of NORTH DMC as to any breach/ delay having been committed, liability accrued or loss or damage caused or suffered shall be conclusive, absolute and binding on the Concessionaire and the Concessionaire specifically confirms and agrees that no proof of any amount of liability accrued or loss or damages caused or suffered by NORTH DMC under this Concession Agreement is required to be provided in connection with any demand made by NORTH DMC to recover such compensation through appropriation of the relevant amounts from the Performance Security under this Agreement.

In the event of encashment of the Performance Security by NORTH DMC, in full or part, the Concessionaire shall within 15 (fifteen) days of receipt of the encashment notice from NORTH DMC provide a fresh Performance Security or replenish (in case of partial appropriation) the existing Performance Security, as the case may be. The provisions of this

Article shall apply *mutatis mutandis* to such fresh Performance Security. The Concessionaire's failure to comply with this provision shall constitute a default or breach of the Concession Agreement by the Concessionaire, which shall entitle NORTH DMC to terminate this Concession Agreement in accordance with the provisions hereof.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall subject to NORTH DMC's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

#### **9.4 Utilization of retained amount:**

NORTH DMC shall be entitled to utilize the retained amount in the same manner as it would utilize the Performance Security.

- i. Upon receipt of a renewed or replacement Performance Security within 30 (thirty) days of the expiry / termination of the Agreement, NORTH DMC shall return the unutilized security amount for the Performance Security to the Concessionaire.
- ii. The interest earned on any retained amounts on cash security shall be the property of NORTH DMC and NORTH DMC shall not be required to account to the Concessionaire for any such interest.

NORTH DMC shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Construction Period, or during the O&M Period, or any amount due and payable by the Concessionaire to NORTH DMC (including any Delay Liquidated Damages), in accordance with this Agreement.

NORTH DMC shall further have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire's failure to honour any of its obligations, responsibilities or commitments during the Agreement.

Bank Guarantees would not be released in case of breach by the Concessionaire of any of the terms of the Agreement.

#### **9.5 Cost to be borne by Concessionaire:**

The cost of procuring the Performance Security or any renewal/replenishment thereof shall be borne solely by the Concessionaire.

#### **9.6 Demand under Performance Securities**

NORTH DMC shall not be required to give any prior notice to the Concessionaire of its intention to make a demand under the Performance Security, as the case may be. However, NORTH DMC shall provide the Concessionaire with a copy of any demand notice issued by them under the Performance Security, simultaneously with the issuance of the demand notice to the Scheduled Bank that has issued the relevant Performance Security.

If NORTH DMC makes a demand under any Performance Security, in part or in full, the Concessionaire shall immediately and in no event later than 15 (fifteen) days of such demand, restore the value of such Performance Security, to the amount stated in Sub-Clause 9.1.

#### **9.7 Release of Performance Security by NORTH DMC**

Within 30 (thirty) days from the termination of this Agreement, the Performance Security

or, as the case may be, the amount retained by NORTH DMC as cash security, shall be released to the Concessionaire after the expiry of 30 (thirty) days from the termination of this Agreement, subject to NORTH DMC's right to receive any amounts from the Concessionaire upon Transfer Date.

## ARTICLE 10 THE SITES

### 10.1. The Sites

The Sites of the Project Facilities shall comprise of the land as described in **Schedule 7**, and in respect of which the Rights of Way shall be provided and granted by NORTH DMC to the Concessionaire on a leave and license basis under and in accordance with this Agreement (the “**Sites**”).

The Sites would include (but not limited to) land for setting up of WtE Project Facilities including but not limited to a Waste to Energy Plant(s) for daily processing/recycling/disposal of the mixed Municipal Solid Waste (MSW), associated processing facility(ies), Material Recovery Facility(ies), Sanitary Landfill Site (SLF) and other facilities of similar nature, as per requirement, of design capacity of 2500 tonnes per day (TPD).

Without prejudice and subject to the Agreement, the ownership of the Project except Sites, including all improvements made therein by the Concessionaire, during the Concession Period, shall at all times remain with the Concessionaire.

### 10.2. Grant of License over the Site

10.2.1. NORTH DMC shall grant the Concessionaire a license over the Site along with all necessary Rights of Way, to enter upon, access and occupy the Sites, free of all Encumbrances upon payment of nominal land rental of ₹ 1 per sqm per annum in accordance with this **Article 10**, Applicable Laws, and Applicable Permits. The license granted to the Concessionaire shall include the exclusive right to:

- (a) design, construct, commission, operate and maintain during the O&M Period, the Project Facilities necessary for implementation of the Project at various Sites, in accordance with all Applicable Laws;
- (b) install, operate, use, maintain, and remove such equipment, devices or other structures and improvements on, over, or under the Sites, as may be necessary or appropriate for the operations and activities required or permitted under this Agreement;
- (c) use Access Roads, gates, fences and utilities at or about the Sites;
- (d) construct, use, operate, maintain, replace and repair electric lines, telecommunication lines, water supply networks and other utilities required to undertake the Project at the Sites.

10.2.2. On and from the Compliance Date and subject to the provisions of this Agreement, NORTH DMC shall grant the Concessionaire: (i) license over the Sites including the exclusive right to occupy and use the Sites to construct the Project Facilities; and (ii) all necessary Rights of Way to the Sites. Any charges payable for obtaining the Right of Way will be paid directly by North DMC.

10.2.3. NORTH DMC shall provide the Site to the Concessionaire free of Encumbrances and encroachments as a Condition Precedent. If the Concessionaire discovers any hazardous substances at the time of handover of the Site by NORTH DMC, NORTH DMC will remove such hazardous substances at its own cost and expense. The Concessionaire’s acceptance of the Sites at the time of NORTH DMC’s handover/giving access to the Sites shall be deemed to be unconditional acceptance and that there was no hazardous substance or any possible form of obstruction to the project at the time of handover of

Sites and concessionaire shall be barred from raising any such issues, whatsoever, after the handover or having access to the Sites.

- 10.2.4. The Concessionaire shall not without the prior written consent or approval of NORTH DMC use the Sites for any purpose other than to undertake the Project and purposes incidental thereto, as permitted under this Agreement or as may be otherwise approved by NORTH DMC.
- 10.2.5. The full ownership and title over the Sites shall vest with NORTH DMC for the entire Concession Period.
- 10.2.6. NORTH DMC warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, occupy the Sites, from such time that access is granted to the Concessionaire and until the expiry of the Concession Period or early termination of this Agreement. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Sites or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, NORTH DMC shall, if called upon by the Concessionaire, defend such claims and proceedings.
- 10.2.7. Subject to any substitution rights exercised by the Lenders, the license granted by NORTH DMC shall automatically terminate upon termination of this Agreement or expiry of the Concession Period.
- 10.2.8. The Concessionaire hereby irrevocably appoints NORTH DMC (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorized officer of NORTH DMC, and the Concessionaire consents to it being registered for this purpose.
- 10.2.9. Termination of the Agreement shall automatically terminate the license granted over the Sites handed over to the Concessionaire.

### **10.3. Site Data and Verification**

- 10.3.1. NORTH DMC has made available to the Concessionaire, the layout plans in NORTH DMC's possession in connection with the Sites. The Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Sites.
- 10.3.2. The Concessionaire shall also be deemed to have inspected and examined the Site and its surroundings, analyzed and verified the accuracy and reliability of the layout plan & general data provided by NORTH DMC and any other information available with respect to the Sites and to have satisfied itself as to all the relevant matters including:
  - (a) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site after carrying out necessary technical studies at the cost & efforts of Concessionaire;
  - (b) the suitability of the Site for undertaking the construction and operation of the Project after carrying out necessary technical studies at the cost & efforts of Concessionaire;

- (c) the condition of the utilities available till the battery limits of the Sites;
- (d) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
- (e) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
- (f) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
- (g) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
- (h) the suitability and adequacy of any access roads to the Sites and other utilities and facilities to be provided by the relevant Government Authority; and
- (i) all other matters that may affect the performance of its obligations under this Agreement.

Subject to Clause 10.3, the Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by NORTH DMC, then NORTH DMC shall have no liability for the same. The Concessionaire shall not be entitled to any extension on this count, nor shall it be open to the Concessionaire to justify any default or delay on the ground of the Concessionaire having not visited or acquainted itself with the Sites and Sites' conditions in any manner whatsoever. Further, any misinterpretation of the data, studies and reports provided by NORTH DMC shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 10.3 above, which affect or may affect the Project or the performance of any of its obligations under this Agreement.

#### **10.4. Unforeseen Site Conditions**

Without prejudice to Clause 10.3 above, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Good Industry Practices, the Concessionaire may seek a Variation in accordance with Article 28. Upon receipt of a request for a Variation due to unforeseen Site conditions, if, in the opinion and sole discretion of NORTH DMC, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Good Industry Practices, then NORTH DMC shall approve Variation to the relevant provisions of the Agreement in accordance with Article 28. Any decision of NORTH DMC regarding the existence of any unforeseen Site conditions shall be final and binding on the Concessionaire.

#### **10.5. Site Related Covenants**

The Concessionaire agrees and undertakes that:

- (a) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license or create any Security over any part of the Site or its rights and interest in the Site, other than as specifically permitted under this Agreement;
- (b) the Concessionaire shall not allow any encroachment on, or unauthorized occupation of any part of the Site and in the event of any encroachment or unauthorized occupation, the Concessionaire shall immediately cause such encroachment or any unauthor-

ized occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorized occupants from the Site;

- (c) the grant of any rights to a Sub-Contractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
- (d) the Concessionaire shall be wholly responsible for safety at and security of the Sites and the Project Facilities developed;
- (e) the Concessionaire shall take all necessary measures to confine its operations, personnel and equipment to the Site and not encroach on any Adjoining Property;
- (f) all minerals, fossils, articles of value or antiquity, structures and other remains or things of geological or archaeological interest and other objects with historic, antique or monetary value discovered at, on or under any of the Sites shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Sub-Contractor's personnel from removing or damaging any such article or thing. Further, immediately upon the discovery of any such article or thing of value, the Concessionaire shall inform NORTH DMC of such discovery and carry out the instructions of NORTH DMC in this regard;
- (g) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties;
- (h) the Concessionaire shall not to do or permit to be done anything which might:
  - (i) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
  - (ii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
  - (iii) cause any contamination or damage to any Adjoining Property, and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused.

If the construction works and/or the O&M services cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third party consents and/or the approval of the concerned Government Authority(ies) to undertake such construction works and/or the O&M services. NORTH DMC shall provide all assistance to the Concessionaire for procuring such approvals.

- (i) The Concessionaire shall not sub-license whole or any part of the Sites.
- (j) The Concessionaire shall obtain and maintain the Applicable Permits in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued.
- (k) During the Concession Period, the Concessionaire shall protect the Sites 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 Concessionaire

to place or create any Encumbrance or security interest over all or any part of the Sites or the Project Facilities, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

- (l) The Concessionaire may landscape and develop the Sites and regulate the use thereof in accordance with the Good Industry Practice and in conformity with the provisions of this Agreement.

#### **10.6. Access to NORTH DMC Related Parties and INDIANOIL Related Parties**

10.6.1. The Concessionaire shall ensure that NORTH DMC Related Parties, and INDIANOIL Parties have access to the Sites and the license granted to the Concessionaire over the Site shall always be subject to:

- (a) the rights of NORTH DMC and / or NORTH DMC's Representative, INDIANOIL and/or INDIANOIL's Representative and other NORTH DMC Related Parties or INDIANOIL Related Parties to enter upon and access the Site to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that NORTH DMC and INDIANOIL shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct the construction and/or operation of the Project in any manner whatsoever; and
- (b) the rights of the utility providers to enter upon and access the Sites for laying or installing telegraph lines, electric lines or for any other public purpose.

#### **10.7. Sites to be free from Encumbrances**

The Sites shall be made available by NORTH DMC to the Concessionaire pursuant hereto free from all Encumbrances and occupations and upon payment of nominal land rental of ₹ 1 per sqm per annum to the NORTH DMC for the acquisition and use of such Sites for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For avoidance of doubt, it is agreed that existing Rights of Way, easements, privileges, liberties and appurtenances to the Sites shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Sites.



## ARTICLE 11 UTILITIES AND ASSOCIATED ROADS

### 11.1. Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the Government Instrumentalities owning the existing roads, Right of Way 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 NORTH DMC of the relevant Government Instrumentality. Further, the NORTH DMC shall, upon written request from the Concessionaire, initiate and undertake at its own cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

### 11.2. Shifting of obstructing utilities

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

### 11.3. Felling of Trees

NORTH DMC shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall in the sole discretion of NORTH DMC, 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 avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to NORTH DMC.

## ARTICLE 12 FINANCIAL CLOSURE AND SUBSTITUTION AGREEMENT

### 12.1. General Obligations

- 12.1.1. The Concessionaire expressly agrees and undertakes that it shall itself be responsible to arrange for financing and/ or meeting all financing requirements for the Project at its cost and shall enter into Financing Agreements with the Lenders, if required, for the same. To this end, NORTH DMC and IndianOil as CBG and Ethanol Off-taker shall cooperate with the Concessionaire to achieve Financial Closure, including providing such consents and waivers as may be reasonably required by the Lenders.
- 12.1.2. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 90 (ninety) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the NORTH DMC in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay.
- 12.1.3. In case of a Concessionaire Event of Default, NORTH DMC acknowledges that the Lenders will have a right to substitute the Concessionaire in accordance with **Article 25** and the Substitution Agreement. The NORTH DMC will suspend its right to step- in or terminate this Agreement until the expiry of the period available to the Lenders to exercise their substitution rights under **Article 25**.
- 12.1.4. The Concessionaire shall, upon occurrence of Financial Closure, notify NORTH DMC forthwith, and shall have provided to NORTH DMC, at least 2 (two) days prior to Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Senior Lenders.
- 12.1.5. The Concessionaire shall maintain books of accounts recording all its receipts (including fees and other revenues derived/collected by it from or on account of any of the Project Facilities and/or its use), income, expenditure, payments assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.
- 12.1.6. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of NORTH DMC if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on NORTH DMC, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against NORTH DMC. For avoidance of doubt, NORTH DMC acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

### 12.2. Security Creation

- 12.2.1. The Concessionaire shall be entitled to create assignment by way of Security over all of its rights, title and interests in and to the Concession Agreement in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, provided that the creation of such Security will not result in any financial liability to NORTH DMC and provided that the CBG and Ethanol to be provided to IndianOil shall be free from all encumbrances.
- 12.2.2. Except for any Security created by operation of law and any Security created pursuant to this Article 12.2, the Concessionaire shall not be entitled to create any other

Security over the Concession Agreement, or insurance policies taken by it in favour of any third Persons, without the prior written consent of NORTH DMC or over the CBG and Ethanol Sale and Purchase Agreement without prior written consent of Indianoil, which consent NORTH DMC and/or INDIANOIL may deny in its sole discretion.

12.2.3. The Concessionaire shall not be entitled to create any Security over the Site or any part thereof, or any of the Project Facilities whether in favour of the Lenders or any third Persons.

### **12.3. Termination due to failure to achieve Financial Closure**

Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in this Article or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. In case of Termination due to such event, NORTH DMC shall have the right to forfeit the Performance Security and/or bid security and IndianOil shall have the right to forfeit CBG and Ethanol Security, unless such Financial Closure is not achieved due to failure of part of IndianOil to execute the CBG and Ethanol Sale and Purchase Agreement. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Compliance Date to precede the Financial Closure, the provisions of this Article shall not apply.

### **12.4. Substitution Agreement**

The Concessionaire hereby agrees and undertakes that it shall sign the Substitution Agreement within 30 days from the date of Financial Closure or as per the timelines decided by the Lenders. This Agreement shall not be assigned by the Concessionaire. Provided, however, subject to the provisions of this Agreement, Lenders may be given the right of substitution by execution of the Substitution Agreement in the form annexed hereto as Schedule 9.

The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Concessionaire shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Concessionaire under this Agreement. Provided that in the event the Lenders are unable to substitute the Concessionaire by Nominated Company as per the provisions of the Substitution Agreement, NORTH DMC shall proceed to terminate the Agreement.

## ARTICLE 13 INSPECTION, SUPERVISION AND REVIEW

- 13.1. NORTH DMC shall at all times, during the Concession Period have the right to enter upon and access the Site. The Concessionaire shall have the right to accompany North DMC during its inspection of the Project Facilities.
- 13.2. The Concessionaire shall provide free & unhindered access, information, data to all the inspecting / reviewing agencies as per relevant provisions of this Agreement, Statutory approvals that are to be maintained during the construction as well as operation & maintenance phase of the WtE plant.
- 13.3. The periodic inspection of facilities, review of progress & certification on achievement of construction related milestones shall be done by a Project Management Unit (the "PMU"). The PMU shall comprise members from North DMC, IndianOil, the Concessionaire & an independent agency of GNCTD to be roped in by North DMC as per the scope of inspection, review.
- 13.4. During the Construction Period, NORTH DMC may inspect the Project Facilities at least once a month and prepare an inspection report, setting out the progress of the construction of the Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, Specifications and Standards, and Designs and Drawings. NORTH DMC shall send the report to the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any.
- 13.5. During the O&M Period, NORTH DMC may inspect the Project Facilities at least once a month and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the KPIs (including specifically, the Influent Standards and the Discharge Standards). NORTH DMC shall send the report to the Concessionaire within 7 (seven) days of such inspection, pursuant to which, the Concessionaire shall be required to rectify the defects or deficiencies, if any. NORTH DMC shall also have the right to verify the results of the tests undertaken by the Concessionaire at any time during the O&M Period of the quality of the compost, CBG, Ethanol or any other products or by-products created during waste management processes which are intended to be sold in the market.
- 13.6. NORTH DMC shall, at all times, have the right to attend any meetings held by the Concessionaire to review the progress of the construction or O&M of the Project Facilities, and to provide its comments/suggestions regarding the progress as well as the manner in which the construction works, or O&M services is being undertaken. Neither any comments/suggestions provided by NORTH DMC nor any failure to provide comments/suggestions shall be deemed to be an acceptance of the construction works or the O&M services or a waiver of the Concessionaire's obligations to implement the Project, in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, the ESHS Documents, and all Applicable Laws and Applicable Permits.
- 13.7. The Concessionaire agrees that notwithstanding any review by the Project Management Unit of any or all of the construction works or O&M services, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Facilities.
- 13.8. The detailed scope of work of Inspection is set out in Schedule 10

## ARTICLE 14 CONSTRUCTION PERIOD

### 1.1. Commencement and Duration

The period for construction of the Project Facilities shall commence on and from the Compliance Date and shall continue until the Construction Completion Date (the "Construction Period"). Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall, prior to the Compliance Date, be entitled to commence:

- (a) soil or geophysical investigation or testing at the Sites; and
- (b) appointment of Sub-Contractors for the construction works for the Project Facilities, with the prior approval of NORTH DMC.

### 1.2. Designs and Drawings

#### 1.2.1. Basic Engineering Designs

- (a) The Concessionaire shall prepare the Basic Engineering Designs in accordance with the Technical Specifications, Applicable Laws and Applicable Permits. The Basic Engineering Designs shall be drawn to scale, with accurate dimensions, to minimize construction delays, disputes and to ensure smooth construction of the Project Facilities and submitted in accordance with **Schedule 11**. The Project Facilities should be designed in a manner such that the Concessionaire can obtain consent to operate from the State Pollution Control Board for the operation of the Project Facilities. The Basic Engineering Designs should also specify the Proposed Technology(ies) for the implementation of the Project.
- (b) Within 30 (thirty) days from the Execution Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy of the draft Basic Engineering Designs to NORTH DMC.
- (c) NORTH DMC reserves the right to offer review and comments on the Drawings & Documents submitted by the Concessionaire.
- (d) NORTH DMC may require the Concessionaire to amend or modify the draft Basic Engineering Designs if NORTH DMC identifies any deficiencies, inaccuracies or shortcomings in the draft Basic Engineering Designs. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Basic Engineering Designs from NORTH DMC, then the Concessionaire shall modify the draft Basic Engineering Designs to correct any such shortcomings, inaccuracies or deficiencies and/or address, in writing, NORTH DMC comments on the draft Basic Engineering Designs and submit the revised Basic Engineering Designs to NORTH DMC within 10 (ten) days of receipt of comments. For the avoidance of doubt, submission of Basic Engineering Designs to NORTH DMC shall not relieve the Concessionaire of its obligations to prepare the Basic Engineering Design in accordance with Technical Specifications, Applicable Laws and Applicable Permits.
- (e) Use of Proposed Technology:
  - (i) The Concessionaire shall design and develop the Project on the basis of the Proposed Technology, as part of the Designs and Drawings.
  - (ii) Upon the expiry or early termination of this Agreement, the Concessionaire shall assign the license and related rights to use the Proposed Technology for the sole purpose of operating and maintaining the Project at no additional cost to NORTH DMC.

- (iii) The Concessionaire shall indemnify NORTH DMC for any claims, losses, damages and costs suffered by NORTH DMC or as a result of an infringement of any third party's Intellectual Property Rights caused by the operation and use of the Project Facilities.
- 1.2.2. The Concessionaire shall construct the Project Facilities strictly in accordance with the applicable Standards, Codes, Designs and Drawings
- 1.2.3. Notwithstanding anything contained in this Agreement, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the Designs and Drawings. Subject to satisfaction of Conditions Precedent set out in Article 4, the Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Article.
- 1.3. Construction Plan**
- 1.3.1. Within 30 (thirty) days from the Execution Date, the Concessionaire shall prepare and submit to NORTH DMC a detailed Construction Plan. The Construction Plan shall set out:
  - (a) The detailed plan for completing the construction (the "Construction Completion Schedule" as set out in **Schedule 12**) of the Project Facilities by the Scheduled Construction Completion Date; specific activities and extent of construction work to be performed by the Concessionaire to achieve completion of the construction of the Project Facilities by the Scheduled Construction Completion Date and
  - (b) the order in which the Concessionaire proposes to execute the construction of the Project Facilities.
- 1.3.2. NORTH DMC shall review and provide comments, if any, on the draft Construction Plan to the Concessionaire or notify the Concessionaire of its approval of the draft Construction Plan within 30 (thirty) days from the date of receipt of the draft Construction Plan from the Concessionaire. NORTH DMC may require the Concessionaire to amend or modify the draft Construction Plan if NORTH DMC identifies any deficiencies or shortcomings in the draft Construction Plan. If the Concessionaire receives any comments, suggestions or instructions to modify the draft Construction Plan from NORTH DMC, then the Concessionaire shall incorporate the suggestions made by NORTH DMC and modify the draft Construction Plan to address any such comments, shortcomings or deficiencies identified by NORTH DMC. Thereafter, the Concessionaire shall submit the revised Construction Plan to NORTH DMC for its approval. The process set out in this Clause shall continue until the Construction Plan is approved by NORTH DMC in accordance with this Clause.
- 1.3.3. The Concessionaire shall develop and construct the Project Facilities strictly in accordance with the approved Construction Plan. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the approved Construction Plan without the prior written approval of NORTH DMC. The Concessionaire shall not commence construction of any part of the Project Facilities prior to approval of the Construction Plan in accordance with this Clause.
- 1.3.4. Notwithstanding any approval of the Construction Plan by NORTH DMC, the Concessionaire shall, be solely liable for completing the construction of the Project Facilities by the Scheduled Construction Completion Date.

1.3.5. The Concessionaire shall submit a consolidated Construction Plan for the Project Facilities.

#### 1.4. ESHS Documents

1.4.1. Within 45 (forty-five) days from the Execution Date, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy on a compact disc of the ESHS Documents to NORTH DMC in the format prescribed in **Schedule 13**.

1.4.2. The ESHS Documents shall set out the Project Facilities specific health, safety and environment policies, guidelines and procedures to be followed by the Concessionaire in undertaking the Project, developed in accordance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits, and Good Industry Practices.

1.4.3. The ESHS Documents shall comprise the following:

(a) Safeguard Documents:

As part of the Safeguard Documents, the Concessionaire shall be required to:

- (i) submit an environment and social impact assessment report (the “ESIA; and
- (ii) prepare the environmental management plan (the “EMP”).

(b) Safety Documents:

As part of the Safety Documents, the Concessionaire shall be required to prepare the following:

- (i) environment, social, health and safety management plan (the “ESHSM”);
- (ii) environmental, social, health and safety management strategies and implementation plan (the “ESH-MSIP”). The ESH-MSIP shall be prepared on the basis of the template of requirements as set out in Schedule 13. The ESH-MSIP shall include the following, for the purposes of managing the key ESHS risks in relation to the Project:
  - (A) traffic management plan to ensure safety of local communities from construction traffic;
  - (B) water resource protection plan to prevent contamination of drinking water;
  - (C) boundary marking and protection strategy for mobilization and construction to prevent offsite adverse impacts; and
  - (D) strategy for obtaining Concessionaire Applicable Permits prior to the start of relevant works.

(c) Code of Conduct

The Code of Conduct shall be prepared on the basis of the requirements set out in Schedule 13. The Code of Conduct shall apply to the Concessionaire's employees and subcontractors and shall set out the ESHS obligations of the Concessionaire under the Agreement relating to risks associated with labor influx, spread of communicable diseases, sexual harassment, gender-based violence, illicit behaviour and crime, and maintaining a safe environment etc. The Code of Conduct shall also set out the manner in which the Code of Conduct will be implemented, including how it will be introduced into conditions of employment/engagement, what training will be pro-

vided, how it will be monitored and how the Concessionaire proposes to deal with any breaches.

- (d) In the ESHS, the Concessionaire shall also be required to provide details of the core team of 3 (three) people for implementation of the Concessionaire's ESHS obligations, comprising:(i) health expert and safety specialist;(ii) an environmental specialist; and (iii) social specialist, who meet the minimum qualification requirements specified in Schedule 13.
- (e) Within 30 (thirty) days from the Execution Date, the Concessionaire shall prepare and submit 4 (four) hard copies and 1 (one) soft copy of Labour Influx and Workers Camp Management Plan to NORTH DMC that addresses specific activities that will be undertaken to minimize the impact on the local community, including elements such as codes of conduct, training programs on HIV/AIDS, etc. A Workers' Camp Management Plan addresses specific aspects of the establishment and operation of workers' camps.

This Labor Influx and Workers' Camp Management Plan will include:

- (i) mandatory and repeated training and awareness raising for the workforce about refraining from unacceptable conduct toward local community members, specifically women;
- (ii) informing workers about national laws that make sexual harassment and gender-based violence a punishable offence which is prosecuted;
- (iii) introducing a Worker Code of Conduct as part of the employment contract, and including sanctions for non-compliance (e.g., termination), manual scavenging, engagement with local residents, child labor, nondiscrimination, harassment of coworkers including women and those belonging to Scheduled Castes and Schedules Tribes and other minority social groups,
- (iv) contractors adopting a policy to cooperate with law enforcement agencies in investigating complaints about gender-based violence.
- (v) training programs on HIV/AIDS and other communicable diseases,
- (vi) workers' Camp Management Plan addressing specific aspects of the establishment and operation of workers' camps provided NORTH DMC is unable to cater to the demand for affordable housing for this additional workforce in terms of rentals, hostels, apartments, etc.; and
- (vii) complaint handling mechanism at the Project level.

1.4.4. NORTH DMC may provide comments, if any, on the draft ESHS Documents to the Concessionaire within 30 (thirty) days from the date of receipt of the draft ESHS Documents from the Concessionaire. NORTH DMC may require the Concessionaire to amend or modify the draft ESHS Documents if NORTH DMC identifies any deficiencies or shortcomings in the draft ESHS Documents. If the Concessionaire receives any comments, suggestions or instructions to modify the draft ESHS Documents from NORTH DMC, then the Concessionaire shall modify the draft ESHS Documents to address any such comments, shortcomings or deficiencies identified by NORTH DMC. Thereafter, the Concessionaire shall submit the revised ESHS Documents to NORTH DMC. The process set out in this Clause shall continue until the ESHS Documents are completed by the Concessionaire.

1.4.5. The Concessionaire shall ensure that its Sub-contractors comply with and conform in all



aspects of the ESHS Documents, approved in accordance with this Clause 1.4.4, in executing the Project. Any failure of the Concessionaire or the Sub-Contractors to comply with the ESHS Documents shall constitute a Concessionaire Event of Default. The Concessionaire shall indemnify NORTH DMC against all costs, expenses, penalties and liabilities incurred/suffered by NORTH DMC due to the Concessionaire's failure to comply with the ESHS Documents in the course of execution of the Project. The Concessionaire shall not deviate from or make any subsequent modification or amendment to the ESHS Documents.

- 1.4.6. Neither any comments on the ESHS Documents by NORTH DMC, nor any failure to review and provide comments on the ESHS Documents shall excuse any failure by the Concessionaire to adopt proper and recognized safety and environment friendly practices during the execution of the Project. The Concessionaire shall bear all risk, responsibility and liability for the accuracy and adequacy of the final ESHS Documents in ensuring compliance with the applicable safeguard policies/performance standards/Applicable Laws, the ESMF, this Agreement, Applicable Permits and Good Industry Practices in the execution of the Project. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in preparation of the ESHS Documents and complying with the requirements of Clause 1.4.4 in this article.

#### **1.5. Sub-contracting**

- 1.5.1. The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of Work during the Construction Period, with the prior intimation to NORTH DMC.
- 1.5.2. The Concessionaire shall provide a copy of each proposed Sub-Contract, along with details of the relevant Sub-Contractor, for the record to NORTH DMC, which should set out the precise Scope of Work to be Sub-contracted to such Sub-Contractor and should be consistent with the terms of this Agreement.
- 1.5.3. The Concessionaire shall be responsible for the supervision and monitoring of the performance of any work or services by the Sub-Contractor.
- 1.5.4. If the Concessionaire proposes to novate or replace a Sub-Contract after submission of details as required under Article 14.5.2 above, then such novation or replacement shall also be intimated to NORTH DMC.
- 1.5.5. The Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Sub- Contractor. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Sub-Contractors.
- 1.5.6. NORTH DMC have the right to access of information and audit the Sub- Contractor files with regards to the Concession Agreement.

#### **1.6. Concessionaire's Construction Obligations**

- 1.6.1. The Concessionaire shall design, finance, construct and complete the Project Facilities and achieve the COD in accordance with Applicable Laws, Applicable Permits, Good Industry Practice, the Technical Specifications, the ESHS Documents, the Designs and Drawings, the Construction Plan and other provisions of this Agreement.

For this purpose, during the Construction Period, the Concessionaire shall:

- (a) complete the development and construction of the relevant Project Facilities by the relevant Scheduled Construction Completion Date, in a manner that:
  - (i) is in compliance with the Technical Specifications, the Designs and Drawings, the Construction Plan, the ESHS Documents, Applicable Laws, Applicable Permits and Good Industry Practices. For the avoidance of doubt, if there arises any ambiguity or conflict between the Technical Specifications and any Applicable Laws, then the one setting out the more stringent requirements or specifications shall prevail;
  - (ii) the Project Facilities are fabricated, erected, installed and completed in accordance with the final Designs and Drawings;
  - (iii) the Project Facilities are free from all defects in design, materials, and workmanship;
  - (iv) the Project Facilities are safe, reliable and fit for purpose;
  - (v) the Project Facilities shall be capable of operating up to their respective design capacity; and
- (b) maintain and comply with the conditions of all Applicable Permits in undertaking the construction of the Project Facilities;
- (c) within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction of the Project Facilities, appoint a Person with sufficient skill and expertise to act as the Concessionaire's Representative. The Concessionaire's Representative shall monitor, coordinate and supervise the completion of the Project Facilities, and liaise with NORTH DMC's Representative during the Construction Period and the O&M Period. At any time during the Concession Period, the Concessionaire may replace the Concessionaire's Representative with prior written notice to NORTH DMC;
- (d) provide all necessary assistance to NORTH DMC or the PMU or any other Statutory agency in undertaking inspection of the Project Facilities, and in performing its other obligations and duties under this Agreement;
- (e) provide all necessary assistance to the Financial Institutions to inspect the Site(s) and/or all accounts, records, and other documents relating to the submission of proposals and contract performance of the Concessionaire, as well as its Sub-Contractors, agents, personnel, consultants, service providers or suppliers relating to the Project and have them audited by auditors appointed by the Financial Institutions.
- (f) ensure that none of its employees, consultants, service providers, suppliers, or Sub-Contractors, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice;
- (g) reasonably consider and act upon the comments/suggestions made by NORTH DMC during any meetings with the Concessionaire;
- (h) rectify any defects and/or deficiencies in the Project Facilities, including any defects and/or deficiencies identified by NORTH DMC;
- (i) take all necessary measures to maintain the safety and security of personnel, material and property at the Site(s) and the Adjoining Properties, in accordance with the approved ESHS Documents and all Applicable Laws;

- (j) ensure that all excavated materials, earthworks, waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits;
- (k) submit monthly reports to NORTH DMC, no later than 10 (ten) days after the end of each month, which should set out the following:
  - (i) extent of progress of construction activities performed by the Concessionaire for the Project Facilities;
  - (ii) comparison of actual progress against the planned progress of construction works, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;
  - (iii) details of any accident or hazardous incident at the Site(s) and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
  - (iv) status of rectification of defects and/or deficiencies discovered by NORTH DMC;
- (l) ensure that an adequate number of suitably skilled and experienced contractors, architects, workmen and other personnel are engaged to undertake the Project. The Concessionaire shall be solely responsible for the work performed by any staff and labour engaged by it to execute the Project and for payment of all applicable labour charges, fees, cess payable under Applicable Laws (including labour welfare legislations) in connection with the skilled and unskilled manpower employed for the Project, including specifically the "Building and Other Construction Workers Welfare Cess Act, 1996". The Concessionaire shall ensure that its Sub-Contractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Site(s) and comply with all applicable labour laws. The Concessionaire shall indemnify and hold harmless NORTH DMC from and against all claims, liabilities, expenses, costs and losses suffered or incurred by NORTH DMC due to the Concessionaire's or any Sub-Contractor's failure to comply with any Applicable Laws (including labour welfare legislations);
- (m) arrange for all equipment, machinery, tools and other resources required to undertake the Project and be solely responsible for such equipment, machinery, tools and resources;
- (n) take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Contractors' personnel or equipment, to or from the Site(s), does not interfere with local traffic in the vicinity of the Site(s);
- (o) maintain accurate and systematic accounts and records of goods and material utilized and other costs and expenses incurred in connection with the construction works for the Project Facilities, including all invoices, receipts, *challans*, vouchers, quotations and other records and documents with respect to the Project Facilities in accordance with Applicable Laws;
- (p) obtain and maintain adequate insurances as per this Agreement; and  
 prepare and keep up-to-date, "as-built" records of the execution of the construction work for the Project Facilities, showing the exact as-built locations, sizes and details of the works executed. The "as-built" records shall be kept on the Site(s) and be made available to NORTH DMC for review and verification. The

Concessionaire shall provide 4 (four) hard copies and 1 (one) soft copy on a compact disc, of the complete set of "as-built" drawings for the Project Facilities to NORTH DMC as a condition precedent to the issuance of the Construction Completion Certificate.

#### **1.7. Waste to Energy Plant(s)**

- 1.7.1. The Concessionaire will construct Waste to Energy Plant(s) at the Site(s) to produce, and sell the CBG and Ethanol to IndianOil or utilize and/or sell any other clean energy or products, byproducts generated from the treatment of the Municipal Solid Waste. The Concessionaire may, at its sole option and discretion, also construct a rooftop solar power plant(s) at the Project Facilities to produce clean energy.
- 1.7.2. The Concessionaire shall undertake such construction of Waste to Energy Plant(s) at the Site(s) in accordance with all Applicable Laws and after obtaining all necessary approvals and consents to construct the Waste to Energy Plant(s) at the Site(s).
- 1.7.3. It shall be the Concessionaire's obligation to obtain all required clearances and approval for purposes of setting up, operating and maintaining the Waste to Energy Plant(s).

#### **1.8. Rights and Obligations of NORTH DMC**

1.8.1. During the Construction Period, NORTH DMC shall:

- (a) comply with all its obligations under Applicable Laws (and Applicable Permits) in relation to the Concession granted hereunder;
- (b) make reasonable endeavors to assist the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) within 30 (thirty) days of the Compliance Date, and in any event, prior to the commencement of any construction for the Project Facilities, appoint a Person with sufficient skill and expertise to act as NORTH DMC's Representative. NORTH DMC's shall liaise with the Concessionaire's Representative during the Construction Period and the O&M Period. At any time during the Concession Period, NORTH DMC may replace NORTH DMC's representative with prior written notice to the Concessionaire;
- (d) cause the Representative to carry out timely inspection of the Project Facilities, and perform its other obligations and duties under this Agreement;
- (e) upon progressive completion of construction works for the Project Facilities in accordance with the Technical Specifications, Designs and Drawings, Construction Plan and other provisions of this Agreement, the Construction Completion Certificate to the Concessionaire
- (f) ensure that the Concessionaire enjoys peaceful access to the Site(s) and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Site(s) or create any Encumbrance over any part of the Site(s), which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement.

#### **1.9. Utilities**

- 1.9.1. The Concessionaire shall obtain install and maintain at its cost, all utilities necessary for undertaking the construction of the Project Facilities, including all temporary power and water connections, lighting facilities, telephone connections, internet connections, etc., at the Site(s). The Concessionaire shall bear the cost of all power, water, and other utilities consumed by it during the Construction Period, and the Concessionaire shall not be entitled to claim any reimbursement from NORTH DMC in this regard.
- 1.9.2. The Concessionaire shall not be entitled to any extension of time or costs to comply with its obligations in Clauses above.
- 1.9.3. NORTH DMC shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the construction of the Project Facilities.

#### **1.10. Construction Timelines**

- 1.10.1. The Concessionaire shall comply with the Construction Plan, the Designs and Drawings and the Technical Specifications and complete the construction of the Project Facilities on or before the date scheduled for completion of construction works (the “**Scheduled Construction Completion Date**”).
- 1.10.2. Subject to Clause 1.10.3 below, the Concessionaire shall be entitled to a day-for-day extension of the Scheduled Construction Completion Date, if the completion of construction of the Project Facilities is delayed due to any of the following reasons (each such event, a “**Delay Event**”):
  - (a) occurrence of a Force Majeure Event, provided that the requirements of Article 14 have been complied with;
  - (b) a Qualifying Change in Law;
  - (c) any delay attributable to unforeseen Site conditions; or
  - (d) any variation proposed by NORTH DMC in the Technical Specifications or the Designs and Drawings in accordance with Article 28.
  - (e) delay caused in complying with any instructions of NORTH DMC, which instructions are not attributable to any default of the Concessionaire.

The Concessionaire shall promptly provide NORTH DMC with a notice upon becoming aware of any Delay Event listed at Clause 1.10.2 above in this Article. The notice should specify the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire and mitigation measures being taken by the Concessionaire.

The issuance of the notice under this Clause 1.10.2 above in this Article , within 7 (seven) days from the date the Concessionaire became aware of the Delay Event, shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 1.10.2 above in this Article .

- 1.10.3. Without prejudice to the Concessionaire's obligations to notify NORTH DMC regarding the occurrence of a Delay Event above, the Concessionaire shall: (i) keep and maintain records as reasonably necessary to substantiate and establish claims for extensions under Clause 1.10.2 above in this Article ; and (ii) give NORTH DMC access to such records and documents or provide NORTH DMC with copies, if so requested.
- 1.10.4. If the Concessionaire claims an extension of time in accordance with Clause 1.10.2 above in this Article and NORTH DMC is of the opinion that such delay was caused or

materially contributed to by any concurrent or interacting cause or causes of delay not listed in Clause 1.10.2 above in this Article but solely attributable to the Concessionaire, then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.

- 1.10.5. If two or more of the Delay Events listed in Clause 1.10.2 occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 1.10.2.
- 1.10.6. Except as provided in Clause 1.10.2, the Concessionaire shall not be entitled to any extension of time for any reason whatsoever, including due to:
  - (a) delay caused in complying with any instructions of NORTH DMC or its agents which are attributable to any act or omission of the Concessionaire;
  - (b) failure of any Sub-Contractor to commence or carry out any work within the prescribed timelines;
  - (c) unavailability or shortage of equipment, materials, or any other resources;
  - (d) any delay in approving the drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or any other document submitted by the Concessionaire due to any deficiencies or shortcomings in such drafts of the Designs and Drawings, the Construction Plan, the ESHS Documents or other documents, as the case may be;
- 1.10.7. North DMC may seek the comments/ opinion of the PMU for matters it deems fit that considered opinion of the project stakeholders are required to arrive at a practical solution.
- 1.10.8. Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any of the Delay Event shall be settled in a final and binding manner in accordance with **Article 26**.

#### **1.11. Delay Liquidated Damages**

- 1.11.1. Subject to Clause 1.10.2 above, if the Concessionaire fails to complete the construction of the Project Facilities by the Scheduled Construction Completion Date, then NORTH DMC shall be entitled to liquidated damages for each day of delay beyond the Scheduled Construction Completion Date, at the rate of [[0.1% (zero point one per cent)] of the Performance Security for each day of delay up to [6 (six)] months from the Scheduled Construction Completion Date (the “**Delay Liquidated Damages**”).
- 1.11.2. The Delay Liquidated Damages will be payable until the construction of the Project Facilities is completed, as certified by NORTH DMC in accordance with Article 14.
- 1.11.3. NORTH DMC shall have a right to invoke the Performance Security(ies) to the extent of the Delay Liquidated Damages
- 1.11.4. The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimation of and reasonable compensation for the loss that shall be suffered by NORTH DMC as a result of the delay in the completion of the Project Facilities, and not as penalty.
- 1.11.5. If, for any reason, the above paragraphs relating to the payment of Delay Liquidated Damages are void, invalid or otherwise inoperative so as to disentitle NORTH DMC from claiming any Delay Liquidated Damages, then NORTH DMC will be entitled to claim against the Concessionaire for general damages for delay in completing the construc-

tion of the Project Facilities by the Scheduled Construction Completion Date.

1.11.6. If the Concessionaire fails to complete the construction of the Project Facilities within 6 (six) months from the Scheduled Construction Completion Date, other than on account of any Delay Event (the "Grace Period") then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 16.1.

1.11.7. The payment or deduction of Delay Liquidated Damages shall not relieve the Concessionaire from its obligations to complete the construction of the Project Facilities, or from any of its other duties, obligations or responsibilities under the Agreement. The Concessionaire shall use and continue to use its best endeavors to avoid or reduce further delay in completing the Project Facilities.

## **1.12. Completion of Works**

### **1.12.1. Completion of Work Milestones**

- (a) Upon completion of the works corresponding to each Work Milestone, as specified in the Construction Plan, the Concessionaire shall issue a notice to NORTH DMC, requiring NORTH DMC to inspect the completed works covered by the relevant Work Milestone. The purpose of such inspection shall be to determine whether the works corresponding to the relevant Work Milestone have been duly completed.
- (b) If NORTH DMC is of the view that the works for the relevant Work Milestone do not satisfy the requirements of Article 14.6, then NORTH DMC shall have the right to provide any comments, suggestions and/or instruct the Concessionaire to carry out necessary modifications, to ensure that the works comply with the requirements of Article 14.6. Upon receipt of such comments, suggestions or instructions from NORTH DMC, the Concessionaire shall make necessary modifications to the works to remedy any defects or deficiencies and re-issue a notice to NORTH DMC. The Concessionaire shall bear all costs of remedying the defects and deficiencies in the works and shall not be entitled to any extension of time for remedying such defects or deficiencies. This process shall be repeated until NORTH DMC is satisfied that the works for the relevant Work Milestone have been completed in accordance with the requirements of Article 14.6.
- (c) North DMC may seek the comments/ opinion of the PMU for ascertaining completion of work milestones.
- (d) If NORTH DMC fails to:
  - i. inspect the completed portion of the works covered by the relevant Work Milestone, within 7 (seven) Business Days from the date of receipt of a notice from the Concessionaire under Clause 14.12.1(a) above;
  - ii. provide any comments or suggestions or notify the Concessionaire of any defects or deficiencies in the completed portion of the works covered by the relevant Payment Milestone, within 7 (seven) Business Days from the date of inspection of such completed portion of the works; then, such Works shall be deemed to be completed

### **1.12.2. Testing and Commissioning of the Project Facilities**

- (a) Upon completion of construction of each Project Facilities, in accordance with the requirements set out in this Agreement, the Concessionaire shall issue a notice to NORTH DMC, requiring them to be present at the Site(s) on the date specified in such notice to

undertake a final inspection of the completed Project Facilities and conduct any tests required to ensure that the Project Facilities complies with the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits.

- (b) Within 5 (five) days from the date of receipt of a notice under Article 14.12.2(a) above, NORTH DMC may request the Concessionaire to vary the date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 7 (seven) days from the date specified in the notice received from the Concessionaire under Article 14.12.2(a) above.
- (c) The Concessionaire shall, on the date specified in the notice issued under Article 14.12.2(a) or on such other date as may be agreed with NORTH DMC, carry out the tests in accordance with the instructions and under the supervision of NORTH DMC and in accordance with Schedule 14, to demonstrate that the Project Facilities complies with the requirements of Clause 14.6. IndianOil shall have a right but not obligation to be present for such inspection.
- (d) If NORTH DMC is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any defects or deficiencies in the Project Facilities, identified by NORTH DMC or revealed through the tests and the Project Facilities shall be tested again upon rectification of such defects or deficiencies. This process shall be repeated until such time that NORTH DMC and IndianOil is satisfied that the Project Facilities has been completed in accordance with Clause 14.6 and is safe and fit for purpose. The Concessionaire shall bear all costs of remedying the defects and deficiencies and retesting the Project Facilities and shall not be entitled to any extension of time for remedying such defects or deficiencies or for retesting the Project Facilities.
- (e) If NORTH DMC is also satisfied with the results of the tests and inspection of the Project Facilities, NORTH DMC shall within 15 (fifteen) days thereafter, issue a Completion Certificate to certify that the Project Facilities has been completed in accordance with this Agreement, the Technical Specifications, the Designs and Drawings, Applicable Laws and Applicable Permits and the Project Facilities is safe and fit for purpose subject to the following conditions having been fulfilled by the Concessionaire:
  - i. the submission of 4 (four) hard copies and 1 (one) soft copy on a compact disc/ USB drive/ PEN drive of complete sets of as built drawings of the Project facilities.
  - ii. the Concessionaire having obtained all Applicable Permits necessary for commencement of the O&M services (including specifically, the consent to operate from the [State Pollution Control Board] for the operation of the Project Facilities);
  - iii. the Concessionaire having obtained adequate insurance for the O&M Period in accordance with Clause 11.2;
  - iv. the Concessionaire having engaged sufficient number of adequately skilled O&M personnel to perform the services during the O&M Period; and
  - v. the O&M Manual having been approved by NORTH DMC; and
  - vi. the Concessionaire having cleared the Site(s) and removed all debris, hazardous materials, surplus construction materials, equipment, temporary works, work sheds, labour camps and all other temporary installations on the Site(s).
- (f) If NORTH DMC fails to issue the Construction Completion Certificate for the Project Fa-



cilities to the Concessionaire within [7 (seven)] Business Days from the date of satisfaction of the conditions set out in Clause 14.12.4(a) above and fails to notify the Concessionaire of any reasons for the failure to issue the Construction Completion Certificate for the Project Facilities, then, the Construction Completion Certificate for the Project Facilities shall be deemed to have been issued to the Concessionaire upon the expiry of the [7 (seven)] Business Days period.

- (g) North DMC may seek the comments/ opinion of the PMU for ascertaining completion of testing & commissioning milestones.
- (h) The date of the issuance or deemed issuance of the Construction Completion Certificate shall be the Construction Completion Date for the Project Facilities.

### **1.13. Trial Operations**

- 1.13.1. Subject to Clause 14.13.3 below, within 1 (one) day of the issuance or deemed issuance of the Construction Completion Certificate for the Project Facilities to the Concessionaire, the Concessionaire shall commence the Trial Operations of the Project Facilities in accordance with the trial operation procedures to determine whether the Project Facilities meets the KPIs on a continuous basis and is fit and ready to be placed into commercial operations in accordance with this Agreement. IndianOil shall have a right but no obligation to be present during the Trial Operations.
- 1.13.2. NORTH DMC shall ensure that adequate quantity of MSW is delivered to the Project Facilities during the Trial Operations to enable the Concessionaire to demonstrate that the Project Facilities meets the Technical Specifications and the KPIs.
- 1.13.3. If the Concessionaire fails to commence or continue the Trial Operations, due to the inadequate quantity or inferior quality of the MSW, then the Concessionaire shall promptly notify NORTH DMC. If in the opinion of NORTH DMC, the quantity or quality of MSW is not adequate to undertake Trial Operations, then NORTH DMC shall extend the time period for the Trial Operations. In such case, the date scheduled for commencement of operations (the "Scheduled COD") will also be extended on a day-for-day basis, provided that the Scheduled COD shall not be extended beyond the date which is 6 (six) months from the Construction Completion Date.
- 1.13.4. During the Trial Operations, NORTH DMC shall monitor the performance of the Project Facilities on a regular basis to ensure that the Project Facilities meets the Technical Specifications.
- 1.13.5. If NORTH DMC, is of the view that: ( i) the Trial Operations are not being conducted in accordance with the Trial Operations Procedure; or (ii) there are any defects or deficiencies in the Project Facilities, NORTH DMC shall instruct the Concessionaire to follow the trial operation procedures and/or rectify the defects and deficiencies to ensure compliance with the KPIs.

It is clarified that no Availability Liquidated Damages are payable by the Concessionaire during the Trial Operations period for a failure to achieve the KPIs. However, for the Trial Operations to be successfully concluded, the Concessionaire must demonstrate that the Project Facilities consistently and continuously meets the KPIs during the last 20 (twenty) days of the 3 (three) months Trial Operations period, as may be extended in accordance with Clause 14.14(c) above. If the Project Facilities fails to achieve the KPIs on a continuous basis during the last 20 (twenty) days of the 3 (three) months Trial Operations period (as extended in accordance with Clause 14.14(c)), then the Trial Operations period shall be extended by another 20 days. Sub-

ject to Clause 14.14(e)(i), the Trial Operations shall continue until the Concessionaire can demonstrate that the Project Facilities consistently achieves the KPIs for 20 (twenty) consecutive days.

- 1.13.6. If the Concessionaire has been able to consistently achieve the KPIs for 20 (twenty) consecutive days (as supported by daily reports), the Concessionaire shall issue a notice to NORTH DMC requiring NORTH DMC to undertake a final inspection of the Project Facilities. NORTH DMC shall have the right to undertake such final inspection within 5 (five) Business Days of a notice being issued by the Concessionaire.
  - 1.13.7. If, upon final inspection, NORTH DMC is satisfied that the Project Facilities meets the KPIs and the Technical Specifications, and are capable of safe and reliable operations, then, NORTH DMC shall issue the Trial Operations Completion Certificate for the Project Facilities to the Concessionaire within 7 (seven) days of NORTH DMC undertaking a final inspection of the Project Facilities pursuant to Article 14.13.5 above.
  - 1.13.8. If, upon final inspection, NORTH DMC believes that the Project Facilities does not comply with the KPIs and/or Technical Specifications, then NORTH DMC may reject the Project Facilities and terminate this Agreement. Upon termination of this Agreement, in accordance with this Article 14.13.8, the consequences set out in Article 23.4.1 and Article 23.4.7 shall follow.
  - 1.13.9. If NORTH DMC: (i) does not undertake a final inspection of the Project Facilities within [5 (five)] Business Days of receipt of a notice from the Concessionaire under Clause 14.14(e); or (ii) fails to notify the Concessionaire of any defects in the Project Facilities within [7 (seven)] days of undertaking a final inspection; or (iii) fails to issue a Trial Operations Completion Certificate within [7 (seven)] Business Days from the date of the final inspection, then the Trial Operations shall be deemed to have been successfully completed for Project Facilities and the Trial Operations Completion Certificate will be deemed to have been issued to the Concessionaire upon the expiry of the [5 (five)] Business Days period (in case of (i)) and upon the expiry of the [7 (seven)] Business Days period (in case of (ii) and (iii)).
  - 1.13.10. If the Trial Operations are not successfully completed and/or the Concessionaire fails to issue a notice to NORTH DMC under Article 14.13.5 above on or prior to the Scheduled COD, as may be extended in accordance with Article 14.13.3, for any Project Facilities, then such failure shall be treated as a Concessionaire Event of Default and the consequences set out at Article 16 shall follow.
  - 1.13.11. North DMC may seek the comments/ opinion of the PMU for ascertaining completion of Trial operations period.
  - 1.13.12. Notwithstanding anything contained in Article 14.13.8, if the Concessionaire fails to successfully complete the Trial Operations for the Project Facilities on or prior to the Scheduled COD, as may be extended in accordance with Clause 14.13.3, then such failure will be treated as an Authority Event of Default, and the consequences set out at Article 23 shall follow.
- 1.14. Commercial Operations Date**
- 1.14.1. Within 7 (seven) Business Days from the date of issuance or deemed issuance of the Trial Operations Completion Certificates for the Project Facilities, NORTH DMC shall issue the COD Certificate, subject to the following conditions having been fulfilled by the Concessionaire:

- a) the Concessionaire having received the Construction Completion Certificate;
  - b) the Concessionaire having submitted to NORTH DMC the Scheduled Maintenance Programme for the first-year Post-COD; and
  - c) the O&M Manual having been approved by NORTH DMC;
  - d) the Concessionaire having submitted/extended the performance security to NORTH DMC.
- 1.14.2. If NORTH DMC fails to issue the COD Certificate to the Concessionaire within 7 (seven) Business Days from the date of satisfaction of the conditions set out in Article 14.14.1 above and fails to notify the Concessionaire of any reasons for the failure to issue the COD Certificate, then, the COD Certificate shall be deemed to have been issued to the Concessionaire upon the expiry of the 7 (seven) Business Days period.
- 1.14.3. The date on which the COD Certificate is issued or deemed to have been issued to the Concessionaire shall be the Commercial Operations Date of the Project Facilities.
- 1.14.4. North DMC may seek the comments/ opinion of the PMU for ascertaining completion of Commercial Operations Date.

**1.15. Safety certification prior to Project COD**

The Concessionaire shall, not later than [15 (fifteen)] days prior to the likely Project COD, notify NORTH DMC of the compliance or Safety Requirements and invite them to observe any or all the Tests that may be specified by NORTH DMC in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Project infrastructure is safe for entering into commercial service, and the costs of such Tests shall be borne by the Concessionaire; provided that in case of failure in any Test requiring repetition thereof, the cost of such second or subsequent Test shall also be borne entirely by the Concessionaire. North DMC may seek the help/ comments/ opinion of the PMU & also take into consideration the inspections carried out by various Statutory Agencies before issuing Safety Certificate to the Concessionaire.

## ARTICLE 15 OPERATIONS AND MAINTENANCE PERIOD

### 2.1. Commencement and Duration

The period for the operation and maintenance of the Project Facilities, shall commence on and from COD and shall continue until the Termination Date (the “O&M Period”).

### 2.2. O&M Manual

2.2.1. The Concessionaire shall prepare a detailed O&M Manual for the Project Facilities based on the Proposed Technology and in accordance with the Technical Specifications, the ESHS Documents, Applicable Laws and Applicable Permits. The O&M Manual shall specify the operation procedures (separately for each component of the Project Facilities) and maintenance procedures. In case of any errors or deficiencies in the Technical Specifications, the O&M Manual shall take in account, address or rectify such errors or deficiencies. The Language of the O&M Manual shall be English.

2.2.2. At least 30 (thirty) days prior to the Scheduled Construction Completion Date, the Concessionaire shall submit 4 (four) hard copies and 1 (one) soft copy of the draft O&M Manual to NORTH DMC for its review and approval.

2.2.3. NORTH DMC shall review and provide comments, if any, on the draft O&M Manual to the Concessionaire or notify the Concessionaire of its approval of the draft O&M Manual within 20 (twenty) days from the date of receipt of the draft O&M Manual from the Concessionaire. NORTH DMC may require the Concessionaire to amend or modify the draft O&M Manual if NORTH DMC identifies any deficiencies, inaccuracies or shortcomings in the draft O&M Manual. If the Concessionaire receives any comments, suggestions or instructions to modify the draft O&M Manual from NORTH DMC, then the Concessionaire shall modify the draft O&M Manual to correct any shortcomings, inaccuracies or deficiencies identified by NORTH DMC and/or O&M Manual to NORTH DMC within 10 days of having received NORTH DMC response for its address, in writing, NORTH DMC’s comments on the draft O&M Manual and submit the revised approval. The process set out in this Article 15.2.3 shall continue until the O&M Manual is approved by NORTH DMC in accordance with this Article 15.2.3.

2.2.4. The Concessionaire shall revise the O&M Manual as and when the Concessionaire thinks it necessary to do so and in such case the provisions of Article 15.2.3 will apply as is to the approval of the revised manual.

2.2.5. The Concessionaire shall undertake the O&M of the Project Facilities strictly in accordance with the approved O&M Manual. The Concessionaire shall not deviate from or make any amendment to the approved O&M Manual without the prior written approval of NORTH DMC. The Concessionaire shall not commence operation of the Project Facilities prior to approval of the O&M Manual in accordance with Article 15.2.

2.2.6. Notwithstanding any approval of the O&M Manual by [ NORTH DMC, the Concessionaire shall bear all risk, responsibility and liability for the suitability, accuracy, adequacy and practicality of the O&M Manual. The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of or updating the O&M Manual and complying with the requirements of Article 15.2.

2.2.7. The Concessionaire shall submit a consolidated O&M Manual for the Project Facilities.

### 2.3. Sub-Contracting

2.3.1. The Concessionaire may enter into Sub-Contracts to perform any part of its Scope of

Work during the O&M Period, with the prior intimation to the NORTH DMC.

- 2.3.2. The Concessionaire shall provide a copy of each proposed Sub-Contract, along with details of the relevant Sub-Contractor, to NORTH DMC for its approval, which should set out the precise Scope of Work to be Sub-Contracted to such Sub-Contractor and should be consistent with the terms of this Agreement.
- 2.3.3. Within 7 (seven) days of the execution of an amendment to any approved Sub-Contract, the Concessionaire shall submit a copy of such amendment to NORTH DMC for its records.
- 2.3.4. If the Concessionaire proposes to novate an approved Sub-Contract and/or replace an approved Sub-Contractor, then such novation or replacement shall be with prior intimation to the NORTH DMC.
- 2.3.5. Notwithstanding the approval of any Sub-Contractor by NORTH DMC, the Concessionaire shall be and remain liable under this Agreement for all work and services subcontracted under this Agreement and for all acts, omissions or defaults of any Sub-Contractor. No default under any Sub-Contract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Sub-Contractors.

#### **2.4. Concessionaire's rights and obligations**

- 2.4.1. The Concessionaire shall operate and maintain the Project Facilities in a manner that:
  - (a) is in compliance with the Technical Specifications, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (b) results in the Project Facilities achieving the KPIs;
  - (c) ensures that each of the Project Facilities is capable of operating up to its design capacity on a daily basis;
  - (d) is safe and reliable, subject to normal wear and tear of the Project Facilities;
  - (e) is in compliance with the technology license agreement(s) executed by the Concessionaire for the technology, processes, know-how and systems used or incorporated into the Project Facilities;
  - (f) maintains the safety and security of personnel, material and property at the Site(s), in accordance with the approved ESHS Documents, Applicable Laws and Applicable Permits;
  - (g) ensures that all waste materials and hazardous substances are stored and/or disposed in accordance with the ESHS Documents, Applicable Laws and Applicable Permits; and
  - (h) rectify, cure, remedy all defects, deficiencies, defaults, damage, etc., all of the Project Facilities at its own cost and risk.
- 2.4.2. The Concessionaire shall provide adequate power backup at the Site(s) (including through installation of DG Sets) to ensure continuous supply of power (even during any interruption(s) in the supply of power from the grid) for the uninterrupted operations of the Project Facilities during the O&M Period.
- 2.4.3. The Concessionaire shall provide all necessary assistance to NORTH DMC in undertaking

inspection and monitoring of the operation and maintenance of the Project Facilities.

- 2.4.4. The Concessionaire shall reasonably consider and act upon the comments/suggestions made by NORTH DMC during any meetings of the Concessionaire with its Sub-Contractors.
- 2.4.5. The Concessionaire shall provide NORTH DMC with reasonable access to the Site(s) during office hours to monitor and inspect the Project Facilities.
- 2.4.6. The Concessionaire shall arrange for all equipment, machinery, tools and other resources required to undertake the O&M of the Project Facilities and shall take all reasonable measures to ensure that the transportation of any of the Concessionaire's or the Sub-Contractors' personnel or equipment, to or from the Site(s), does not interfere with local traffic in the vicinity of the Site(s).
- 2.4.7. The Concessionaire shall develop and implement a safety and surveillance programme for the Project Facilities and for handling and disposal of the residual inert matter and adopt appropriate measures and safeguards for security of the environment, life, and property at the Site(s).
- 2.4.8. The Concessionaire shall ensure that none of its employees, consultants, service providers, suppliers, or Sub-Contractors, including any O&M contractor appointed by the Concessionaire, shall engage in any corrupt, fraudulent, collusive, coercive or obstructive practice.

## **2.5. Rights and obligations of the NORTH DMC**

- 2.5.1. During the O&M Period, NORTH DMC shall:
  - a) comply with all its obligations under Applicable Laws;
  - b) monitor and review the operations and performance of the Project Facilities. This includes the right to access the Project Facilities, and review the records and reports that the Concessionaire is required to maintain, during normal working hours;
  - c) review the Scheduled Maintenance Programme and all other plans and documents submitted by the Concessionaire in an expeditious manner, in accordance with this Agreement;
  - d) ensure that the Concessionaire continues to enjoy peaceful access to the Site(s) and shall not assign, transfer, or otherwise dispose of its rights, title, and interest in the Site(s) or create any Encumbrance over any part of the Site(s), which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement;
  - e) comply with all its obligations under the Applicable Laws;

## **2.6. Utilities**

- 2.6.1. The Concessionaire shall apply for and obtain the power connection (at the battery limit of the relevant Site(s)) for the operation of the Project Facilities, in its name, at least 30 (thirty) days prior to the Scheduled Construction Completion Date. The Concessionaire shall provide all necessary assistance to NORTH DMC in procuring the power connection, including by providing all documents and information necessary to complete the application process.
- 2.6.2. The Concessionaire shall install and maintain at its cost, all utilities necessary for the O&M of the Project Facilities, including water, telephone connections, internet connections, etc. at the Site(s). Specifically, to procure water for the O&M of the Project Fa-

ilities, the Concessionaire may dig bore wells at the Site(s) after obtaining all Applicable Permits (including any no-objection certificates from the Central Ground Water Authority or the relevant state authority).

2.6.3. NORTH DMC shall provide any reasonable assistance required by the Concessionaire to obtain the utilities for the O&M of the Project Facilities.

## **2.7. Monitoring and Reporting**

### **2.7.1. Online Monitoring and Meters**

- a) At the Project Facilities Sites, the Concessionaire shall install and maintain an online monitoring system, in accordance with the Technical Specifications and Applicable Laws (including specifically, the EPA) to monitor the volume, specifications and characteristics of the incoming MSW and ensure that the Project Facilities are capable of operating up to its design capacity on a daily basis. The online monitoring devices should be capable of measuring and analyzing the quantum and characteristics of the MSW at the Processing facility and decentralized units and of the quantum and quality of disposables discharged from the Sites.
- b) Online monitoring system shall maintain a record for equipment's historical running information, status, faults, and any other parameters required to judge its conditions. Such monitoring shall be conducted in accordance with Applicable Laws and Good Industry Practices.
- c) The Concessionaire shall record and transmit all data collected from the online monitoring systems and the meter reading of the grade, volume and characteristics of the incoming MSW and the processed disposables. The Concessionaire shall furnish a summary report for the Project Facilities to NORTH DMC on a daily basis, which shall indicate: (A) the quantum of the MSW received at the relevant Project Facility(ies) and the quantum of the processed disposables including compost from the relevant Project Facility(ies) of the relevant day; and (B) the periods during which the quantum of MSW received at the relevant Project Facility(ies) exceeded its design capacity.
- d) The CBG and Ethanol quality parameters, quality and quantity produced, amount of feedstock handled & other important operational parameters shall be made available through web-based applications by the Concessionaire to IndianOil.
- e) In case the CBG is injected in to the CGD entity's gas pipeline network from the nearest / identified tie in point, the online gas quality parameters and quantity readings shall be made available through web-based applications by the Concessionaire to GAIL, CGD entity & IndianOil.
- f) The Concessionaire shall also be required to upload the periodic reports from the online monitoring on the Central Pollution Control Board's website.
- g) The Concessionaire shall maintain the online monitoring systems and meters at its own cost and expense for the entire O&M Period.
- h) At Project Facility (ies), the Concessionaire shall also install meters and gauges at the DG Sets to measure the total number of energy units (in kWh) consumed from the DG Sets in each month of the O&M Period.
- i) [If the Concessionaire sets up a Waste to Energy Plant(s), then the Concessionaire shall install meters at the Waste to Energy Plant(s) to measure the total number of

energy units (in kWh) generated from the Waste to Energy Plant(s) in each month of the O&M Period.]

- j) The meters shall be calibrated once every year during the O&M Period in accordance with Good Industry Practices and the meters shall be jointly tested by [NORTH DMC and the Concessionaire to ensure the accuracy of the meters installed by the Concessionaire.

#### 2.7.2. Records and Reporting Requirements

- a) The Concessionaire shall maintain:
  - i) records of the quantum and characteristics of the MSW received at, and the processed disposables discharged from the Project Facilities; and
  - ii) books of accounts recording all payments received from [NORTH DMC and/or the State Government and other revenues derived/collected by it from the Project Facilities or resulting from its use, separately for each of the Project Facility and Site.
- b) The Concessionaire shall provide to NORTH DMC, 2 (two) copies of its audited financial statements along with a report from its statutory auditors, within 90 (ninety) days of the close of each Financial Year.
- c) For Project Facilities, the Concessionaire shall deliver to NORTH DMC the following during the O&M Period within the specified timelines:
  - i) reports relating to any activity, problem, incident or circumstance that threatens or may threaten public health, safety, the environment or the safety and security of the Project Facilities, and any action taken to mitigate the effect of such incident or problem, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such event or circumstance;
  - ii) reports on any critical breakdowns or failures in the Project Facilities, within 12 (twelve) hours of such occurrence;
  - iii) reports on accidents or other incidents in relation to the O&M personnel or any third party, along with statements on actions taken to minimize recurrence, within 2 (two) days of such occurrence;
  - iv) daily reports with the data collected from the monitoring and metering system, the online monitoring system and the tests conducted by the Concessionaire in accordance with Clause 15.9 on the characteristics and volume of MSW treated at the Project Facilities, processed disposables discharged from the Project Facilities, at the end of each day (i.e., on or before [1500 hours] everyday);
  - v) monthly progress reports relating to the performance of O&M services (including on compliance with the KPIs, details of disposal or sale, as the case may be, of the processed disposables, and details of any Emergency during the relevant month), on or before the 7th(seventh) day of the following month. The monthly progress report must be submitted to NORTH DMC;
  - vi) copies of any reports, notices or responses submitted for compliance/non-compliance with Applicable Laws or Applicable Permits, within 2 (two) days of making such submissions to the relevant Government Authority; and
  - vii) reports on any material litigation, including any winding-up proceedings or no-



tice to commence winding-up proceedings or material disputes to which the Concessionaire is a party, appointment of a receiver or administrator in relation to the business or assets of the Concessionaire and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the O&M services, as soon as reasonably possible after the occurrence of any such event.

- d) It is clarified that the reports set out in this Clause 15. 7 will be separately prepared and furnished for each of the Project Facilities.
- e) It is expressly agreed between the Parties that the NORTH DMC, IndianOil and their respective nominees shall be permitted to inspect the Site(s) and/or all accounts, records, and other documents relating to contract performance of the Concessionaire, as well as its Sub- Contractors, agents, personnel, consultants, service providers or suppliers, including O&M contractors for the Project and have them audited by auditors appointed by NORTH DMC, IndianOil and their respective nominees.

## **2.8. Design Capacity Utilization**

- 2.8.1. During each day of the O&M Period, the Concessionaire shall ensure that Project Facilities can accept and process MSW up to its design capacity.
- 2.8.2. The Concessionaire shall notify NORTH DMC as soon as it becomes aware that the quantum of MSW received at the relevant Project Facility is more than its design capacity.
- 2.8.3. In such circumstances, if the Concessionaire is unable to accept and process the excess MSW (i.e., over and above the design capacity) at the relevant Project Facility, then such failure shall be treated as a Forced Unavailability for which the Concessionaire shall not be liable, subject to the Concessionaire having notified NORTH DMC in accordance with Article 15.8.2 above. NORTH DMC reserves the right to verify the capacity utilization at any Project Facility, at any time during the O&M Period.

## **2.9. Maintenance and Repair of the Project Facilities**

- 2.9.1. During the O&M Period, the Concessionaire shall, at its own cost, undertake the maintenance of the Project Facilities and repair any damage to the Project Facilities either by itself, or through an approved Sub-Contractor, such that the Project Facilities shall be:
  - a) in good working condition (subject only to wear and tear and Force Majeure) and achieve their full useful economic life in accordance with the Designs and Drawings;
  - b) maintained in compliance with the Technical Specifications, O&M Manual, Scheduled Maintenance Programme, Applicable Laws, Applicable Permits, Good Industry Practice and the recommendations of the technology providers;
  - c) capable of meeting the KPIs.
- 2.9.2. For the first year of the O&M Period, the Concessionaire shall submit its scheduled maintenance programme for the Project Facilities, specifying the Scheduled Maintenance periods for the Project Facilities and the impact of such Scheduled Maintenance periods on the Availability of each of the Project Facility (the "Scheduled Maintenance Programme") to the NORTH DMC (with a copy to IndianOil) at least 1 (one) month before the Scheduled COD and for every subsequent year of the O&M Period, the Concessionaire shall submit the Scheduled Maintenance Programme, at least 1 (one) month prior to the beginning of the relevant year. The Scheduled Maintenance Pro-

gramme for the first year will cover the period from the COD until the end of the calendar year in which the COD occurs. It is clarified that the Concessionaire shall submit a consolidated Scheduled Maintenance Programme for the Project Facilities

- 2.9.3. Within 15 (fifteen) days of receipt of the Scheduled Maintenance Programme, NORTH DMC, in consultation with IndianOil, shall notify the Concessionaire of its approval of such schedule.

If NORTH DMC does not accept any one or more of the requested Scheduled Maintenance periods or its impact on the Availability of a Project Facilities, NORTH DMC shall advise the Concessionaire within 15 (fifteen) days of the receipt of the Scheduled Maintenance Programme on when any Scheduled Maintenance can be rescheduled or how its impact on the Availability of a Project Facilities may be minimised. The rescheduled time shall be as close as reasonably practicable to the requested time and shall be of equal duration as the requested period. If NORTH DMC fails to object to any Scheduled Maintenance within the specified time period or fails to advise the Concessionaire of a substitute time, the Concessionaire may schedule the Scheduled Maintenance for such duration and at such time as initially requested, unless IndianOil has intimated Concessionaire that such time and duration is not acceptable to IndianOil in its sole discretion.

- a) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Article 15.9, NORTH DMC may require the Concessionaire to reschedule a Scheduled Maintenance in the Scheduled Maintenance Programme, provided that:
- i) NORTH DMC has given the Concessionaire at least 30 days (30 days) prior written notice of such rescheduling;
  - ii) NORTH DMC shall not require such Scheduled Maintenance to be rescheduled for a period of shorter or longer duration;
  - iii) NORTH DMC shall not require that a single Scheduled Maintenance period be split into two or more periods; and
  - iv) NORTH DMC shall not require that a Scheduled Maintenance be brought forward any earlier than 15 (fifteen) days from the date of such notice without the consent of the Concessionaire.
- b) Notwithstanding the finalization of the Scheduled Maintenance Programme pursuant to this Clause 15.9, the Concessionaire may request a rescheduling of any Scheduled Maintenance upon 60 (sixty) days prior written notice to NORTH DMC. NORTH DMC shall respond to such request, in consultation with IndianOil, within 10 (ten) days and shall not unreasonably withhold its permission for such re-scheduling.
- c) Within 5 (five) days of any re-scheduling of a Scheduled Maintenance, as may be approved by the NORTH DMC, the Concessionaire shall provide to NORTH DMC, the amended Scheduled Maintenance Programme, which shall then be the “Scheduled Maintenance Programme”.
- d) During the O&M Period, the Concessionaire shall, at its own cost, replace any component or part of the Project Facilities that is damaged or worn out or in the Concessionaire's judgment becomes no longer practicable to repair as a result of normal wear and tear.
- e) If at any time during the O&M Period, a Project Facilities is damaged by a Minor Casualty, the Concessionaire shall, with reasonable diligence, proceed to process the claim

with insurance providers and at its own cost, repair, replace, and restore the damaged portion of the Project Facilities to the same condition that it was in before the occurrence of such Minor Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

If at any time during the O&M Period, a Project Facilities is damaged by a Total Casualty, then this Agreement shall be terminable at the option of the Concessionaire. If the Concessionaire elects to terminate the Agreement, then the consequences set out in Article 23 will follow. If, however, the Concessionaire elects not to terminate the Agreement, then the Concessionaire shall repair, replace and restore the damaged Project Facilities to the same condition that it was in before the occurrence of such Total Casualty. To the extent available, insurance proceeds shall be applied to such repair, replacement or restoration.

## **2.10. Remedial Measures**

If after the COD, the Concessionaire ceases to operate Project Facilities for a period of 48 (forty eight) consecutive hours other than due to a Forced Unavailability, Scheduled Maintenance, or a suspension pursuant to Article 21, which is not attributable to the Concessionaire, or a Force Majeure Event, without the prior written consent of NORTH DMC, then NORTH DMC shall be entitled to step-in and undertake O&M of such Project Facilities until the Concessionaire demonstrates to the satisfaction of NORTH DMC that it can and will resume normal operation and maintenance of the Project Facilities. The exercise of NORTH DMC's rights under this Article 15.10 shall be at the cost, risk and expense of the Concessionaire. The Concessionaire shall be liable to pay NORTH DMC charges @ ... per day during such period. Further, such failure shall be deemed to be a Concessionaire Event of Default. Any such step-in shall be without prejudice to the obligations of the Concessionaire to IndianOil in terms of the CBG Sale and Purchase Agreement and the Ethanol Sale and Purchase Agreement.

## **2.11. O&M Personnel**

- 2.11.1. The Concessionaire shall engage (either directly or through an approved Sub-Contractor) adequate number of suitably skilled and qualified personnel to undertake the O&M of the Project Facilities in accordance with the requirements set out in this Article 15.
- 2.11.2. The Concessionaire shall be solely responsible for discharging all obligations in connection with the employment of the O&M personnel, including the payment of wages, salaries, Taxes, and retrenchment compensation and providing all amenities and benefits required under Applicable Laws.
- 2.11.3. Subject to compliance with the Applicable Laws, the Concessionaire shall have full freedom to determine its internal human resources (HR) policies, including, the wages, benefits and salary structure of its employees, the conditions of service, the shifts of work, its hire and fire policy (whether for misconduct or other cause), and payment of severance or retrenchment compensation.
- 2.11.4. NORTH DMC is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the O&M personnel. The Concessionaire shall hold harmless and indemnify NORTH DMC against all losses, claims, costs and damages that NORTH DMC may suffer due to the Concessionaire's Sub-Contractor's failure to comply with Applicable Laws.

## ARTICLE 16 MONITORING AND INSPECTION

### 16.1 During Pre-COD Period

#### 16.1.1 Monthly Progress Reports

During the Pre-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to North DMC, a monthly report bringing out in detail the progress made by the Concessionaire and also organize monthly review meetings with respect to its Scope of Work, including *inter-alia* the Processing facility (including the power plant, if any), Project Facilities and any such information as may be considered essential by North DMC.

#### 16.1.2 Inspection

During the Pre-COD Period, North DMC shall inspect or cause to be inspected the Project Facilities at least [once a month] or at such shorter intervals as may be considered essential by North DMC and/ or the PMU, make report of such inspection (the “**Pre-COD Inspection Report**”) stating in reasonable detail the delay or deficiencies, if any, with particular reference to the Scope of Work, Good Industry Practices, and Applicable Laws.

It shall send a copy of such a Report to the Concessionaire within 2 (two) days of such inspection/ observation and upon receipt thereof, the Concessionaire shall rectify and remedy the observations, if any, stated in the Inspection Report. Provided however, such inspection or submission of Inspection Report by North DMC shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

#### 16.1.3 Tests

For determining that the Project Facilities conform to the requirements of this Agreement, North DMC shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by North DMC/ PMU from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of North DMC and furnish the results thereof to North DMC. For the avoidance of doubt, the costs to be incurred on any such test undertaken shall be borne solely by the Concessionaire. In the event that results of any tests conducted under this Article 16.1.3 above establish any defects or deficiencies in the works, the Concessionaire shall carry out remedial measures and furnish a report to North DMC in this behalf. For the avoidance of doubt, it is agreed that tests pursuant to this Article 16.1.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to North DMC forthwith.

### 16.2 Post-COD period

#### 16.2.1 Monthly Status Reports

During Post-COD Period, the Concessionaire shall, not later than 7 (seven) days after the close of each month, furnish to North DMC a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, the quantity of MSW Collected, Processed and Disposed and shall promptly give such other relevant information as may be required by North DMC.

In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

#### 16.2.2 Inspection

North DMC shall inspect or cause to be inspected the execution of the Project at least [once a month]. It shall make a report of such inspection (the “**Post -COD Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with reference to the Maintenance Requirements, maintenance manual, KPIs or requirements as set forth in this Agreement including Schedules/ Schedules, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Post-COD Inspection Report. Such inspection or submission of Post-COD Inspection Report by North DMC shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

#### 16.2.3 Remedial measures

- a) The Concessionaire shall repair or rectify the defects or deficiencies, which have impact on the operations/ efficiency of the Project, if any, set forth in the Post-COD Inspection Report and furnish a report in respect thereof to North DMC within 15 (fifteen) days of receiving the Post-COD Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports to North DMC of the repair works [once every week] until such works are completed in conformity with this Agreement.

In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, North DMC/ NORTH DMC shall be entitled to recover Damages from the Concessionaire at the rate of [0.1% (zero point one percent)] of Performance Security for each day of delay beyond the period specified for rectification of such defect or deficiency by the Project Management Unit/NORTH DMC.

#### 16.2.4 NORTH DMC’s right to take remedial measures

- (a) In the event the Concessionaire does not maintain and/or repair the Project Facilities/ Project Assets or any part thereof in conformity with the Maintenance Requirements, maintenance manual or KPI or requirements as set forth in this Agreement including Schedules/ Schedules, and fails to commence remedial works within 15 (fifteen) days of receipt of Post-COD Inspection Report or notice in this behalf from [ NORTH DMC, the same shall, without prejudice to its right under this Agreement including termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, an additional sum equal to [10% (ten percent)] of such cost shall be paid by the Concessionaire to NORTH DMC as damages.

## ARTICLE 17 PAYMENTS

17.1 Notwithstanding anything to the contrary in this Agreement, NORTH DMC shall have no obligation to make any payments to the Concessionaire other than those conditions arising from Event of Default or Termination.

### 17.2. Taxes and Royalties

- (a) The Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- (b) The Concessionaire shall be responsible for payment of all applicable royalties on any fine and coarse aggregate, core sand, fine sand, grit and any other minerals extracted and/or used by the Concessionaire or any Sub-Contractor during the Construction Period.
- (c) Upon a request from the Concessionaire, NORTH DMC will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that NORTH DMC shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.
- (d) The Concessionaire shall indemnify NORTH DMC from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.
- (e) Any Taxes payable in relation to the Sites shall be borne by NORTH DMC.
- (f) The Concessionaire shall indemnify IndianOil expressly from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the sale/ purchase of CBG and Ethanol supplied from the WtE plant.
- (g) Upon a reasonable request from the Concessionaire, IndianOil shall provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the sale/ purchase of CBG and Ethanol supplied from the WtE plant. It is expressly clarified that IndianOil shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available to the Concessionaire.

### 17.3 Default Interest

Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts at the prevailing **SBI MCLR + 3% (three per cent) per annum** or part thereof. This is without prejudice to any Party's right to terminate this Agreement in accordance with Article 23 or any other right or remedy available to it under this Agreement or Applicable Laws.

### 17.4 Disputed Amounts

- (a) The Parties shall, within [10 (ten)] days of receiving the amount due and payable to it, shall notify the other Party of the disputed amounts along with details thereof (the "Disputed Amounts"). Within [7 (seven)] days of receiving such notice, the defending Party shall present any information or evidence as may be reasona-

bly required for determining that such Disputed Amounts are not payable. The Parties may, if necessary, meet a representative of the other Party for resolving the dispute and in the event that the dispute is not resolved the Dispute Resolution Procedure in accordance with Article 26 shall apply.

- (b) If any amount is payable by either Party upon determination of a dispute regarding any Disputed Amount such amount shall be deemed to be payable on the date when it first became due and interest for the period of delay shall be due and payable at the rate specified in Article 17.8.

#### **17.5 Set-off**

- (a) The Concessionaire shall not be entitled to retain or set-off any amount due to NORTH DMC by it, but NORTH DMC may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.
- (b) NORTH DMC shall notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.
- (c) The Concessionaire shall not be entitled to retain or set-off any amount due to IndianOil by it in connection with the sale of CBG and Ethanol from WtE plant. However, IndianOil reserves the right to retain or set-off any amount owed to it by the Concessionaire which has fallen due and payable against any amount due to the Concessionaire in connection with the sale of CBG and Ethanol by the Concessionaire from WtE plant.
- (d) IndianOil may notify the Concessionaire at the time it exercises its right to set-off and shall provide the Concessionaire its reasons for exercising such right to set-off.

## ARTICLE 18 KEY PERFORMANCE INDICATORS

### 18.1. Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall develop, operate and maintain the Project Facilities, machinery, and vehicles such that it achieves the performance indicators comprising Availability, Reliability, Operation, Punctuality, Frequency, Safety, upkeep and conformity with ISO certification, as specified in this Article, Good Industry Practice and Applicable Laws (the **Key Performance Indicators**”).

### 18.2. Processing, Disposal & generating value from MSW

- a) Availability: The Concessionaire shall ensure that the Availability of the machinery and facilities for Processing, Disposal & generating value from MSW on every day during the Period of the Concession Agreement shall be 100% (one hundred per cent) (the **“Guaranteed Availability”**)
- b) Operation: The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:
  - i) there are adequate arrangements for machinery and facilities Processing, Disposal & generating value from Municipal MSW as per Specifications and Standards;
  - ii) all machinery, equipment and facilities are operational, function efficiently, and their availability is no less than [98% (ninety eight per cent)] in a month;
- c) Punctuality and duration of work
  - i) The Concessionaire agrees that the Punctuality as to the duration of work at the site shall be measured on a monthly basis in terms of the percentage of days with minimum [8 (eight)] hours of operation to the total number of working days (**“Duration Punctuality”**)
  - ii) The Concessionaire agrees that the Duration Punctuality shall be equal to or more than [80% (eighty percent)] respectively.
- d) Safety of Operations
  - i) NORTH DMC and the Concessionaire agree that the Safety of operation of the work of Processing, Disposal & generating value from Municipal MSW shall be measured in terms of inverse of number of accidents per 1,00,000 MT (the **“General Safety”**) and the number of fatalities per 10,00,000 MT (the **“Severe Safety”**) respectively. The General Safety and Severe Safety shall be calculated in terms of total quantum of processing & disposal of Municipal MSW divided by number of accidents multiplied by [1,00,000 (One Lakh)] and total quantum of MSW cleared divided by number of fatalities multiplied by [10,00,000 (Ten Lakh)], respectively.
  - ii) The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Article 18.1.1(d)(i) shall be equal to or more than [1(one)].

### 18.3. Collection and Transportation (Responsibility of NORTH DMC)

- a) Availability: NORTH DMC shall ensure that the Availability of the collection and transportation vehicles on every day during the O&M Period shall be 100% (one



hundred per cent) (“**Guaranteed Availability**”)

#### 18.4. Facilities at Project Facilities

- a) Availability: The Concessionaire shall ensure that the Availability of the Project Facilities at the Site and decentralized units on every day during the Post-COD period shall be 100% (one hundred percent (the “**Guaranteed Availability**”)
- b) Operation: The Concessionaire shall at all times procure that, save and except any determined damage caused by theft, arson or vandalism:
  - i) there are adequate arrangements of Project Facilities as per Specifications and Standards;
  - ii) all machinery, equipment and facilities are operational, function efficiently, and their availability is no less than [98% (ninety eight per cent)] in a month;
  - iii) the Project Facilities are maintained in accordance with Maintenance Requirements;
- c) Punctuality and duration of work
  - i) The Concessionaire agrees that the Punctuality as to the duration of work of the Project Facilities shall be measured on a monthly basis in terms of the percentage of days with minimum [8 (eight)] hours of operation to the total number of working days (“**Duration Punctuality**”)
  - ii) NORTH DMC and the Concessionaire agree that the Concessionaire may exercise a relaxation equivalent to [2 (two)] hours, for start of the schedule of the Processing & Disposal of Municipal MSW, for reasons attributable to rains, Force Majeure, [or any special circumstance].
  - iii) The Concessionaire agrees that the Duration Punctuality shall be equal to or more than [80% (eighty percent)] respectively.
- d) Safety of Operations
  - i) NORTH DMC and the Concessionaire agree that the Safety of operation of the Project Facilities shall be measured in terms of inverse of number of accidents per [1,00,000 MT] (the “**General Safety**”) and the number of fatalities per 10,00,000 MT (the “**Severe Safety**”) respectively. The General Safety and Severe Safety shall be calculated in terms of total quantum of Legacy Waste cleared divided by number of accidents multiplied by [1,00,000 (One Lakh)] and total quantum of Legacy Waste cleared divided by number of fatalities multiplied by [10,00,000 (Ten Lakh)], respectively.
  - ii) The Concessionaire agrees that the General Safety and the Severe Safety, as the case may be, determined in accordance with Article 18.1.1(d)(i) shall be equal to or more than [1(one)].

#### 18.5. Miscellaneous

- a) **Extent of recovery of waste supplied by NORTH DMC:** The quantum of MSW supplied by NORTH DMC, which is either recycled or processed shall be expressed in terms of percentage of waste supplied (“the Extent of Recovery”). The Extent of Recovery shall not be less than [**80% (eighty per cent)**] during any year of operation. All rights and interest in the [residual inert waste, recyclables, fertilizers etc.], shall vest with the Concessionaire at all times during the O&M Period, unless

transferred by the Concessionaire to a third party buyer/off-taker in accordance with this Agreement.

- b) **Efficiency in redressal of customer complaint:** The total number of Project related complaints redressed within 48 (forty eight) hours of the receipt of complaint, as a percentage of the total number of Project related complaints received in the given time period (the “**Efficiency in Redressal of Customer Complaint**”) shall be increased by the Concessionaire annually up to 100% (one hundred per cent), with the efficiency not being less than 50% (fifty per cent) during any year of operation.
- c) **Quantum of inert/ residual waste undisposed:** The Concessionaire shall make reasonable endeavors to ensure sale of most of the recovered waste products, materials, etc., so as to limit the quantum of waste which remains undisposed to maximum of [20% (twenty per cent)] in a [year]. The quantum of undisposed waste shall be calculated as the difference of total quantum of waste collected and the waste recycled/processed and/or the recycled/processed waste which could not sell.

By way of illustration, assuming that the total quantum of waste processed by the Concessionaire in a year is 1000 (one thousand) tons, the Concessionaire, would have recycled/processed 700 (seven hundred) tons. The remaining 300 (three hundred) tons would constitute of the undisposed waste. If 100 (one hundred) tons out of the 700 (seven hundred) tons of processed waste are not sold by the Concessionaire, the 100 (one hundred) tons would also constitute of undisposed waste. Hence, the total quantum of undisposed waste for the year would be equal to 400 (four hundred) tons which exceeds the limit of 20% (twenty per cent) on undisposed waste. Hence, the Concessionaire may be liable to pay Performance Liquidated Damages.

- d) **Certification**
  - (i) The Concessionaire shall, prior to 1<sup>st</sup> (first) Anniversary of the COD, achieve and thereafter maintain throughout the Concession Period, [ISO 9000, 14000 & 18000 standards] certification or a substitute thereof for the WtE Project Facilities and shall provide certified copies thereof to NORTH DMC, forthwith.
  - (ii) In the event of default in obtaining the certification specified above, the Concessionaire shall, within [15 (fifteen)] days thereof, submit to NORTH DMC, an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for the Project Facilities.
  - (iii) If the period of default in obtaining the ISO certification under this Article shall exceed a continuous period of [15 (fifteen)] months, the Concessionaire shall pay Damages to the NORTH DMC in an amount equal to [5% (five per cent)] of the Performance Security.
- e) **Monthly Report:** The Concessionaire shall, no later than [7 (seven)] days after the end of each month, furnish to the NORTH DMC, a report stating the KPI achievement of the Project Facility as measured on a daily basis. The Concessionaire shall promptly give such other relevant information as may be required by the NORTH DMC.

## 18.6. Availability of Project Facilities

- 18.6.1. The 'Availability' of each Project Facilities will be determined as a ratio of the number of hours in a day during which such Project Facility was available to carry out operations up to its design capacity, to the total number of hours in a day, and the term 'Available' shall be construed accordingly.
- 18.6.2. In computing the Availability of each Project Facilities, the Concessionaire agrees that the Project Facilities will be deemed to be Available at all times, other than during the period of:
- (a) an Unscheduled Outage affecting such Project Facility;
  - (b) a Power Outage affecting such Project Facility;
  - (c) suspension of the O&M services for such Project Facility, the cause of which & for reasons not attributable to the Concessionaire; or
  - (d) an Emergency affecting such Project Facility, the cause of which is not attributable to the Concessionaire, during which the Project Facility will be deemed to be not Available.
- 18.6.3. Notwithstanding anything to the contrary contained in this Agreement, during the period of a Forced Unavailability or a Force Majeure, the Project Facility affected by such Forced Unavailability or a Force Majeure will be deemed to be Available.
- 18.6.4. If the Availability for a Project Facility on any given day is less than the Guaranteed Availability, the NORTH DMC shall issue a notice to the Concessionaire requiring the Concessionaire to cure the default causing the reduction in Availability in [3 (three)] days. Any failure to cure the default and achieve the Guaranteed Availability within [3 (three)] days of receipt of the notice from the NORTH DMC shall constitute a Concessionaire Event of Default. The NORTH DMC may claim Availability Liquidated Damages would be available till the default is cured or the Agreement is terminated.

## 18.7. Damages for failure to achieve Key Performance Indicators

### 18.7.1. Availability Liquidated Damages

- (a) If the Availability on any given day in a [month/quarter] is less than the Guaranteed Availability then the Concessionaire shall pay the liquidated damages (the "Availability Liquidated Damages") equal to [0.1% (zero point one per cent)] of Performance Security for each such day.

### 18.7.2. Performance Liquidated Damages

- (a) If the compliance of KPIs (other than Availability of Project Facilities) on any given day(s) in a [month/quarter] is less than the benchmarks then the Concessionaire shall pay the liquidated damages (the "**Performance Liquidated Damages**") equal to [0.1% (zero point one per cent)] of the Performance Security for each such day. Based on the KPI Adherence Report, if the Project Facility(ies) does not comply with the KPIs, then the process set out below shall follow:
  - i. In the first instance of non-compliance (the First Breach), NORTH DMC shall issue a notice to the Concessionaire on the first day of such non-compliance (First Breach Notice) requiring the Concessionaire to cure the First Breach within [20 (twenty)] days from the date of the First Breach Notice. If the First Breach is cured within [2 (two)] days of the First Breach Notice, then the Concessionaire shall not be liable to pay any Performance Liquidated Damages. If, however, the First Breach continues

beyond [2 (two)] days of the First Breach Notice, then, the Concessionaire shall be liable to pay the Performance Liquidated Damages as pre-decided by the Parties, from the [3rd(third)] day of the First Breach.

- ii. If: (I) the First Breach continues for [20 (twenty)] days from the date of the First Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the First Breach, then such breach shall constitute the Second Breach. Upon occurrence of the Second Breach, the NORTH DMC] shall issue a notice to the Concessionaire on the first day of the Second Breach (Second Breach Notice) requiring the Concessionaire to cure the Second Breach within [20 (twenty)] days from the date of the Second Breach Notice. If the Second Breach continues beyond [2 (two)] days of the Second Breach Notice, then, the Concessionaire shall be liable to pay twice the amount of the Performance Liquidated Damages, as pre-decided by the Parties, from the [1st(first)] day of the Second Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay Performance Liquidated Damages at the rate specified for the First Breach, for the first [2 (two)] days of a continuing breach from the date of the Second Breach Notice and twice the specified Performance Liquidated Damages from the [3rd(third)] day of a continuing Second Breach.
- iii. If: (I) the Second Breach continues for [20 (twenty)] days from the date of the Second Breach Notice; or (II) another instance of non-compliance occurs within [6 (six)] months of the Second Breach, then such breach shall constitute the Third Breach. Upon occurrence of the Third Breach, the NORTH DMC] shall issue a notice to the Concessionaire on the first day of the Third Breach (Third Breach Notice) requiring the Concessionaire to cure the Third Breach within [20 (twenty)] days from the date of the Third Breach Notice. If the Third Breach continues beyond [2 (two)] days of the Third Breach Notice, then: (X) the Concessionaire shall be liable to pay thrice the amount of the Performance Liquidated Damages applicable to the First Breach, from the [1st (first)] day of the Third Breach; and (Y) the Capex Annuity for the relevant [month(s)/quarter(s)] will be reduced by an amount equal to the Capex Annuity for the relevant [quarter/90 (ninety)] days for each day that the Third Breach continues beyond the [1st (first)] day of the Third Breach. In case of (I) above, it is clarified that the Concessionaire will be liable to pay twice the Performance Liquidated Damages specified applicable to the First Breach, for the first [2 (two)] days of a continuing breach from the date of the Third Breach Notice and thrice the specified Performance Liquidated Damages from the [3rd (third)] day of the Third Breach, in addition to the reduction in the Capex Annuity.
- iv. If: (I) the Third Breach is not cured within [20 (twenty)] days from the Third Breach Notice; or (II) a failure to comply with the KPIs results in occurrence of a Third Breach more than 3 (three) times in a continuous [12 (twelve)] month period, it will be treated as a Concessionaire Event of Default and the consequences set out at Article 23 shall apply.
- v. The Parties acknowledge that the Performance Liquidated Damages (including any escalation contemplated in this Article 18.3.2) are a genuine pre-estimation of and reasonable compensation for the environmental

damage that may be caused by the Concessionaire's continuing failure to comply with the KPIs, and not as penalty. The payment of Performance Liquidated Damages will not absolve the Concessionaire from any other liability under Applicable Law, for causing any environmental pollution or health hazard due to its failure to comply with the Discharge Standards and/or Applicable Law.

- (b) Within [7 (seven)] days from the end of each month, the Concessionaire shall be required to provide the monthly progress report for each of the Project Facilities (prepared in accordance with Article 15.7.2(c)(v)) on compliance of such Project Facilities with the KPIs and the reasons for such failure, if any. North DMC shall be required to certify each such monthly report before it is provided to the NORTH DMC. Such certified report on compliance with KPIs shall be referred to as **the KPI Adherence Report**.

18.7.3. Notwithstanding anything to the contrary contained herein, in the event in any [month/quarter] the aggregate of Availability Liquidated Damages and Performance Liquidated Damages levied by the NORTH DMC on account of non-performance exceeds **25% of the Performance Security** amount available with North DMC, then the same shall be construed as Concessionaire Event of Default, which shall make this Agreement liable for termination.

#### ARTICLE 19 ESCROW ACCOUNT

The Concessionaire prior to the Compliance Date, shall open & establish an Escrow Account with a Bank (the “Escrow Bank”) in accordance with the terms & conditions of this Agreement & the Escrow Agreement (**Schedule 8**).

The nature & scope of the Escrow Account as fully described in the Agreement to be entered in to amongst the Concessionaire, North DMC, IndianOil substantially in the form as set forth in Schedule 8.



## ARTICLE 20 FORCE MAJEURE

### 20.1 Force Majeure Events

20.1.1. A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring after the date of this Agreement, which is/are:

- a) beyond the reasonable control of the Affected Party.
- b) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence.
- c) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
- d) such that it/they has/have a Material Adverse Effect.

20.1.2. A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Article 20.1.1:

- a) Non-Political Force Majeure Events
  - i) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements;
  - ii) fire or explosion caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
  - iii) chemical or radioactive contamination or ionising radiation;
  - iv) epidemic, plague or quarantine;
  - v) 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; and
  - vi) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for construction or O&M of the Facilities.

Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- i) heavy rainfall.
  - ii) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project.
  - iii) a delay in the performance of any Subcontractor.
  - iv) non-performance resulting from normal wear and tear; or
  - v) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case maybe.
- b) Indirect Political Force Majeure Events



- i) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the Gol or the GNCTD or occurring in New Delhi.
  - ii) invasion, armed conflict, coup, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the Gol or the GNCTD or occurring in New Delhi.
  - iii) strikes or boycotts (including non-political strikes other than those involving the Concessionaire, Sub-Contractors or their respective employees/representatives, or attributable to any act or omission of any of them and the indirect political strikes such as industry-wide or state-wide strikes), lock-out, or other industrial disputes which are not directly attributable to the actions of the Affected Party.
  - iv) any orders issued by the relevant Government Authority, which require the Concessionaire to suspend the construction or O&M of the Facilities provided that, such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits; and
  - v) delay or failure by relevant Government Authorities in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.
- c) Direct Political Force Majeure Events
- i) occurrence of a Fundamental Change in Law in accordance with Article 22.
  - ii) compulsory acquisition in national interest or expropriation of the Site; and
  - iii) any order, notification or judgment issued or passed by any Government Authority/ Court of Law/ Tribunal which restricts the Concessionaire from constructing or operating the Facilities as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.
- d) Without prejudice to the provisions above,
- i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Article 20.1;and
  - ii) any act, event or circumstance which primarily affects any of the State Government Related Parties or the NORTH DMC Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected NORTH DMC and / or IndianOil, it would have come within the definition of Force Majeure Event under this Article20.1.
- e) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 26, provided however that the bur-

den of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

**20.1.3.** The provision of Article 20 shall apply mutatis mutandis to the CBG and Ethanol Sale Purchase Agreement between IndianOil and Concessionaire.

## **20.2 Notice of Force Majeure Events**

**20.2.1.** The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (the “**FM Notice**”), as soon as the same arises or as soon as reasonably practicable and in any event within 3 (three) days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

**20.2.2.** If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.

**20.2.3.** Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Article 20.2.

## **20.3 Excuse of Performance**

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

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

**20.3.2.** If a Force Majeure Event affects only one Project Facility, and not the other Project Facilities, then the Affected Party shall only be excused from the performance of its obligations in relation to the affected Project Facilities.

Note: The Parties may mutually agree to engage an independent expert to evaluate the occurrence and effect, etc., of the Force Majeure Event.

## **20.4 No Liability for Other Losses**

Save and except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Parties in respect of any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Article 20.

## **20.5 Resumption of Performance**

The Affected Party shall in consultation with the other Parties, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Parties of the same in writing. The other Parties shall afford all reasonable assistance to the Affected Party in this regard.

## **20.6 Allocation of costs during a Force Majeure Event**

**20.6.1.** Upon occurrence of a Force Majeure Event, the Parties shall bear their respective Costs and no Party shall be required to pay any Costs to the other Parties.

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

## **20.7 Termination due to Force Majeure Event**

### **20.7.1. Termination due to a Non-Political Force Majeure Event**

If within a continuous period of [365 (three hundred and sixty five)] days, a Non-Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Non-Political Force Majeure Event or any extended period agreed in pursuance of Article 20.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

Notwithstanding anything contained in this Article 20.7:

- (a) if the Project Facilities are affected by a Total Casualty, then the Concessionaire may terminate this Agreement without having to wait for the expiry of the period of [180 (one hundred and eighty)] days stipulated for a Non-Political Force Majeure Event;
- (b) if the Project Facilities are affected by a Minor Casualty, then the Concessionaire shall be required to repair and restore the Project Facilities to the same condition as previously existed and the Concessionaire shall not be entitled to terminate this Agreement on the grounds of a continuing Non-Political Force Majeure Event.

### **20.7.2. Termination due to an Indirect Political Force Majeure Event**

If within a continuous period of [365 (three hundred and sixty five)] days, an Indirect Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of an Indirect Political Force Majeure Event or any extended period agreed in pursuance of Article 20.3, any Party shall, after the expiry of the period of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

### **20.7.3. Termination due to a Direct Political Force Majeure Event**

- a) If within a continuous period of [365 (three hundred and sixty five)] days, an Direct Political Force Majeure Event continues for a period of [180 (one hundred and eighty)] days or more, after the notification of a Direct Political Force Majeure Event or any extended period agreed in pursuance of Article 20.3, any Party shall, after the expiry of the period

of [180 (one hundred and eighty)] days or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the other Parties.

- b) All the other consequences of termination that are set out at Article 23 shall apply in case of termination of this Agreement due to a Force Majeure Event.

## ARTICLE 21 SUSPENSION OF CONCESSIONAIRE'S RIGHTS

### 21.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Event of Default, the NORTH DMC shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by NORTH DMC to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire & the Lenders’ Representative, NORTH DMC shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding [90 (ninety)] days. Any such Suspension shall be without prejudice to the obligations and liabilities of the Concessionaire under the Ethanol Purchase Agreement and the CBG Purchase Agreement respectively.

### 21.2 Suspension by the Concessionaire

#### 21.2.1. Suspension of construction or O&M of the Project Facilities

- (a) At any time during the Concession Period, the Concessionaire may suspend, whether partially or wholly, the construction or O&M of any Project Facility, in case of an Emergency.
- (b) The Concessionaire acknowledges that suspension of the construction of any Project Facility during the Construction Period pursuant to Article 21.2.1(a) shall not entitle the Concessionaire to an extension of time, if such event is attributable to the Concessionaire.
- (c) Upon the occurrence of an Emergency, the Concessionaire shall as soon as reasonably possible, and in no event later than [3 (three)] days after such occurrence, notify NORTH DMC of such occurrence.
- (d) If, upon notification, NORTH DMC does not concur with the Concessionaire on the nature of such occurrence, then the Concessionaire shall be required to immediately re-commence the construction or O&M of the Project Facility, as the case may be. Upon re-commencement of the construction or O&M services, the Concessionaire may initiate a Dispute regarding its claim for the occurrence of such an event or circumstance, and such Dispute shall be finally settled in accordance with the dispute resolution procedure set out in Article 26, provided however that the burden of proof as to the occurrence or existence of such an event shall be upon the Concessionaire.

#### 21.2.2. Mitigation, Resumption and Termination

- a) The Concessionaire shall make best endeavors to:
  - (i) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 21.2.1(a) above. Notwithstanding anything to the contrary contained in this Agreement, if NORTH DMC, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, NORTH DMC shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost and risk of the Concessionaire;

and

- (ii) resume the construction or O&M services of the Project Facility within 24 (twenty four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 21.2.1(a) or such longer period as may be approved by NORTH DMC and notify the NORTH DMC of the resumption of the works or services.
- b) During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by NORTH DMC for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreement, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify NORTH DMC for all costs incurred during such period.
- c) Without prejudice to Clause 21.2.2(a):
  - i) if suspension of the construction or O&M of a Project Facility pursuant to Article 21.2.1(a) continues for a period of [60 (sixty)] days, and such event is attributable to the Concessionaire, then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 23; and
  - ii) if suspension of the construction or O&M of a Project Facility pursuant to Article 21.2.1(a) continues for a period of [60 (sixty)] days, and such event is not attributable to the Concessionaire, then such event will be treated as a Force Majeure Event and the consequences set out in Article 20 shall apply.

### **21.3 Suspension by NORTH DMC**

#### **21.3.1. Suspension of construction and/or O&M of the Facilities**

- (a) At any time during the Concession Period, NORTH DMC may suspend, whether partially or wholly, the construction or O&M of a Project Facility, in any of the following events or circumstances:
  - (i) upon the occurrence of an Emergency; or
  - (ii) if the Concessionaire fails to comply with Applicable Laws, Applicable Permits, the ESHS Documents, the O&M Manual or otherwise fails to perform its obligations in accordance with this Agreement (including the Technical Specifications).
- (b) The Concessionaire acknowledges that suspension of the construction of the Project Facilities during the Construction Period pursuant to Article 21.3.1(a) shall not entitle the Concessionaire to an extension of time if such event is attributable to the Concessionaire.

#### **21.3.2. Mitigation, Resumption and Termination**

- a) The Concessionaire shall make best endeavors to:
  - (i) mitigate the effects (including incremental costs and delays) of the events or circumstances resulting in suspension pursuant to Article 21.3.1 above. Notwithstanding anything to the contrary contained in this Agreement, if the NORTH DMC, in its sole assessment, is not satisfied with the steps being taken by the Concessionaire to mitigate the effects of the Emergency, the

NORTH DMC shall have the right to step-in to this Agreement and undertake necessary measures to mitigate the effect of the Emergency at the cost (as determined by North DMC) and risk of the Concessionaire; and

- (ii) resume the construction or O&M services of the relevant Project Facility within 24 (twenty four) hours of the ceasing of any of the events or circumstances resulting in suspension pursuant to Article 21.3.1 or such longer period as may be agreed between the Parties, and notify NORTH DMC of the resumption of the works or services.

b) Without prejudice to Article 21.3.2(a):

- (iii) if suspension of the construction or O&M of the relevant Project Facility pursuant to Article 21.3.2(a)(i) and the Emergency is attributable to the Concessionaire, or a such suspension continues for a period of 60 (sixty) days, and such suspension is attributable to the Concessionaire then such suspension shall amount to a Concessionaire Event of Default in accordance with Article 23; and
- (iv) if suspension of the construction or O&M of the relevant Facility pursuant to Article 21.3.2(a) continues for a period of 60 (sixty) days, and such suspension is not attributable to the Concessionaire, then such suspension will be treated as a Force Majeure Event and the consequences set out in Article 20 shall apply.

#### **21.4 Revocation of Suspension**

In the event that the NORTH DMC shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall have the option to revoke the Suspension and restore the rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the NORTH DMC may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

#### **21.5 Substitution of Concessionaire**

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

#### **21.6 Termination**

At any time during the period of Suspension under this Article 21, NORTH DMC may revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement, the NORTH DMC may, within [15 (fifteen)] days of issue of such notice, terminate this Agreement under and in accordance with Article 21.

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, the Concession Agreement shall, upon expiry of aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by NORTH DMC upon occurrence of a Concessionaire Default.



ARTICLE 22 not used

## ARTICLE 23 EVENTS OF DEFAULT AND TERMINATION

### 23.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or the NORTH DMC Event of Default or all as the context may admit or require.

### 23.2 Concessionaire Event of Default

1. In addition to any events specified elsewhere in this Agreement, events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of a NORTH DMC Event of Default, or any other Force Majeure Event, and where the Concessionaire has failed to remedy the defects within any specified time period (to the extent any time period is provided), any of the following events shall constitute an Event of Default by the Concessionaire (the “**Concessionaire Event of Default**”)
  - (a) Failure of the Concessionaire to satisfy Conditions Precedent within the stipulated time as per the provisions of this Agreement.
  - (b) failure of the Concessionaire to complete the construction of a Project Facility by the expiry of the Grace Period.
  - (c) failure of the Concessionaire to pay the Delay Liquidated Damages within the timelines specified in this Agreement.
  - (d) failure of the Concessionaire to achieve successful completion of Trial Operations of Project Facilities.
  - (e) Failure of the Concessionaire to achieve Commercial Operations Date of the WtE plant within the timelines specified in this Agreement.
  - (f) failure of the Concessionaire to remedy any reduction in Availability within [3 (three)] days of receipt of a notice from NORTH DMC in accordance with Article 18.
  - (g) failure of the Concessionaire to build and/or operate the Project in compliance with the KPIs and Technical Specifications.
  - (h) Failure of the Concessionaire to supply CBG and/ or Ethanol for a consecutive period of 2 days or more subject to a maximum of 7 days in any month irrespective of being consecutive or not.
  - (i) Any breach by the Concessionaire of the Ethanol Sale and Purchase Agreement and/or CBG Sale and Purchase Agreement.
  - (j) for any Project Facility, failure of the Concessionaire to achieve the KPIs for [2 (two)] consecutive days, [32 (thirty two)] times in a continuous [12 (twelve)] month period.
  - (k) suspension of the construction or O&M of a Project Facility pursuant to Article 21 (to the extent such Emergency is attributable to the Concessionaire) for a continuous period of 60 (sixty) days.
  - (l) a breach by the Concessionaire of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to construct and/or operate and maintain the Project Facilities and such breach, if capable of being remedied, is not remedied within [30 (thirty)] days of issuance of written notice from Authority specifying such breach and requiring the Concessionaire to remedy the same.

- (m) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect. failure of the Concessionaire to submit and maintain a valid Performance Securities and O&M Securities in accordance with Article 9.
- (n) breach by the Concessionaire of its obligations set forth in this Agreement.
- (o) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permits.
- (p) failure of the Concessionaire to comply with any Applicable Law (including specifically the EPA 1986, SWM Rules 2016, PWM Rules 2016).
- (q) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Article 27.
- (r) failure of the Concessionaire or the Sub-Contractors to comply with the ESHS Documents in accordance with Article 14.
- (s) the breach of the Concessionaire's obligations under or the occurrence of an Event of Default or analogous event under the Financing Agreements or termination of the Financing Agreements (for reasons attributable to the Concessionaire).
- (t) abandonment of the Project by the Concessionaire.
- (u) the Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- (v) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such application has not been withdrawn within 14 (fourteen) days of the date thereof.
- (w) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project.
- (x) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 1956/ Companies Act, 2013 and a liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the agreements in relation thereto; 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 agreements in relation thereto; and
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the agreements in relation thereto and has a credit worthiness at least as good as that of the Concessionaire as at the Effec-

tive Date.

### 23.3 NORTH DMC Event of Default

1. Any of the following events shall constitute an event of default by NORTH DMC (the “NORTH DMC Event of Default”) when not caused by a Concessionaire Event of Default or Force Majeure Event:
  - (a) NORTH DMC does not supply the assured quality & quantity of MSW for a consecutive period of **2 days or more** at any time during the term of this Agreement.
  - (b) NORTH DMC is in Material Breach of any of its obligations under this Agreement and have failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Concessionaire.
  - (c) NORTH DMC has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
  - (d) NORTH DMC has unreasonably withheld or delayed grant of any approval or permission within its respective jurisdictions and such delay and withholding is not attributable to Concessionaire or Force Majeure which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect.
  - (e) Any representations made or warranties given by the NORTH DMC under this Agreement have been found to be false or misleading in any material respect.

### 23.4 Termination due to Event of Default

#### 23.4.1 Termination for Concessionaire Event of Default

- (a) Without prejudice to any other right or remedy which NORTH DMC may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, NORTH DMC shall be entitled to terminate this Agreement in the manner as set out under Article 23.4.1(b) and Article 23.4.1(c).
- (b) Provided however that upon the occurrence of a Concessionaire Event of Default as specified under Article 23.2, NORTH DMC may terminate this Agreement by issue of Termination Notice in the manner set out under Article 23.4.3 after giving the Concessionaire an opportunity of hearing.
- (c) If NORTH DMC decides to terminate this Agreement pursuant to preceding Article 23.4.1(a), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 (thirty) days of receipt of the Preliminary Notice, the Concessionaire shall submit to the NORTH DMC in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “**Concessionaire’s Proposal to Rectify**”)
  - i. In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 (thirty) days, the NORTH DMC shall be entitled to terminate this Agreement by issuing Termination Notice, and the Performance Security of the Concessionaire shall get forfeited.
  - ii. If the Concessionaire’s Proposal to rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying event of default

within such further period allowed, NORTH DMC shall be entitled to terminate this Agreement, by issue of Termination Notice and the Performance Security of the Concessionaire shall get forfeited.

- iii. In the event of Termination of this Agreement by NORTH DMC in accordance with this Article 23.4.1, IndianOil shall be entitled to terminate the CBG and Ethanol Sale and Purchase Agreement and forfeit the securities provided by the Concessionaire under the CBG and Ethanol Sale & Purchase Agreement.

#### **23.4.2 Termination for NORTH DMC Event of Default**

- (a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of NORTH DMC Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (b) If the Concessionaire decides to terminate this Agreement pursuant to preceding Article 23.4.2(a) it shall in the first instance issue Preliminary Notice to NORTH DMC, as the case may be. Within 30 (thirty) days of receipt of Preliminary Notice, the NORTH DMC, shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the “**NORTH DMC Proposal to Rectify**”). In case of non-submission of Proposal to rectify by NORTH DMC, within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (c) If NORTH DMC] Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, the NORTH DMC shall have further period of 30 (thirty) days to remedy/ cure the underlying Event of Default. If, however, NORTH DMC fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

#### **23.4.3 Termination Notice**

If a Party has become entitled to do so decide to terminate this Agreement pursuant to the preceding sub-Article 23.4.1 or 23.4.2, it shall issue Termination Notice setting out:

- (a) in sufficient detail the underlying Event of Default.
- (b) the Termination Date which shall be a date occurring not earlier than 60 (sixty) days from the date of Termination Notice/
- (c) the estimated Termination Payment including the details of computation thereof;and
- (d) any other relevant information.

#### **23.4.4 Obligation of NORTH DMC and Concessionaire**

Following issue of Termination Notice by either NORTH DMC or Concessionaire, NORTH DMC and Concessionaire shall promptly take all such steps as may be necessary or required to ensure that,

- (a) until Termination is final, NORTH DMC and Concessionaire shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project.
- (b) the Termination Payment, if any, payable by NORTH DMC in accordance with the Article

23.4.5 is paid to the Concessionaire within 30 (thirty) days of the Termination Date; and

- (c) the Project is handed over to NORTH DMC by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to NORTH DMC.

#### **23.4.5 Termination Payment for NORTH DMC Event of Default**

Upon Termination of this Agreement on account of NORTH DMC Event of Default, the Concessionaire shall be entitled to receive back the Performance Security and also receive an amount equal to Debt Due and 110% (one hundred and ten per cent) of the Adjusted Equity as Termination Payment. In case of such termination, IndianOil shall be entitled to terminate the CBG and Ethanol Sale and Purchase Agreement and shall return the securities provided by the Concessionaire under the CBG and Ethanol Sale & Purchase Agreement after adjustment of any amount claimed by IndianOil from the Concessionaire.

#### **23.4.6 Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

#### **23.4.7 Termination Payment for Concessionaire Event of Default**

- (a) Upon Termination of this Agreement on account of Concessionaire Event of Default before COD, no Termination Payment shall be made to the Concessionaire and NORTH DMC shall be entitled to forfeit the Performance Security of the Concessionaire.

#### **23.4.8 Upon termination of this Agreement**

- (a) The Concessionaire shall cease all work in relation to construction of the Project Facilities.
- (b) The Concessionaire shall cease all work in relation to O&M of the Project Facilities.
- (c) The Concessionaire shall take all necessary steps to safeguard and protect the Project Facilities (at whatever stage of completion or operation) and all other equipment, materials and goods on the Sites.
- (d) The Concessionaire shall hand over the Sites and the immovable assets, to Authority or its nominee, to the extent applicable, as per Articles 23.4.9, 23.4.10, and 23.4.11.
- (e) In case of termination of this Agreement due to an NORTH DMC Event of Default, the NORTH DMC shall return the Performance Securities, the O&M Securities, if not already returned to the Concessionaire, after adjusting any outstanding payments owed by the Concessionaire, within 30 (thirty) days from the Transfer Date.
- (f) The Concessionaire agrees that on the service of a Termination Notice or 180 (one hundred and eighty) days prior to the expiry of the Concession Period by efflux of

time, it shall conduct or cause to be conducted by NORTH DMC a survey (the “**Condition Survey**”) and inspection of the Project to ascertain the condition thereof, verify compliance with the Concessionaire’s obligations under this Agreement and to prepare an inventory of the assets comprised in the Project.

- (g) If, as a result of the Condition Survey, the NORTH DMC shall observe/notice that the Project or any part thereof is not in the condition required thereof under this Agreement (except normal wear and tear) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in the requisite conditions well before the Termination Date.

#### **23.4.9 Transfer of the Sites and the Project Facilities**

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand over the Sites, the immovable assets such as Processing Facility, Material Recovery Facility, decentralized units, etc., to the NORTH DMC any other entity nominated by the NORTH DMC in accordance with this Article 23 on a date mutually decided by the NORTH DMC and the Concessionaire (the “**Transfer Date**”).

#### **23.4.10 Inspection of the Sites and the Project Facilities**

- (a) No later than 30 (thirty) days from the end of the 29<sup>th</sup> (twenty ninth) year of the O&M Period or 30 (thirty) days from the date of termination of the Agreement, as the case may be, the NORTH DMC shall carry out a condition survey of the Sites and the Project Facilities to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the design life of the Project Facilities.
- (b) NORTH DMC shall notify the Concessionaire at least 7 (seven) days prior to the date on which it wishes to carry out the survey of the Sites and the Project Facilities.
- (c) If the survey carried out by the NORTH DMC shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the NORTH DMC shall notify the Concessionaire of the rectification and/or maintenance work which is required to ensure that the condition of the Sites and the Project Facilities is restored to the Hand-back Conditions.
- (d) The Concessionaire shall carry out such rectification and/or maintenance work to achieve the Hand-back Conditions within 30 (thirty) days from the receipt of a notice from the NORTH DMC in accordance with Article 23.4.10(c) above, at its own cost and risk. Upon completion of the rectification and/or maintenance work, the Concessionaire shall request the NORTH DMC to carry out a final survey and inspection of the Sites and the Project Facilities. The NORTH DMC shall carry out the final survey within 7 (seven) days of receipt of a notice from the Concessionaire pursuant to this Article 23.4.10(d). [At the discretion of the NORTH DMC, the Concessionaire may be allowed extension of the period of [15 (fifteen)] days to rectify the defects notified by the NORTH DMC or Project Management Unit if and to the extent that the Project Facilities cannot be used for the purposes for which they are intended after handing over by reason of a defect or damage attributable to the Concessionaire.]
- (e) If NORTH DMC satisfied with the results of the final survey, then NORTH DMC shall notify the Concessionaire within 7 (seven) days of carrying out the final survey that the Sites and the Project Facilities, comply with the Hand-back Condi-

tions. If NORTH DMC is not satisfied with the results of the final survey, then NORTH DMC shall or shall cause North DMC to estimate the cost of restoring the Sites and the Project Facilities to the Hand-back Conditions and recover such cost from the Concessionaire.

#### **23.4.11 Hand-back Requirements**

On the expiry or early termination of this Agreement, the Concessionaire shall, at its own cost:

- (a) hand over to the NORTH DMC or any entity nominated by the NORTH DMC, the Sites and the Project Facilities.
- (b) to the extent that such rights and interests are not already vested in the NORTH DMC, transfer all its rights and interest in the immovable assets comprising in the Project Facilities and execute such deeds and documents as may be necessary for this purpose and complete all related legal or other formalities;
- (c) hand over all records and documents relating to the Sites and the Project Facilities including as-built records, Designs and Drawings, online monitoring and metering data, operating logs, manuals, reports, plans and records.
- (d) transfer to the NORTH DMC or its nominee (free of cost) the license to use the Proposed Technology and other know-how relating to the Project Facilities.
- (e) transfer or cause to be transferred to NORTH DMC or its nominee any sub-contract that NORTH DMC or its nominee has chosen to take over and terminate all other sub-contracts.
- (f) transfer to NORTH DMC or its nominee all Concessionaire Applicable Permits which NORTH DMC or its nominee may require, and which can be legally transferred.
- (g) remove from the Sites all employees and workmen, and movable assets, equipment and materials that are not required to be taken over by NORTH DMC or its nominee; and
- (h) cooperate with and assist NORTH DMC with the Project post the handing over.

#### **23.4.12 Consequences of termination due to a Force Majeure Event**

- i. In case of termination of the Agreement due to a Force Majeure Event, the following consequences shall apply the Concessionaire shall hand over the Sites and the immovable assets, to Authority on an "as is where is "basis and to the extent relevant.
- ii. Authority shall be required to return the, Performance Securities or the O&M Securities, as the case may be, after adjusting any outstanding payments owed by the Concessionaire, to the Concessionaire within 30 (thirty) days from the Transfer Date; and
- iii. in case of termination due to an Indirect Political Force Majeure Event or a Direct Political Force Majeure Event, Authority shall assess the Cost of the construction work undertaken by the Concessionaire in relation to the Project Facilities as on the date of the Termination Notice and based on such assessment, pay the Termination Compensation in accordance with Article24.

#### **23.5 Rights of Authority on Termination**

23.5.1 Upon Termination of this Agreement for any reason whatsoever, Authority shall upon



making the Termination Payment, if any, to the Concessionaire, have the power and authority to:

- (a) enter upon and take possession and control of the Sites, constructed Project Facilities and the immovable assets, forthwith.
- (b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project including Project Facilities and the immovable assets.

23.5.2 Notwithstanding anything contained in this Agreement, Authority shall not, as consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handover of the Project Facilities by the Concessionaire to NORTH DMC shall be free from any such obligation/ fee/penalties/taxes.

23.5.3 Termination Payment shall become due and payable to the Concessionaire within 30 (thirty) days of a demand being made by the Concessionaire to NORTH DMC/State Government with the necessary particulars, and in the event of any delay, NORTH DMC/State Government shall pay interest at a rate equal to 3% (three per cent) above the State Bank of India Base Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that the Termination Payments shall become due and payable by NORTH DMC/State Government upon actual or constructive handover of the Sites, Project Facilities and immovable assets by the Concessionaire to NORTH DMC clear from all encumbrances, charges and liens whatsoever, unless expressly agreed by the Parties otherwise.

23.5.4 The Concessionaire expressly agrees that Termination Payments under this Article 23 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

23.5.5 The NORTH DMC, and the Concessionaire hereby unconditionally acknowledge and agree that, without prejudice to their any other right or remedy, NORTH DMC shall be entitled to pay the Termination Payment [to the extent required] to the Lenders' Representative for procuring discharge / release of any charge/ hypothecation created by Concessionaire on the movable assets for securing payment of Debt Due; and for this purpose the Lender is entitled to receive from the NORTH DMC, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.; and Concessionaire hereby irrevocably agree that such payment by the NORTH DMC shall be full and final settlement of proportionate claim of Termination Payment to the Concessionaire under this Agreement.

#### **23.6 Accrued Rights and liabilities of Parties**

- (a) Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money as damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Agreement, including without

limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations. Upon termination IndianOil shall have no liability or obligations towards either NORTH DMC or the Concessionaire.

- (b) Nothing in Article 23 shall prevent or restrict a Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

## ARTICLE 24 TERMINATION COMPENSATION

### 24.1. Termination Compensation for Termination post the Compliance Date but prior to the Construction Completion Date

#### 24.1.1. For NORTH DMC Event of Default

If the Agreement is terminated prior to the Construction Completion Date for NORTH DMC Event of Default, North DMC shall be liable to pay to the Concessionaire, the aggregate of:

- (a) Debt Due.
- (b) Equity infused in the Concessionaire as on the date of Termination Notice along with interest on the Equity at the rate of the prevailing **SBI MCLR + 3% (three percent)**.

LESS

- (a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

#### 24.1.2. For a Concessionaire Event of Default (including any default under the CBG Sale and Purchase Agreement or the Ethanol Sale and Purchase Agreement)

If the Agreement is terminated prior to the Construction Completion Date for a Concessionaire Event of Default, the NORTH DMC shall pay to the Concessionaire, the aggregate of:

- (a) 85% (eighty-five per cent) of Debt Due.

LESS

- (a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

### 24.2. Termination Compensation for Termination post the Construction Completion Date but prior to the COD

#### 24.2.1. For an NORTH DMC Event of Default

If the Agreement is terminated post the Construction Completion Date but prior to the COD for an NORTH DMC Event of Default, the NORTH DMC shall be liable to pay to the Concessionaire the aggregate of:

- (a) Debt Due.
- (b) Equity infused in the Concessionaire as on the date of Termination Notice along with interest on the Equity at the rate of the prevailing **SBI MCLR + 3% (three per cent)**.

LESS

- (a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

#### 24.2.2. For a Concessionaire Event of Default (including any default under the CBG Sale and Purchase Agreement or the Ethanol Sale and Purchase Agreement)

If the Agreement is terminated post the Construction Completion Date but prior to the COD for a Concessionaire Event of Default, the NORTH DMC shall pay to the Concessionaire, the aggregate of:

- (a) 85% (eighty five per cent) of Debt Due.

LESS

- (a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

### **24.3. Termination Compensation for Termination post the COD:**

#### **24.3.1. For an NORTH DMC Event of Default**

If the Agreement is terminated post the COD for an NORTH DMC Event of Default, the NORTH DMC shall be liable to pay to the Concessionaire the aggregate of:

- (a) Debt Due less Insurance Cover for assets under Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due
- (b) 110% of the Adjusted Equity infused in the Concessionaire as on the date of Termination Notice along with interest on the Equity at the rate of the prevailing **SBI MCLR + 3% (three per cent)**.

LESS

- (a) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

The Concessionaire shall be entitled to withdraw the Operation Performance Security, if subsisting

#### **24.3.2. For a Concessionaire Event of Default (including any default under the CBG Sale and Purchase Agreement or the Ethanol Sale and Purchase Agreement)**

If the Agreement is terminated post the COD for a Concessionaire Event of Default, the NORTH DMC shall pay to the Concessionaire, the aggregate of:

an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall also be included in the computation of Debt Due

LESS

- (a) all direct costs suffered or incurred by North DMC as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars
- (b) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

Upon Termination of this Agreement on account of Concessionaire Event of Default the Operation Performance Security, if subsisting, shall be invoked by North DMC

### **24.4. Termination Compensation for Termination due to a Force Majeure Event**

#### **24.4.1 Non-Political Force Majeure Event and Indirect Political Force Majeure**

- a) If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non- Political Force Majeure Event, prior to the COD:

- (i) Debt Due.

LESS

- (i) any insurance proceeds received and retained by the Concessionaire.
- b) If the Agreement is terminated due to an Indirect Political Force Majeure Event or Non-Political Force Majeure Event, post the COD, Authority shall be liable to pay to the Concessionaire:

- a. Debt Due.

LESS

- b. any insurance proceeds received and retained by the Concessionaire.

c) Direct Political Force Majeure

- i) if the Agreement is terminated due to a Direct Political Force Majeure Event, prior to the COD, Authority shall be liable to pay to the Concessionaire:

- (A) Debt Due.

- (B) Equity infused in the Concessionaire as on the date of the notice of termination under Article 20 along with interest on the Equity at the rate of the prevailing SBI MCLR + 3% (three per cent).

LESS

- (C) any insurance proceeds received and retained by the Concessionaire; and

- (D) any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

- ii) If the Agreement is terminated due to a Direct Political Force Majeure Event post the COD, NORTH DMC shall be liable to pay to the Concessionaire:

- A. Debt Due less Insurance Cover for assets under Concessionaire ownership; provided that if any Insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

- B. 110% (one hundred and ten per cent) of the Adjusted Equity

LESS

- C. any insurance proceeds received and retained by the Concessionaire; and

- D. any amounts due and payable by the Concessionaire under this Agreement (including Liquidated Damages).

24.5. All Termination Compensation required to be paid to the Concessionaire shall be paid within 60 (sixty) days of transfer of the Sites and the Project Facilities in accordance with Article 23.

#### 24.6. Limitations on Termination Compensation

- (a) Termination Compensation, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Bid Project Cost, in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of [60 (sixty)] days from COD, the

Concessionaire shall notify to NORTH DMC (with a copy to the State Government), the Bid Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Compensation, and it is further agreed that in the event such disaggregation is not notified to NORTH DMC, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Compensation, the Debt Due shall at no time exceed [50% (fifty per cent)] of the Bid Project Cost.

- (b) The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Compensation. Provided, however, that the provisions of this Article 24.6 (b) shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within [60 (sixty)] days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Bid Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Compensation.

**24.7. Full and Final Settlement**

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 24 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against NORTH DMC, in relation to Termination of this Agreement and the Concessionaire shall be excluded from all other rights and remedies in respect of such Termination.

**24.8. The provisions of this Article 24 shall survive the Termination of this Agreement.**

## ARTICLE 25 SUBSTITUTION OF THE CONCESSIONAIRE

### 25.1 Substitution by Lenders' Representative

In the event of Concessionaire's Default, NORTH DMC shall, if there be, any Lenders, send copy of the Termination Notice to the Lenders' Representative to inform & grant 15 (fifteen) days to the Lenders' Representative, for making representation on behalf of the lender stating the intention to substitute the Concessionaire. In case NORTH DMC receives representation on behalf of the Lenders, within the aforesaid period, NORTH DMC shall withhold the termination for period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders' Representative to exercise the Lenders; Right of substitution in accordance with the Substitution Agreement, and substitute the Concessionaire with Nominated Company.

### 25.2 Substitution by NORTH DMC

In the event that no company is nominated by the Lenders' Representative to act as the Nominated Company, Authority may either substitute the Concessionaire with its own Nominated Company in accordance with the Substitution Agreement, or terminate the Agreement.

### 25.3 Substitution Process

While carrying out Substitution, the Lenders' Representative or NORTH DMC, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire. Such Nominated Company shall have to agree to bear all the liabilities of the Concessionaire in terms of this Agreement and Financing Agreement.

### 25.4 Consequences of Substitution

NORTH DMC shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, Concessionaire's entire obligations under this Agreement by such Nominated Company subject to fulfillment of the remainder of the term of this Agreement. Such rights shall be granted by NORTH DMC through the novation of the Agreement, if applicable, in favour of the Nominated Company.

NORTH DMC shall also execute new Substitution Agreement with the Nominated Company and the Lenders, if there be any. All Sub-Contracts and agreements in respect of the Project including Financing Agreements and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Sites and Project Assets in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/ clearances of NORTH DMC received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.

## ARTICLE 26 DISPUTE RESOLUTION

### 26.1. Amicable Resolution

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of NORTH DMC and/ or IndianOil (the "Dispute") and so notified in writing by either Party, shall in the first instance be attempted to be resolved amicably by the representatives of the Parties in accordance with the procedure set forth in Article 26.1.2 below.

In the event of a Dispute, either Party may require such Dispute to be referred to the competent authority, NORTH DMC and/ or IndianOil (or the Person holding charge) and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the representatives of the Parties shall within 15 (fifteen) days of service of a written notice from one Party to the other Party(ies) (the "Dispute Notice") hold a meeting (the "Dispute Meeting") in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at the office of NORTH DMC in New Delhi and the Dispute may be mutually settled between the parties

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.

If the Dispute is not amicably settled within 15 (fifteen) days of the Dispute Meeting, either Party may refer the Dispute to conciliation or arbitration in accordance with the provisions of Article 26.2 and 26.3 below.

### 26.2. Conciliation

In the event of any Dispute is not amicably settled within 15 (fifteen) days of the Dispute Meeting, either Party may require such Dispute to be referred to NORTH DMC, [insert designation] from IndianOil and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] 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 Article 26.1.1 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 Article 26.3.

### 26.3. Arbitration

#### 26.3.1. Procedure

Subject to the provisions of Sub-Clauses 26.1 and 26.2, any Dispute which is not resolved amicably (between NORTH DMC and/or IndianOil on one side and the Concessionaire on the other side) shall be finally settled by reference to arbitration. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, or such other rules as may be mutually agreed by the parties, and shall be subject to the provisions of the **Arbitration and Con-**



ciliation Act, 1996. The expenses of arbitration shall be borne equally by both the Parties.

#### 26.3.2. Arbitration Panel

There shall be a panel of three arbitrators, of whom IndianOil and NORTH DMC shall jointly appoint 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 of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi.

#### 26.3.3. Place of Arbitration

The place of arbitration shall ordinarily be New Delhi but by mutual agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

#### 26.3.4. Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings. Any party using other than English as language shall supply the other party an authorized transcript of true translation of its submissions into English at its costs and expenses.

#### 26.3.5. Enforcement of Award

- (a) The Arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 26 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and NORTH DMC] agree and undertake to carry out such Award without delay subject to the rights of the aggrieved parties to secure relief from any higher forum.
2. The Concessionaire and NORTH DMC] agree that an Award may be enforced against the Concessionaire and/or NORTH DMC], as the case may be, and their respective assets wherever situated.
3. 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.

### 26.4. Performance during Dispute

Pending the submission of and/or decision on a Dispute and until the arbitral Award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such Award.

### 26.5. Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon Disputes between the Concessionaire and NORTH DMC], all Disputes arising after such constitution shall, instead of reference to arbitration under Article 26.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

### 26.6. Any dispute between Concessionaire and IndianOil shall be settled in terms of dis-

pute resolution mechanism provided under the CBG and Ethanol Sale and Purchase Agreement.

- 26.7. Any dispute between IndianOil and North DMC shall be settled through Alternative Mechanism for Resolution of CPSE Disputes ( AMRCD) as mentioned in DPE OM No. 4(1)/2013-DPE(GM)/FTS-1835 dated 22-05-2018 (as amended from time to time)

## ARTICLE 27 INSURANCE

### 1. Insurance Cover

The Concessionaire shall, at its cost and expense, purchase and maintain effective from the Compliance Date and during the Concession Period such insurance policies for such maximum sums as are necessary and customary under Financing Documents and Applicable Laws, and/or in accordance with Good Industry Practice (or may in the future become available) on commercially reasonable terms and reasonably required to be maintained consistent with projects and facilities of the size and type of the Project, including but not limited to the following:

- (a) Builders' / Sub-Contractors' all risk insurance.
- (b) Erection insurance and/or break down insurance.
- (c) Public liability insurance applicable for the Concession Period, Termination, and post- Termination period.
- (d) Statutory insurances such as workmen's compensation insurance or any other insurance required by the Applicable Laws.
- (e) Comprehensive Third-Party liability insurance including injury or death to Persons who may enter the Sites.
- (f) Insurance policies related to any of the Concessionaire's obligations hereunder.
- (g) Any other insurance that may be considered necessary by NORTH DMC / Lenders of the Concessionaire, if any, to protect the Concessionaire, its employees and its assets (against loss, damage or destruction at replacement value) or otherwise, including all Force Majeure Events that are insurable and not otherwise covered in items (a)to(f).

### 2. Insurance Companies and Costs

- 2.1. The Concessionaire shall insure all insurable Project Assets comprised in the Project.
- 2.2. All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers there under against, *inter-alia*, NORTH DMC, IndianOil, and its assigns, subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- 2.3. The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, *inter-alia*, the NORTH DMC, IndianOil and its affiliates, subsidiaries, employees, successors, assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than Third Party liability insurance policies) or because of deductible articles in or inadequacy of limits of any such policies of insurance, unless otherwise mentioned in this Agreement.

### 3. Evidence of Insurance Cover

The Concessionaire shall, from time to time, provide to the NORTH DMC, copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

**4. Application of Insurance Proceeds**

All moneys received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution or replacement of the Project or any part thereof, which may have been damaged or destroyed. The Concessionaire shall carry out such repair or renovation or restoration or substitution or replacement to the extent possible in such manner that the Project or any part thereof, shall, after such repair or renovation or restoration or substitution or replacement be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear expected.

**5. Validity of the Insurance Cover**

The Concessionaire shall pay the premium payable on such insurance policies so as to keep the policies in force and valid throughout the Concession Period and furnish copies of the same to the NORTH DMC. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) days clear notice of cancellation is provided to NORTH DMC in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances required under this Agreement, NORTH DMC may at its option purchase and maintain such insurance and all sums incurred by NORTH DMC in this behalf shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by NORTH DMC by exercising right of set-off or otherwise from the Performance Security.

## ARTICLE 28 VARIATION

1. NORTH DMC & the Concessionaire may, at any time during the Concession Period, propose a Variation to the Scope of Work, Technical Specifications, and/or the Designs and Drawings.
2. **NORTH DMC Proposed Variation:**
  - a. NORTH DMC may propose a Variation in the Scope of Work, Technical Specifications or the approved Designs and Drawings. Provided that, NORTH DMC shall not propose a Variation, which: (i) is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permit.
  - b. Within 15 (fifteen) days of receipt of a request for Variation from NORTH DMC, the Concessionaire shall submit a proposal to NORTH DMC setting out in sufficient detail the implications of the proposed Variation, including any implications on the Construction Plan, the Scheduled Milestone Completion Date, the Scheduled Construction Completion Date and Scope of Work and additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation. It is clarified that the additional Costs incurred in undertaking the Variation or any reduction in Costs resulting from the Variation will be determined based on NORTH DMC's schedule of rates for similar works.
  - c. Notwithstanding anything to the contrary in this Article 28.2, the Concessionaire shall have the right to reject a Variation proposed by NORTH DMC if, in the Concessionaire's view, the proposed variation will result in: (i) the Concessionaire incurring additional Costs, of more than 25% (twenty five per cent) of the Bid Project Cost; (ii) reduction in the Bid Project Cost by more than 25% (twenty five per cent); or (iii) a delay of more than 120 (one hundred and twenty) days in a Scheduled Milestone Completion Date or the Scheduled Construction Completion Date.
  - d. Based on its review of the proposal submitted by the Concessionaire, NORTH DMC may, at its sole discretion: (i) accept the proposal and the corresponding adjustment to the Construction Plan and/or the additional Costs or reduction in the Bid Project Cost for undertaking the Variation; (ii) provide its comments on the proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the proposal submitted by the Concessionaire and withdraw the proposed Variation, within 15 (fifteen) days from the date of receipt of the Concessionaire's proposal under Sub-Clause 28.2(b)above.
  - e. To the extent NORTH DMC seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, NORTH DMC's comments and submit a revised proposal.
  - f. On approval of the proposal or the revised proposal, as the case may be, NORTH DMC shall issue an Addendum to the Concession Agreement and Concessionaire shall proceed with the Variation in accordance with the said Addendum.
  - g. If the Parties are unable to agree on the implications of a Variation proposed by NORTH DMC, which in NORTH DMC's view is necessary or desirable for the Project, NORTH DMC shall have the right to require the Concessionaire to carry out the proposed variation at the cost determined in accordance with NORTH DMC's schedule of rates for similar works. Where NORTH DMC's schedule of rates do not

provide schedule of rates for similar works, then the cost of the works covered by the proposed Variation will be determined by NORTH DMC, Any dispute on the terms of the Variation will be resolved in accordance with Article 26.

- h. On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the Construction Plan, Scheduled Milestone Completion Date, Scheduled Construction Completion Date and/or payment of additional amounts, if any, set out in the Variation Order.

**3. Concessionaire Proposed Variation**

The Concessionaire may propose a Variation if it considers such Variation necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the Project Facilities.

To propose a Variation, the Concessionaire shall submit a proposal to Authority (with a copy to the Project Management Unit and NORTH DMC), with a statement setting out:

- (a) the need for a Variation.
- (b) the additional work required; and
- (c) adjustment to the Compliance Date, Construction Plan, Scheduled Milestone Completion Date and Scheduled Construction Completion Date.

Based on its review of the proposal submitted by the Concessionaire, if NORTH DMC is of the view that the proposed Variation is justified, then it will provide its acceptance to the Concessionaire with no financial implication on North DMC.

On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the Construction Plan and/or additional costs, as set out in the Variation Order.

- 4. Notwithstanding anything to the contrary in this Article 28, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the Construction Plan and additional Costs shall be determined in accordance with Article 22.
- 5. Notwithstanding the above, a Variation made necessary due to any act, omission or default of the Concessionaire or any Sub-Contractor in the performance of the Concessionaire's obligations under this Agreement shall not entitle the Concessionaire to any adjustment in the Construction Plan or any other compensation or relief.
- 6. No Variation shall invalidate this Agreement.

## ARTICLE 29 INTELLECTUAL PROPERTY & CONFIDENTIALITY

### 1. Proprietary Material

The property in all designs, drawings, processes, methods, details, plans, concepts, technology, specifications, schedules, programs, reports, calculations, documents and other works relating to the Project, including intellectual property rights therein or thereto, whether registered or not, which have been or are hereafter written, originated, made or generated by the Concessionaire or any of its employees, Sub-Contractors, consultants or agents in connection with this Agreement or the design, development, construction, operation and maintenance of the Project/Project Facilities/Project Assets, shall be and remain at all times the property of the Concessionaire, vest exclusively in the Concessionaire and ensure to the exclusive benefit of the Concessionaire (the Proprietary Material).

The Concessionaire, as beneficial owner, hereby grants to the NORTH DMC & IndianOil a perpetual non-exclusive license to use such Proprietary Material in connection with the Project, irrevocably and free of cost. Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to a Third Party. Such license shall automatically get extended to NORTH DMC for Project purpose only and not for Third Party use or transfer, upon the Termination of this Agreement or the discharge by the Concessionaire of its duties hereunder.

### 2. Confidentiality

NORTH DMC] shall not at anytime divulge or disclose or suffer or permit its servants or agents to divulge or disclose, transfer, communicate to any Person or use in any manner for any purpose unconnected with the Project any Proprietary Material or other information, material, documents, records or data, concerning the Project, the Concessionaire and NORTH DMC & (including any information concerning the contents of this Agreement) except of its directors, officials, employees, Sub-Contractors, consultants, agents or representatives on a need to know basis or as may be required by any law, rule, regulation or any judicial process.

The NORTH DMC] shall use such Proprietary Material and information only for the purposes of this Agreement or as otherwise expressly permitted by the Concessionaire in writing.

The Concessionaire shall ensure that all its directors, employees, Sub-Contractors, consultants, agents or representatives execute, deliver and comply with customary confidentiality and non-disclosure agreements reasonably required by the NORTH DMC], have been duly approved by the NORTH DMC], with respect to the Project.

The aforesaid provisions shall not apply to the following information:

- i. Obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality; or
- ii. Already in the public domain otherwise than by breach of this Agreement.
- iii. Disclosed due to a court order or under any Act of GoI/GNCTD or required by Applicable Laws.

### 3. Survival

The Concessionaire and the NORTH DMC, IndianOil accept and confirm that the provisions of this **Article 29** shall survive the Termination of this Agreement.

## ARTICLE 30 ACCOUNTS AND AUDIT

- 30.1** The Concessionaire shall maintain full accounts of all Costs, expenses incurred, revenues derived/collected by it from and on account of use of the Project and of O&M expenses and other costs paid and shall provide to NORTH DMC copies of the said accounts duly audited and certified by the Statutory Auditor of the Concessionaire within 120 (one hundred twenty) days of the close of each Financial Year to which they pertain, during the subsistence of this Concession Agreement. Such audited accounts shall form the basis of various payments by either Party under this Concession Agreement (including Termination Payment). The Concessionaire shall also furnish, within one week of its publication, certified copies of the audited accounts and annual report published by the Company under the Applicable Laws.
- 30.2** The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors (the “Statutory Auditors”) to practice in India out of the mutually agreed list of [10 (ten)] independent and reputable firms of Chartered Accountants in India (the “List of Chartered Accountants”) for preparing the List of Chartered Accountants are set forth in Schedule 17. Subject to a 30 (thirty) days’ notice to NORTH DMC and the replacement Statutory Auditors being appointed from the List of Chartered Accountants, the Concessionaire may terminate the appointment of any Statutory Auditor appointed in accordance with this Article. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 30.3** On or before the 15<sup>th</sup> (fifteenth) day of April each year, the Concessionaire shall provide for the preceding Financial Year a statement duly audited by its Statutory Auditors giving summarized information, the revenues derived from the Project and such other information as the NORTH DMC may reasonably require.
- 30.4** Notwithstanding anything to the contrary contained in this Agreement, the NORTH DMC shall have the right but not the obligation to appoint at its cost another firm of Chartered Accountant from the List of Chartered Accountants (the “Additional Auditor”) to audit and verify all those matters, expense, costs, realizations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.
- 30.5** In the event of there being any difference between the finding of the Additional Auditor, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute resolution procedure.



## ARTICLE 31 MISCELLANEOUS

### 1. Assignment and Charges

The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the NORTH DMC and/ or IndianOil.

Restraint set forth in this Article shall not apply to:

- (a) liens/ encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire.
- (b) mortgage/pledge/hypothecation of movable assets/goods purchased by Concessionaire, revenue and receivables received by Concessionaire (excluding Insurance proceeds) in favor of the Lenders for the Project.
- (c) Provided, no charge/ mortgage/ lien/ hypothecation or encumbrance of any kind whatsoever can be created or construed as allowed to be created either over the CBG and Ethanol to be produced or over the Project Assets including the Sites, assets and equipment provided by NORTH DMC for the Project.
- (d) Provided further that irrespective of security here in above permitted, Concessionaire is irrevocably obligated to procure release of such security and hand over to NORTH DMC, upon Termination of this Agreement, their respective Project Assets free of all Encumbrances whatsoever.

The Concessionaire shall not create nor permit to subsist any further Encumbrance over the Sites.

### 2. Interest and Right of Set-Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing PLR of State Bank of India per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set-off.

Provided the stipulation regarding interest for delayed payments contained in this Article 31.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### 3. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts in the **National Capital Territory of Delhi** shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 4. Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default

hereof or of other provisions or obligations under this Agreement.

- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of such Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

## **5. Survival**

- (a) Termination of this Agreement shall not relieve the Concessionaire or the NORTH DMC or IndianOil of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and except as otherwise provided in any provision of this Agreement expressly limiting the liability of any Party, shall not relieve any 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.
- (b) Termination shall:
  - (i) not relieve the Concessionaire or the NORTH DMC or IndianOil, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
  - (ii) 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.

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

## **6. Amendments**

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

## **7. Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, e-mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses as specified below or such address, email address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered:

- (a) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested)

at that address, and

- (b) in the case of any communication made by telex or facsimile or e-mail, when transmitted properly addressed to such telex number or facsimile number or e-mail id.

**8. Severability**

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to Dispute Resolution under this Agreement or otherwise.

**9. No Partnership**

Nothing contained in this Agreement shall be construed or interpreted to create an association, joint venture or partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

**10. Language**

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language and true translation into English language if other than English is used at the costs and expenses of the Party sending such communication, notice, documentation and proceedings.

**11. Counterparts**

This Agreement may be executed in [6 (six)] counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

**12. Liability for Review**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment, certification, verification or approval by NORTH DMC, of any Project Agreement, design, detailed engineering, or document, accounts, invoice, etc., submitted by the Concessionaire nor any observation, testing, certification, validation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe, test or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Approvals; and
- (b) the NORTH DMC their advisors or shall not be liable to the Concessionaire by reason of any review, comment, approval observation, testing, certification, verification, validation or inspection referred in Sub-Clause(a)above.

**13. Unforeseen Event**

Any event or condition that has not been explicitly covered under the provisions of this Agreement shall be resolved after discussion and mutual agreement between the

Parties.

**14. Liability and Indemnification**

- (a) The Concessionaire (the “Indemnifying Party”) shall indemnify, defend and hold harmless NORTH DMC and/ or IndianOil (the “Indemnified Parties”) during the Concession Period from and against all liabilities, damages, losses, expenses, claims, suits, proceedings, judgments, settlements, actions, costs of any nature whatsoever, whether directly or indirectly arising, for personal injury, for damage to or loss of any property and any Third Party liability, including reasonable attorney’s fees, actually incurred or suffered by the Indemnified Parties, arising out of or in any way connected with (i) any breach, negligence, default, omission, violation, infringement etc. as the case may be, by the Indemnifying Party or Persons claiming through or under it or due to such Party’s representations & warranties herein; covenants, agreements or obligations contained herein or the terms and conditions hereof; any intellectual property right of any Person; (ii) failure of the Indemnifying Party or Persons claiming through or under it to comply with Applicable Laws or the Applicable Permits or to pay taxes or make contractual or other payments due and payable to any Person; (iii) the employment, sickness, injury or death of any Person employed directly or indirectly by the Indemnifying Party or Persons claiming through or under it; or (iv) as provided elsewhere herein.
- (b) The Concessionaire shall be responsible for executing, performing its obligations hereunder in accordance with the provisions of this Agreement at its risk and consequence and shall be responsible for any liability whatsoever arising under, in connection with or in relation to the discharge of obligations hereunder by the Concessionaire or Persons claiming through or under it and shall indemnify, keep indemnified and hold the NORTH DMC and/ or IndianOil and its advisors harmless in this behalf.
- (c) The NORTH DMC and or IndianOil shall not be liable to the Concessionaire for any indirect, consequential, incidental, punitive or exemplary damages, loss of profit, consequential financial or economic loss or any disruption in the flow of MSW into the Project for any reason whatsoever.
- (d) The Concessionaire shall keep the NORTH DMC & / or IndianOil indemnified during the Concession Period against any claims, damages, liabilities, costs, penalties etc. (i) from or by any Government Authority, including the CPCB or the SPCB, and Third Parties for damages to the environment or any acts, omissions, defaults or negligence of the Concessionaire that damages the environment; and (ii) resulting from accidents at work, occupational diseases and contingencies that may arise at or around the Sites or in the employment of labor and personnel at the Project. The Concessionaire shall remain liable for its acts or omissions in implementing the Project in accordance with the Technical Specifications and the Applicable Laws even after the Termination of this Agreement by efflux of time or otherwise.
- (e) Except as expressly provided in this Agreement, the Concessionaire shall carry out and perform its rights and obligations under this Agreement and the Project Agreements at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to this Agreement and the Project Agreements till the

Termination Date.

- (f) The provisions of this Article 31.15 shall survive the Termination of this Agreement.
- (g) Any liability of IndianOil and NORTH DMC under this Agreement towards the Concessionaire or any third party, shall be several and not joint or joint & several.
- (h) The Concessionaire agrees that IndianOil has no obligations towards the Concessionaire under this Concession Agreement other than to enter into the Ethanol Sale and Purchase Agreement and the CBG Sale and Purchase Agreement. Accordingly, the Concessionaire acknowledges that IndianOil has no liabilities in contract, law or otherwise to the Concessionaire under this Agreement.

**15. Liability for review of Documents and Drawings** Except to the extent expressly provided in this Agreement:

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

**16. Reservation of Rights**

No forbearance, indulgence, relaxation or inaction by the Concessionaire at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of NORTH DMC and/ or IndianOil, as may be applicable, to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to the NORTH DMC and/ or IndianOil, as may be applicable, upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the NORTH DMC and/ or IndianOil, as may be applicable, in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the NORTH DMC and/ or IndianOil, as may be applicable, in respect of any other default.

**17. Third Parties**

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the NORTH DMC and/ or NORTH DMC Related Parties, IndianOil, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

**18. 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 Concessionaire arising from the RFP/EoI, shall be deemed to form part of this Agreement, and treated as such.

#### ARTICLE 32 DEFINITIONS

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

1. **“Access Road”** means a motorable approach road required to be built (if any) for providing access to the Site(s) to the Concessionaire.
2. **“Additional Performance Security”** means the performance security that must be submitted by the Selected Bidder to the NORTH DMC, together with the Performance Security and ESHS Performance Security to secure the obligations of the Concessionaire/Bidder in accordance with the requirements of this Agreement;
3. **“Adjoining Property”** means any land and/or property adjoining or adjacent or any part of the Site, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
4. **“Adjusted Equity”** means the Equity funded in Indian Rupees (₹) and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Wholesale Price Index (WPI) applicable to all commodities announced by Govt of India and for any Reference Date occurring:
  - (a) on or before Commercial Operation Date (COD), the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Compliance Date and the Reference Date;
  - (b) from Commercial Operation Date (COD) and until the 5<sup>th</sup> (fifth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
  - (c) after the 5<sup>th</sup> (fifth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point three three percent) thereof at the commencement of each month following the 5<sup>th</sup> (fifth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;
  - (d) For the avoidance of doubt, the Adjusted Equity shall, in the event of Concession Period, be computed as on the Reference Date immediately preceding the Concession Period Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

7. **“Affected Party”** means the Party claiming to be affected by a Force Majeure Event in accordance with Article 20.
8. **“Agreement” or “Concession Agreement”** means this agreement executed between the NORTH DMC, IndianOil and the Concessionaire including its Schedules and annexures and includes any amendments made thereto in accordance with the provisions hereof.
9. **“Applicable Law”** means all laws, acts, ordinances, rules, regulations notifications and guidelines in force and effect, including *inter-alia* the Environment Protection Act, 1986, Solid Waste Management Rules, 2016, and CPHEEO Manual on Municipal Solid Waste Management, 2016, National Building Code, ISO standards and BIS standards, and shall also include judgments, decrees, injunctions, writs or orders of any court of record as may be in force and effect as of the date hereof and shall include any amendment or re-enactment thereof from time to time, having jurisdiction over any Party, this Agreement, the Project, the Project Agreements and each document, instrument and agreement delivered hereunder or in connection herewith;
10. **“Applicable Permits”** means all the authorizations, licenses, clearances, permits, no-objections, sanctions and consents as required under Applicable Laws, at its respective cost, to be procured by the Concessionaire in connection with the implementation of the Project.
11. **“Article”** means an article of this Agreement.
12. **“Associate”** means, in relation to the Concessionaire, [the Selected Bidder or a member of the Selected Bidder], a person who controls, or is controlled by, or is under the common control of the same person who controls the concessionaire, the selected bidder or member of the selected bidder, as the case may be.
13. **“Authority”** in this Agreement means North Delhi Municipal Corporation (referred also as North DMC)
14. **“Authority Event of Default”** shall have the meaning assigned thereto in Article 23.
15. **“Authority’s Representative”** means any officer nominated by the NORTH DMC, from time to time, to act on its behalf and liaise with the Concessionaire and/ or IndianOil for the purposes of this Agreement and notified as such in writing to the Concessionaire and the NORTH DMC.
16. **“Availability”** means the availability of the Project Facilities to collect, transport process and dispose MSW, as determined in accordance with Articles 18.1.1(a), 18.1.2(a) and 18.1.3(a).
17. **“Liquidated Damages”** means the liquidated damages payable by the Concessionaire to NORTH DMC for failure to achieve the Guaranteed Availability, in accordance with Article 18.2.1.
18. **“C&T” or “Collection & Transportation”** refers to primary and secondary collection and transportation of MSW from the Project Area to the Processing Facility/ Sanitary Landfill.
19. **“CBG”** means Compressed Bio Gas as defined in IS 16087:2016 of Bureau of Indian Standards (BIS) specifications or any of its revised version.
20. **CBG Sale and Purchase Agreement** shall mean the Agreement to be entered in to between IndianOil and Concessionaire substantially in the form of **Schedule 18**.
21. **CBG Security** shall mean the performance security to be provided by the Concessionaire

to IndianOil as provided under the CBG Sale and Purchase Agreement towards due performance of Concessionaire under the CBG Sale and Purchase

22. **CGD entity** shall have the meaning assigned to it under the CBG Sale and Purchase Agreement
23. **“Clause”** means a clause of this Concession Agreement.
24. **“Compliance Date”** means the later of the date by which the Condition Precedent of the Parties are achieved or waived.
25. **“Compliance Period”** shall have the meaning assigned thereto in **Article 4**.
26. **“Concession”** shall have the meaning as assigned thereto in **Article 3**.
27. **“Concessionaire Event of Default”** shall have the meaning assigned thereto in **Article 23**.
28. **“Conditions Precedent”** means conditions to be satisfied before commencement of the Project as specified in **Article 4**.
29. **“Commercial Operation Date”** or **“COD”** means the date when the Concessionaire begins commercial operations of the Processing Facility with 2500 TPD capacity of waste supplied by North DMC & pursuant to issuance of Completion Certificate by North DMC.
30. **“Commencement Date”** shall have the meaning as assigned to it in **Article 5**.
31. **“Completion Certificate(s)”** shall refer to the Certificate to be issued by the NORTH DMC as set out in **Schedule 15**, upon successful commissioning and functioning of the Processing Facility.
32. **“Concessionaire’s Representative”** means the Person nominated by the Concessionaire, from time to time, to act on its behalf and liaise with the NORTH DMC and/ or IndianOil for the purposes of this Agreement and notified as such in writing to the NORTH DMC and/ or IndianOil.
33. **“Conditions Precedent”** means collectively, the conditions precedent of the Concessionaire, NORTH DMC that are set out at **Article 4**, and 'Condition Precedent' means any one of these.
34. **“Construction & Demolition Debris”** or **“Debris”** or **“C&D Waste”** means solid waste resulting from construction, re-modelling, repair, renovation or demolition of Structures or from land clearing activities. **“Structures”** for this definition means buildings of all types (both residential and non-residential), utilities, infrastructure facilities and any other type of man-made structure. **“Debris”** includes, but is not limited to bricks, concrete rubble and other masonry materials, soil, rock, wood (including painted, treated and coated wood and wood products), land clearing debris, wall coverings, plaster, dry-wall, plumbing fixtures, roofing, waterproofing material and other roof coverings, asphalt pavement, glass, plastics, paper, gypsum boards, electrical wiring and components containing no hazardous materials, pipes, steel, aluminium and other non-hazardous metals used in construction of structures.
35. **“Contractor”** or **“Sub-Contractor”** means any Person with whom the Concessionaire has entered into/may enter into any material contract in relation to the Project.
36. **“Cost”** means all documented expenditure reasonably incurred by the Concessionaire, whether on or off the Site, including overhead and similar charges, but does not include profit.



37. “CPCB” means the Central Pollution Control Board of the Government of India.
38. “Daily Weight Sheet(s)” shall have the meaning assigned thereto in Schedule 16;
39. “Dead Remains” means the dead bodies, carcasses, bones or skeletal remains of animals, rodents and other living beings (other than plants);
40. “Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Termination Date:
  - (a) the principal amount of the debt provided by Lenders under the Financing Agreements for financing the Bid Project Cost (the “Principal”) but excluding any part of the principal that had fallen due for repayment 6 (six) months prior to the Termination Date;
  - (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-Article (a) above until the Termination Date but excluding (i) any interest, fees or charges that had fallen due 3 (three) months prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Agreements to any Lender, and (iii) any prepayment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default or State Government Default; and
  - (c) any Subordinated Debt which is included in the Financial Package disbursed by lenders for financing the Bid Project Cost; provided that if all or any part of the Debt Due is convertible into equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal shall be dealt with as if such conversion had not been undertaken. For the purpose of this Agreement, the term “Subordinated Debt” means the debt provided by the lenders or Concessionaire’s Shareholders for meeting the Bid Project Cost and shall be subordinate to the financial assistance provided by Senior Lenders.
41. “Debt Service” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in a Financial Year to the Lenders under the Financing Agreements.
42. “Design & Drawings” means: (a) the Basic Engineering Designs; (b) the Screening Report and (c) the detailed 'good for construction' designs and drawings, technical information, plans, samples, patterns, models and specifications for the works required to be carried out under this Agreement..
43. “Designated Bins” means the collection bins placed by the MSW collection agency at locations recommended by the NORTH DMC for receiving the Primary Collection & Transportation of MSW within the Project Area.
44. “DISCOM” means Electricity Distribution Company of GNCTD & under the areas managed by NORTH DMC.
45. “Disposal” means the final and safe disposal of post processed residual MSW and inert street sweepings and silt from surface drains on land as specified in Schedule I of the SWM Rules 2016 to prevent contamination of groundwater, surface water, ambient air and attraction of animals and birds;
46. “Disputes” shall have the meaning assigned thereto in Article 26 hereof.
47. “Dispute Resolution Procedure” means the procedure for resolution of disputes as set

forth in **Article 26**.

48. **“Dumpsite”** means a land utilized by NORTH DMC for disposal of solid waste without following the principles of sanitary land filling.
49. **“EIA”** means the Environment Impact Assessment for the Project.
50. **“Emergency (ies)”** means conditions or situation that is likely to endanger the safety of the individuals on or about the Project or which poses an immediate threat of material damage to the Project.
51. **“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest or other obligations and shall also include physical encumbrances, including encroachments on the Site.
52. **“Engineered Sanitary Landfill Site” or “Sanitary Landfill Site” or “Sanitary Landfill” or “SLF”** or means the Sanitary Landfill Site to be designed, developed, constructed and operated by the Concessionaire at the allocated site in conformance with the terms of this Agreement for disposal of residual inert matter and rejected waste; and the site where the concessionaire conducts a final and safe disposal of residual inert matter, residual solid waste and inert waste, which is designed with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement.
53. **“Equity”** means the sum expressed in Indian Rupees (₹) representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments which has converted into equity share capital of the Company.
54. **“Event of Default”** shall have the meaning assigned thereto in **Article 23**.
55. **“Escrow Account”** means the interest-bearing account opened by the Concessionaire with the Escrow Bank in accordance with the Escrow Agreement, which shall be operational until the expiry of the Concession Period.
56. **“Escrow Bank”** means the Scheduled Bank with which Concessionaire opens the Escrow Account, pursuant to the Escrow Agreement.
57. **“Escrow Agreement”** means the agreement to be executed among the NORTH DMC, the Concessionaire, and the Escrow Bank in relation to the opening and operations of the Escrow Account.
58. **“Ethanol”** means Anhydrous Ethanol for Use in Automotive Fuel as defined in IS 15464 : 2004 (Reaffirmed Year : 2019 ) of Bureau of Indian Standards (BIS) specifications or any of its revised version.
59. **“Excluded Waste”** means waste material of the nature that the Project is not designed or authorized to receive, manage, process and dispose which includes (i) Hazardous Waste, (ii) Bio-Medical Waste (iii) Dead Remains, (iv) E- Waste and (v) construction and demolition waste;
60. **“Execution Date”** means the date of signing of the Concession Agreement.
61. **“Event of Default”** means the NORTH DMC Event of Default or a Concessionaire Event of Default, as the context may require.

62. **“Facility”** means any establishment wherein the MSW management processes namely segregation, recovery, storage, collection, recycling, processing, treatment, or safe disposal are carried out.
63. **“Financing Agreements” or “Financing Documents”** means collectively the agreements entered into for providing the debt financing for the implementation of the Project and shall include the security documents creating the relevant security (such as mortgages or charges or liens) on the Project or any part thereof in line with this Agreement, for securing the debt provided for funding the Bid Project Cost.
64. **“Financial Assistance”** means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
65. **“Financial Close”** means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled and the Concessionaire has access to the Financial Assistance.
66. **“Financial Default”** means occurrence of breach of the terms and conditions of the Financing Agreements or continuous default in Debt service by the Concessionaire for period of 3 (three) months.
67. **“Financial Model”** means the financial model adopted by Senior Leaders, setting forth the capital and operating costs of the Project and revenues there from on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.
68. **“Financial Package”** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all Financial Assistance specified in the Financing Agreements, Subordinated Debt, if any.
69. **“Financial Year”** shall mean a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year.
70. **“Force Majeure” or “Force Majeure Event”** means an act, event, condition or occurrence as specified in **Article 20**.
71. **“Fundamental Change in Law”** means any Change in Law that:
- (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or
  - (b) renders a material part of this Agreement invalid, illegal or unenforceable; or
  - (c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Agreement.
71. **“Gol” or “Govt of India” or “Govt”** means the Government of India.
72. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them or facilities similar to the Project Facilities;
73. **“Government Agency”** means Gol, GNCTD, NORTH DMC or any Governmental Depart-

ment, Commission, Board, Body, Bureau, Agency, Authority, Instrumentality, Court or Other Judicial or Administrative body, Central, State, or local, having Jurisdiction over the Concessionaire, the Site/Project or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

74. **“Grace Period”** shall mean as defined in **Article 14**.
75. **“Guaranteed Energy Consumption”** means the maximum number of units of power (in kWh) per ton quoted by the Selected Bidder in the Financial Proposal, which it expects to consume during the O&M Period [(other than any units expected to be generated and consumed from the Power Plant)], to operate and maintain the Project, at varying volumes and compositions of MSW. The Guaranteed Energy Consumption for any quarter during the O&M Period will be determined on the basis of the number of units of power (in kWh) per ton quoted by the Selected Bidder in the Financial Proposal for the average volume and composition of waste processed and disposed at the Site(s) in such quarter (such average to be calculated in accordance with the KPI Adherence Report).
76. **“Hand Back Condition”** mean the condition in which the Site, the Facilities, and the WtE Plant, if any, shall be handed back to NORTH DMC or any entity nominated by NORTH DMC on expiry or early termination of this Agreement, which is consistent with the due performance of the Concessionaire's obligations under this Agreement.
77. **“Hand Back Requirement”** means the obligations of the Concessionaire in relation to transfer of the Facilities upon expiry or early termination of the Project, as set out in **Article 23**.
78. **“Hazardous Waste”** shall have the meaning as defined under the Hazardous Wastes Management Rules, 2016 and as amended thereto.
79. **“ICT Infrastructure”** shall mean all Information & Communication Technology Infrastructure, equipment and systems (including software, hardware, firmware, networks and websites) including but not limited to sensors, geographical positioning systems, cameras, electronic weigh bridges and associated software, to facilitate the functioning of the project on day to day basis.
80. **“Intellectual Property Rights”** means patents, copyrights, database rights, design rights, trade-marks, service marks, trade names, domain names, rights in reputation, rights in undisclosed or confidential information (such as know-how, trade secrets and inventions, whether patentable or not), and other rights of a like nature (whether registered or unregistered) and all applications for such rights as may exist anywhere in the world.
81. **“Invoice”** means an invoice for payment of (a) Supply of CBG to IndianOil (b) Supply of Ethanol to IndianOil submitted by the Concessionaire in accordance with the provisions of **Schedule 18 & Schedule 19**.
82. **“KPI Adherence Report”** shall have the meaning ascribed to it under Article 18.3.2(c).
83. **“KPI”** means the key performance indicators set out in Article 18, which the Project must achieve during the Construction Period and the O&M Period.
84. **“Legacy Waste”** shall have the meaning as provided under the CPCB Guidelines for Disposal of Legacy Waste, 2019.
85. **“Lenders” or “Senior Lenders”** means any person, financial institutions, banks, funds

and trustees for bond holders or debenture holders, who have provided loans for financing the Bid Project Cost as evidenced in Financing Documents.

86. **“LoA” or “Letter of Award”** issued by NORTH DMC to the Selected/ Successful Bidder for developing the Project in terms of this Agreement.
87. **“Liquidated Damages”** means the Delay Liquidated Damages, the Availability Liquidated Damages, the Performance Liquidated Damages and the end Product Output Liquidated Damages.
88. **“MNRE”** means Ministry of New & Renewable Energy, Gol.
89. **“MoHUA”** means Ministry of Housing & Urban Affairs, Gol.
90. **“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of any 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 any or all Party(ies).
91. **“Material Breach”** means a breach by any Party of ny 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.
92. **“Material Recovery Facility”** means a facility where non-compostable MSW can be temporarily stored by NORTH DMC or any other entity mentioned in Rule 2 of the SWM Rules 2016 or any person or agency authorized by any of them to facilitate segregation, sorting and recovery of recyclables from various components of waste by authorized informal sector of waste pickers, informal recyclers or any other work force engaged by NORTH DMC or entity mentioned in Rule 2 of the SWM Rules 2016 for the purpose before the waste is delivered or taken up for its processing or disposal.
93. **“Minor Casualty”** means any fire or other casualty that results in physical damage to the Project Facilities to the extent that the total cost (as estimated by North DMC) of repairing and/or replacing the damaged portion of the Project Facilities as the case may be, to the same condition as previously existed would not exceed the amount of [₹ 25, 00,000 (Rupees twenty five lakhs)].
94. **“Nominated Company”** means the entity that is selected either by the Lenders or by the NORTH DMC for substituting the Concessionaire, upon occurrence of Concessionaire’s Event of Default, in terms of the provisions of this Agreement & Substitution Agreement.
95. **“Operational Plan”** means a comprehensive plan with location of Designated Bins, their pickup schedule, vehicle planning & scheduling for Secondary Collection and Transportation of MSW in the Project Area, approved by the NORTH DMC.
96. **“O&M”** means operations & maintenance.
97. **“O&M Expenses”** means the expenses incurred in 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. For the avoidance of doubt, fees and expenses payable to the Escrow Bank shall form part of the O&M Expenses.
98. **“O&M Manual”** means the manual, required to be prepared by the Concessionaire and approved by NORTH DMC for the operation and maintenance of the Project in accordance with Article 15.

99. **“O&M Period”** means the period commencing from the COD and ending on the Termination Date, during which the Concessionaire is required to operate and maintain the Project.
100. **“O&M Security”** has the meaning ascribed to it in **Article 9**.
101. **“Organic Waste”** means such type of MSW that can be degraded by micro-organisms but shall not include excluded wastes.
102. **“PLBs”** means Participating Local Bodies.
103. **“P&D”** refers to Processing & Disposal of MSW collected from the Project Area, as is more clearly defined in SWM Rules, 2016.
104. **“Performance Security”** means the guarantee for performance of its obligations as per terms of this Agreement, to be furnished by the Successful Bidder (or the Concessionaire), in accordance with **Article 9** in the format given at **Schedule 6**.
105. **“Person(s)”** means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, society, unincorporated organization, government or government body or any other legal entity.
106. **“Post COD Period”** means the period starting on and from the COD and ending on the Termination Date.
107. **“Power Charges”** means the cost of the power consumed by the Concessionaire to operate and maintain the Project during the O&M Period, which will be calculated on the basis of the prevailing Power Unit Rate, the Fuel Price, to the extent applicable and such other applicable charges as per the guidelines of the relevant Government Authorities.
108. **“Power Outage”** means any interruption in the supply of electricity from the grid or any Diesel-Generators (DG) Sets maintained by the Concessionaire at the Sites, which disrupts the continuous operation of the Project.
109. **“Power Unit Rate”** means the cost per unit of power drawn from the grid (through the relevant distribution licensee for the Sites), which will be the prevailing tariff per unit of power charged by the relevant distribution licensee in the relevant month during the O&M Period.
110. **“Pre-COD Period”** means the period commencing from the Execution Date and extending up to the COD.
111. **“Preliminary Notice”** means the notice of intended Concession Period by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.
112. **“Primary Collection & Transportation”** means the door to door collection, collection from public spaces, street cleaning and delivering to the to the Designated Bins at the designated collection points.
113. **“Processing”** means any scientific process by which segregated MSW is handled for the purpose of reuse, recycling or transformation into new products.
114. **“Processing Facility”** means the facility created by the Concessionaire for processing of the MSW, prior to its final disposal at engineered Sanitary Landfill Site, and also includes bio-methanation, incineration, gasification, anaerobic digestion, pyrolysis etc or any other technology for waste processing or any combination thereof.
115. **“Project”** shall mean Processing, Disposal & generating value from Municipal Solid Waste

in the form of CBG and Ethanol or any other products, byproducts on Design, Build, Finance, Operate & Transfer basis for a Waste to Energy plant including Processing Facility(ies) at Ranikhera or alternate suitable municipal land within North DMC New Delhi and discharging the Scope of Services more specifically set out in **Schedule 1**.

- 116. “Project Agreements”** means any material contracts or agreements entered into by the Concessionaire after the date of this Agreement relating to the construction, operation and maintenance of the Project.
- 117. “Project Area”** means the area presently under boundaries/ jurisdiction of the NORTH DMC or any extension thereof during the Concession Period.
- 118. “Project Assets”** means all physical and other assets relating to and forming part of the Project including (a) Right of Way or otherwise; (b) tangible assets such as civil works and equipment including but not limited to foundations, buildings, complaint redressal center, Processing Facility, electrical systems, communication systems, transport vehicles, Designated Storage & Bins within the WtE plant, ICT Infrastructure and administrative office; (c) Project Facilities situated on the Sites; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project.
- 119. “Project Facilities”** means all the amenities and facilities required as basic and support infrastructure for implementation of the Project including construction/renovation, operation and maintenance of facilities for Processing, Disposal & generating value from Municipal Solid Waste and the integrated solid waste management system such as infrastructure, ICT infrastructure, machinery and equipment procured, inherited, installed and operated and all other Project related physical assets.
- 120. “Proposed Technology”** means the proven technology(ies) proposed to be used by the Concessionaire to develop the Project and Project Facilities, as specified by the Concessionaire in its Designs and Drawings.
- 121. “Proprietary Material”** shall be as defined in **Article 29**.
- 122. “Qualifying Change in Law”** means any Change in Law, which
- (a) is directly applicable to the Project.
  - (b) impacts the Cost or time for undertaking the Project; and
  - (c) which was not reasonably foreseeable by the Concessionaire as on the Bid Submission Due Date.
- 123. “Related Parties”**
- “Concessionaire Related Parties”** means any of the following:
- (a) the Selected Bidder or Associates of the Selected Bidder.
  - (b) an officer, servant, employee or agent of the Concessionaire acting in that capacity.
  - (c) any Subcontractor engaged by the Concessionaire and their directors, officers, servants, employees or agents acting in that capacity.
  - (d) any Person acting on behalf of the Concessionaire.

**“NORTH DMC Related Parties”** means any of the following:

- (a) an officer, servant, employee or agent of the NORTH DMC, acting in that capacity.
- (b) any contractor or subcontractor of the NORTH DMC and their directors, officers, servants, employees or agents, acting in that capacity; or
- (c) any Person acting on behalf of the NORTH DMC.

For the avoidance a doubt, ‘NORTH DMC Related Parties’ does not include the Concessionaire or GNCTD.

**“IndianOil Related Parties”** any of the following:

- (a) an officer, servant, employee or agent of the IndianOil, acting in that capacity;
- (b) any contractor or subcontractor of the IndianOil and their directors, officers, servants, employees or agents, acting in that capacity; or
- (c) any Person acting on behalf of the IndianOil.

132. **“Residual Inert Matter”** means the inert matter left for final disposal in engineered Sanitary Landfill Site after processing of the MSW by one or more of the relevant Project.
133. **“Residual Solid Waste”** means and includes the waste and rejects from the MSW which are not suitable for recycling or further processing.
134. **“Right of Way”** means the constructive possession of sites, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project, in accordance with this Agreement.
135. **“Schedules”** means any of the annexure, appendices, supplements or documents annexed to this Agreement and as amended from time to time.
136. **“Sanitary Land Fill or SLF”** means the site/s where the Concessionaire conducts a final and safe disposal of residual inert matter, residual MSW and inert waste, which is designed, maintained & operated by the Concessionaire with protective measures against pollution of ground water, surface water and fugitive air dust, wind-blown litter, bad odour, fire hazard, animal menace, bird menace, pests or rodents, green-house gas emissions, persistent organic pollutants slope instability and erosion in accordance with the terms of this Agreement.
137. **“Scheduled Construction Completion Date”** means the date which is 24 (Twenty Four) months from the **Compliance Date**, by which the Concessionaire is required to complete the construction of the Project Facilities forming part of the integrated WtE plant.
138. **“Scheduled Maintenance”** means a planned maintenance of the Project that:
- (a) has been scheduled and allowed by the NORTH DMC in accordance with the Scheduled Maintenance Program; and
  - (b) is for inspection, testing, preventive and corrective maintenance, repairs, replacement or improvement of such Facilities, as the case may be.
139. **“Scheduled Maintenance Program”** means, for each year of the O&M Period, the schedule for undertaking preventive and corrective maintenance of the Project, as prepared by the Concessionaire and approved by the NORTH DMC in accordance with Article 15.



140. **“SEB”** means State Electricity Board of GNTCD.
141. **“Secondary Collection & Transportation”** means the transportation of MSW from the secondary collection points and Designated Bins in the Area governed by NORTH DMC to the Processing Project Facility/ Sanitary Landfill, by a Third party contracted by NORTH DMC or NORTH DMC itself.
142. **“Secondary Collection Points”** means Designated Bins and other collection points, areas of any land, constructed space allocated by NORTH DMC, if any, to temporarily store the MSW collected.
143. **“Selected Bidder” or “Successful Bidder”** means the Entity selected by INDIANOIL (for and on behalf of the NORTH DMC) through a competitive bidding process for implementing and managing the Project.
144. **“SERC”** means Delhi State Electricity Regulatory Commission.
145. **“Site”** means the identified land parcel, in respect of which the Concessionaire shall be granted License in accordance with terms hereof, for undertaking development/construction of Processing Facilities forming part of the integrated WtE.
146. **“MSW”** means Municipal Solid Waste and includes solid or semi-solid domestic waste, sanitary waste, commercial waste, institutional waste, catering and market waste and other non-residential wastes, street sweepings, silt removed or collected from the surface drains, horticulture waste, agriculture and dairy waste, treated bio-medical waste excluding industrial waste, bio-medical waste and e-waste, battery waste, radioactive waste generated in the area under the local authorities and other entities mentioned under Rule 2 of the SWM Rules 2016
147. **“SPCB”** means Delhi State Pollution Control Board.
148. **“Representative of NORTH DMC”** means any officer nominated by the NORTH DMC, from time to time, to act on its behalf and liaise with the Concessionaire and/ or IndianOil for the purposes of this Agreement and notified as such in writing to the Concessionaire and/ or IndianOil.
149. **“Subordinated Debt”** is the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Bid Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
  - (b) all accrued interest on the debt referred to in sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to [5% (five per cent)] above the bank rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and [6 (six) month] LIBOR (London Inter-Bank Offer Rate) plus [2% (two per cent)] in case of loans denominated in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

152. **"Substitution Agreement"** is an agreement that may be executed between the Concessionaire, NORTH DMC, IndianOil and the Lenders in the form set out in Schedule 9, pursuant to which, in case of Default by the Concessionaire including any Financial Default, Lenders (through its nominee) shall be allowed to take charge of the Concessionaire's roles & responsibilities under this Agreement.
153. **"Supplementary Fuel"** means any fuel that can be used as a supplement to the MSW to enrich RDF / fuel during commissioning / start of activities. Use of supplementary fuel would be permissible as per extant & relevant MNRE guidelines.
154. **"SWM Rules"** means the MSW Management Rules, 2016 framed by the Government of India under the Environment (Protection) Act, 1986 (Act 29 of 1986) and includes any statutory amendments / modifications thereto or re-enactments thereof, from time to time.
155. **"Taxes"** means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, goods and service tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the sub-contractors and the term Tax shall be construed accordingly.
156. **"Termination"** shall mean the expiry or termination of this Agreement and the Concession hereunder.
157. **"TPD"** means tonnes per day.
158. **"Compensation"** means the compensation payable by NORTH DMC upon termination of this Agreement, in accordance with Article 24.
159. **"Termination Date"** means the date specified in the Termination Notice as the date on which the Concession Agreement expires or terminates earlier.
160. **"Termination Notice"** means the notice of Termination by any of the Parties to the other Party, in accordance with the applicable provisions of this Agreement.
161. **"Termination Payments"** means the payments payable pursuant to Articles 20 and 23 of this Agreement.
162. **"Third Party (ies)"** means any Person other than the Parties to this Agreement.
163. **"Test (s)"** means the tests to be carried out by the Concessionaire at its cost, in the presence of North DMC representatives as may be required for getting Statutory clearances / Approval or asked by in respect of the Processing Project Facility and SLF to ensure that the same confirms to the requirements as per Good Industry Practice and Applicable Law or Applicable Permits.
164. **"Casualty"** means any fire or other casualty that results in physical damage to the Project Facilities, to the extent that the total cost of repairing, replacing or restoring the damaged portion of the Project Facilities (as determined by the North DMC), to the same condition as existed previously, would be more than 25% (twenty five per cent) of the total replacement cost of the Facilities.
165. **"Transfer Date"** shall be as defined in Article 23.
166. **"Transportation"** means conveyance of MSW, either treated, partly treated or untreated

from a location to another location in an environmentally sound manner through specially designed and covered transport system so as to prevent the foul odour, littering and unsightly conditions.

167. **"Trial Operations"** means the operation of the Project Facilities on a trial basis for a period of 3 (three) months from the Construction Completion Date or such longer period as may be determined.
168. **"Trial Operations Completion Certificate"** means the certificate issued by NORTH DMC and/ or the Independent Engineer to the Concessionaire upon successful completion of the Trial Operations.
169. **"Unscheduled Outage"** means an interruption of or a reduction in the Availability of any Facilities that is not the result of a Forced Unavailability.
170. **"Vacant Possession"** means delivery of possession of the Site free from all Encumbrances to NORTH DMC and the grant of all rights and all other rights appurtenant thereto within the scope of this Agreement.
171. **"Variation" or "Deviation"** means any alteration in the Scope of Work, technical specifications or the Designs and Drawings, as instructed by NORTH DMC or proposed by the Concessionaire, in accordance with Article 28.
172. **"Variation Order" or "Deviation Order"** means an order issued by NORTH DMC certifying its approval of a proposed Variation and recording the terms and condition on which the proposed Variation is required to be implemented.
173. **"Waste Generator(s)"** means all residential, commercial, institutional and industrial establishments generating MSW and located within the Project Area.
174. **"Waste to Energy" or "WtE"** means all activities, processes and technologies of converting mixed MSW for production of valuable fuels, products but not limited to Electricity, CBG and Ethanol, low carbon fuels, fertilizers, recoverable/ reusable resources & materials including but not limited to plastics, paper/ pulp, metal, glass, wood etc & other refuse derived fuels.
175. **"Willful Misconduct"** means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.
176. **"WPI"** means the Wholesale Price Index for all commodities as published by the Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

\*\*\*\*\*

In witness whereof the Parties hereto have signed this Agreement on this \_\_\_\_ day of \_\_\_\_\_ month & year 2021.

For North Delhi Municipal Corporation

By:

Name:

Title:

For IndianOil Corporation Ltd

By:

Name:

Title:

(The Concessionaire)

By:

Name:

Title:

## SCHEDULES

### SCHEDULE 1 SCOPE OF SERVICES

(See Article 2)

#### 1. Sanitary Land Filling Site

##### Role of Concessionaire

- (a) The Concessionaire shall Design, Construct and Operate Project Facility of including Processing facility, Material Recovery Facility, Sanitary Land Filling (SLF) etc., of Designed Capacity at the Site provided by NORTH DMC. The Sanitary Landfill shall be setup in accordance with the requirement of SWM Rules, 2016 and CPHEEO Manual.
- (b) All necessary technical investigations & surveys for design of facilities by Concessionaire viz. Geo-technical investigation including load bearing capacity, water table, Contour & Topographical survey of the land, quality of ground water, etc required for delivery of the integrated WtE plant & associated facilities at the project site.
- (c) Pay Waste Royalty Charges to North DMC on monthly basis as per the rates finalized in the bidding process.
- (d) Upon completion of every 5 years of the Commercial Operation Date payment of finalized Waste Royalty Charges ( $W_{RC}$ ) with 10% increase upon every 5 years to North Delhi Municipal Corporation for the entire life of the Plant. Illustration for revision is as below:

Year	Waste Royalty Charges in ₹ per ton	Remarks
COD + 1 year	$W_{RC}$	Nil
Up to COD + 5 years	$W_{RC}$	Nil
COD + 6 years	$W_{RC} \times 1.10$	$W_{RC}$ increased by 10%
Up to COD + 10 years	$W_{RC} \times 1.10$	Nil
COD + 11 years	$W_{RC} \times 1.21$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 15 years	$W_{RC} \times 1.21$	Nil
COD + 16 years	$W_{RC} \times 1.33$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 20 years	$W_{RC} \times 1.33$	Nil
COD + 21 years	$W_{RC} \times 1.48$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 25 years	$W_{RC} \times 1.48$	Nil

Year	Waste Royalty Charges in ₹ per ton	Remarks
COD + 26 years	$W_{RC} \times 1.62$	$W_{RC}$ increased cumulatively by 10%
Up to COD + 30 years	$W_{RC} \times 1.62$	Nil

- (e) The Concessionaire shall install weighbridges (3 nos or more & as per design, operational requirements) from the start date of disposal activity of appropriate capacity. The weighing system shall be fully online electronic, automatic system equipped with the latest technology along with backup server facility. Data of weighing system shall be maintained properly for the entire Concession Period with backup server facility and shall be provided as & when required by NORTH DMC.
- (f) Concessionaire to ensure by weighment that inert/residual Processing waste from Processing Facilities to the Sanitary Landfill should not be disposed more than 20% of the total incoming waste at Processing facility and as per extant provision of SWM Rules 2016 issued from time to time.
- (g) SLF shall comprise compacted earth bunds with impermeable liner systems comprising compacted clay liners, or geo-membranes, or geosynthetic clay liners. The landfill cells will incorporate leachate collection systems comprising gravel and geotextile filter layers and pipe collection and transfer systems.
- (h) The Concessionaire shall also set up a leachate treatment facility at the landfill site involving any suitable technology to meet the standards as per regulatory norms.
- (i) Shall be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (j) Ensure arrangement for water and power supply at project/ WtE site at its own cost.
- (k) Transportation of inert/residual Processing waste to the Sanitary Landfill is to be done by the Concessionaire from the integrated WtE plant.
- (l) Ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any.
- (m) Pay all Taxes, duties and outgoings, including utility charges relating to the Project Facilities.
- (n) The Concessionaire shall provide fencing/ compound wall (as applicable) along the perimeter of the Site and arrange adequate lighting system for easy operations in the working area as well as to the access ways.
- (o) Provide fire protection measures and safety equipment for all workers at the site. Entrance into the Site from outside the Site shall be restricted to one point. However, several emergency exits may be provided.
- (p) Adequate measures to avoid trespassing shall be taken by the Concessionaire. En-

sure adequate power back-up for smooth operation of the machinery and equipment installed.

- (q) All the necessary regulatory approvals (including Environmental clearance, consent to establish and operate from SPCB, etc.as applicable as per extant statutory guidelines of Central & State Govt, CPCB etc) shall be taken prior to the commencement of integrated WtE plant, SLF construction and operations.

**2. Conditions for Weigh Bridge**

- a) It shall be fully online electronic with real time monitoring systems, automatic system equipped with the latest technology along with backup server facility. Data of weighing system shall be maintained properly for the entire Concession Period with backup server facility and shall be provided as & when required by NORTH DMC.
- b) It shall be operated in CCTV surveillance with data storage of entire Concession Period. For CCTV surveillance High Definition IP based cameras in adequate numbers shall be provided by the Concessionaire.
- c) CCTV Recordings of operation of weighing system shall be provided as and when required by NORTH DMC.

**3. Role of the NORTH DMC (referred as NORTH DMC or Authority interchangeably):**

- a) Provide land for the integrated WtE plant & the SLF within [1 (one)] month to the Concessionaire from the Execution Date.
- b) NORTH DMC shall arrange to approve the Implementation Plan submitted by the Concessionaire for the integrated WtE plant & SLF facility within a period of 21 days from the date of submission. NORTH DMC shall, where appropriate, coordinate/assist Concessionaire in securing Applicable Permits.
- c) To monitor, supervise, and review Concessionaire's progress against submitted timelines.
- d) Shall ensure source segregation of MSW to the extent possible & providing assured regular supply of mixed MSW, which can be used for the entire life of the WtE Plant & against Royalty Charges to be paid by the Concessionaire as per finalized rates in the bidding process. North DMC shall provide guarantees on quality and quantity of MSW of **minimum 2000 Ton Per Day or more up to 2500 Ton Per Day** supplied.
- e) Ensure a separate waste collection stream from bulk waste generators, vegetable and flower markets for the purpose of collecting segregated Organic Waste.
- f) Shall ensure regular primary collection of waste from households i.e. on daily basis.
- g) NORTH DMC shall meet and defray any cost or penalty levied upon the Concessionaire pursuant to any judgment or order of any court of competent jurisdiction or statutory authority, in connection with any damages resulting from legacy waste, which is not directly attributable to the Concessionaire's non-observance or non-compliance of its obligations hereunder.
- h) Plan, design & implement & allocate Secondary Collection Points in consultation with the Concessionaire within 90 (ninety) days from the Execution Date.
- i) Sign, Operate and maintain an escrow account with the Concessionaire to ensure a single account for cash flow.
- j) Facilitate in a timely manner all such approvals, permissions and authorizations which Concessionaire may require or is obliged to seek from them under this Agreement, in connection with implementation of the Project and the performance of its obligations.

- k) Assist in getting connection for water and electricity connection at each of the Site(s).
- l) Validate the data provided by the Concessionaire in monthly progress reports.
- m) Observe and comply with all obligations set forth in this Agreement, and any other Agreement to be executed with the Concessionaire.
- n) Have right over assets and technology in case of termination of Concession Period or expiry of Concession Period, whichever is earlier.
- o) Assurance to Concessionaire that any of its officers, employees or workmen shall not, at any time, during the Concession Period interfere with or obstruct in the functioning, running and the overall management of the Project and in any matter in relation to or connected therewith.

#### **4. Setting-up of Processing Facilities**

##### **Role of Concessionaire**

- a. The Concessionaire shall be obligated to set up at its cost and expense, an integrated Waste to Energy plant along with Sanitary Land Fill with associated Waste Processing Facility at the earmarked Site and discharge obligations set out in Schedule 1 for Processing of MSW prior to its final disposal at engineered Sanitary Landfill Site, as per the Construction Plan submitted by the Concessionaire. The Implementation Schedule shall be submitted in MS Project/ Bar chart/ GANTT chart as applicable.
- b. Setting up a Waste to Energy Plant having capacity as provided in Concession Agreement. The Concessionaire shall have the Processing Facility fully set up and obtain a Completion Certificate from NORTH DMC for the newly installed Project Facility as mentioned below:
  - i. 50% to 60% of Name Plate Capacity (i.e. 50% to 60% of 2500 TPD = ~ 1250 to 1500 TPD)- within 12 months from the Compliance date as per the Concession Agreement.
  - ii. 100% of Name Plate Capacity (i.e. 100% of 2500 TPD = 2500 TPD)- within 24 months from the Compliance date as per the Concession Agreement.

Note: For Construction Period specific milestones, please refer to **Schedule 12**.

The Concessionaire shall also be obligated to promptly rectify and remedy any defects or deficiencies that are pointed by North DMC and furnish a report in respect thereof to North DMC.

- c. In the event the Concessionaire is unable to achieve COD within the said time period, the Concessionaire shall be granted an additional period of \_\_\_ days without levy of any damages. In case of any further delay to achieve COD, Liquidated Damages at the rate of [0.1% (zero-point one percent)] of the Performance Security per day of delay beyond \_\_\_ days from Scheduled Construction Completion Date shall be levied by NORTH DMC on the Concessionaire, subject to a maximum of [90 (ninety)] days beyond which it shall tantamount to Concessionaire Event of Default. Provided however, if the delay to achieve COD is due to any Force Majeure event or due to delay on part of NORTH DMC in issuing Completion Certificate, no such Liquidated Damages shall be levied.

#### **5. Processing & Disposal of MSW**

##### **Role of Concessionaire**

- a. The Concessionaire shall setup an integrated Waste to Energy plant along with Sanitary Land Fill with associated Waste Processing Facility on the designated lands provided by NORTH DMC. The land provided shall only be used for the purposes of the Project.



- b. The Concessionaire shall take all Applicable Permits in sequence and comply with the provisions therein from time to time.
- c. The Concessionaire shall design, construct, operate and maintain all the Project Assets and Project Facilities including Processing Facility in compliance with all applicable laws at its own cost.
- d. The Waste Processing Facility & WtE plant shall use the technology as quoted, selected by the Concessionaire in the competitive bidding.
- e. The Concessionaire shall at its cost and expense procure all machinery and equipment for the Project. The Concessionaire shall comply with proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated in the Project.
- f. The Processing Facility shall achieve COD within a period for milestones as mentioned in this Schedule. The Concessionaire shall submit monthly progress reports during the above period to North DMC.
- g. Supply of CBG and Ethanol to IndianOil at the rates & as per technical specifications, other details provided in **Schedule 18 & Schedule 19** during the entire lifetime of the proposed WtE plant.
- h. The Concessionaire shall operate and maintain the integrated WtE, Waste Processing Facility & the Sanitary Land Fill during the entire Concession Period in accordance with the Applicable Laws, extant guidelines of Statutory agencies such as MoEF & CC, CPCB, Delhi State PCB, MoUHA & amended from time to time during the life of the plant.
- i. The Concessionaire shall ensure that the inert/Processing rejects generated from the Processing Facility should achieve total elimination of landfill but in any circumstances not in excess of 20% (twenty per cent) of input waste quantity. The Concessionaire will also ensure treatment and discharge of leachate generated from WtE Facility in accordance with the CPCB standards.
- j. All penalties, levies (if any) due to any non-compliance of statutory provisions will be borne by the Concessionaire.
- k. The Concessionaire shall retain revenue generated through products produced out of such Processing. The Concessionaire shall also retain revenue generated through carbon credits.
- l. The Concessionaire shall maintain daily records of quantum of incoming, processed waste, rejects, products and product quality in the formats approved by NORTH DMC. The monthly report shall be submitted by the Concessionaire to North DMC in this regard.
- m. The Concessionaire shall arrange for all facilities and equipment for weighing - minimum 2 (two) electronic weighbridges with CCTV cameras, platforms etc. The Concessionaire shall also store at least past 2 months of such video feed and make it available for inspection at the request of NORTH DMC.
- n. The flue gas vented to atmosphere shall be required to be treated adequately by scrubbing, neutralization and filtering so that the pollutants are dust levels are well within the acceptance level as statutory requirements.
- o. The Concessionaire shall develop the surrounding of the plant with greenhouse concept having plants, lawns, gardens etc. as model spot for educating students/ public on environmental protection and best environment practices.

- p. The Concessionaire shall erect at least (1) signboard with details (capacity, contact details and signage) about the WtE plant in [Local Language(s)] and English of a size not less than 2ft. by 4ft. each, adjacent to the main entrance in a manner that is ordinarily visible to any person using such entrance.
- q. The Concessionaire shall at all times comply with the statutory norms of CPCB/ SPCB for pollution control.
- r. The Concessionaire will place a board at the entrance of the Processing facility displaying emission and discharge parameters of air & water.
- s. The Concessionaire shall display layout at the entrance and indicate warning signs in the WtE.
- t. The workers involved in MSW handling shall be provided with gloves, masks, uniforms, aprons and other Personal Protective Equipment (PPE).

## **6. Setup Complaint Redressal Centre**

### **Role of Concessionaire**

- a. The Concessionaire shall setup at least 1 (one) Complaint Redressal Centre specific to the issues relating to the WtE plant, which shall be functional by the Commencement Date such that it allows for (a) easy monitoring of operations of the Project and (b) establishment of standard protocol to address customer complaints.
- b. The Complaint Redressal Centre shall be capable to registering complaints by the way of written communication, telephonically or personal visits by the consumers. The Complaint Redressal Centre shall be supported in English and [local language(s)].
- c. The Complaint Redressal Centre shall have at least 3 (three) operational dedicated phone lines for receiving customer calls / complaints.
- d. The "Complaint Redressal Centre" shall be kept operational by the Concessionaire from 6 am to 10 pm, 7 (seven) days a week. Concessionaire shall maintain a digital record of all complaints received containing identification number, customer name, service address, phone number, date and time of initial call, date and time of any follow -up calls and type of complaint. Complaints shall be verified and shall be redressed within 24 hours of their receipt.
- e. The Concessionaire shall also develop a website and a mobile application for filing complaints by any of aggrieved citizens in the 2 km vicinity of the WtE plant.
- f. The aggrieved residents for registering of their complaints may also contact the offices of NORTH DMC who shall immediately forward such complaints to the Complaint Redressal Centre. NORTH DMC shall designate one of their officers not below the rank of Junior Engineer as the Nodal Officer to receive such complaints. The Concessionaire shall be bound to act on the complaint so forwarded on an immediate basis and send status report to such Nodal Officer within 24 (twenty-four) hours of having redressed the complaint specifying the action taken. In the event, the Concessionaire fails to take action or send status report within the aforesaid time period, it shall be liable to pay Liquidated Damages in accordance with Article 18 of the Agreement.

SCHEDULE 2 APPLICABLE PERMITS

(See Article 4)

1. Concessionaire Applicable Permits (indicative & not exhaustive)

SN	Applicable Permit	Authority
a.	Temporary Power Connection (During Construction Period)	Electricity Board/ other temporary sources
b.	Consent to Operate	State Pollution Control Board
c.	Consent for storage of hazardous materials	Director of Explosives
d.	Consent Firefighting system	Firefighting Department
e.	CEIG approval stage 1 for construction & stage 2 on completion of project	Chief Electrical Inspector to Government
f.	Electricity Board approval during various stages request for load sanction, remittance of deposit, installation of incomings, etc	Electricity Board
g.	Layout and building plan approval	ULB/DTCP
h.	Consent to establish	State Pollution Control Board (SPCB)
i.	Tree cutting	Forest Department
j.	Road cutting & crossing	Public Works Department or any other road owning agency
k.	Railway Crossing	Commissioner Railway safety
l.	Revenue road cutting & crossing	Panchayat/Local Authority

SN	Applicable Permit	Authority
m.	Access Road to new Project Facilities	Forest Department/ Panchayat/Local Authority/ Irrigation Department
n.	Consent to Operate for Existing Facilities	ULB and SPCB

**Note:**

- Depending upon the technology deployed in the WtE plant & the end products such as CBG, Ethanol, Power etc, there may be requirement of other permits to be taken by the Concessionaire.
- The Concessionaire will be liable to obtain all Applicable Permits (other than NORTH DMC & IndianOil Applicable Permits) that are necessary for construction, operation and maintenance of the Project Facilities.
- NORTH DMC shall assist the Concessionaire in obtaining all the required permits.

## SCHEDULE 3 SPECIFICATIONS AND STANDARDS

*(See Article 5.1)*

### 1. Project Facilities

The Project Facilities shall conform to the Specifications & Standards as specified in this Schedule & this Agreement.

The Specifications & Standards applicable to the design & construction of the WtE/ Waste Processing, Material Recovery facilities shall conform with National Building Code of India, relevant specifications & standards issued/ specified by Bureau of Indian Standards (BIS), International Organization for Standardization (ISO), other Applicable Laws & good industry/ engineering practice.

In the absence of any specific provision in this Agreement, the following standards shall apply in the order of priority.

- (i) National Building Code of India
- (ii) Bureau of Indian Standards (BIS)
- (iii) International Organization for Standardization (ISO)
- (iv) International guidelines
- (v) Any other specifications, standards, codes proposed by the Concessionaire & approved by the Authority.

Note: Latest version of specified standards, codes & guidelines shall be applicable.

## SCHEDULE 4 MAINTENANCE REQUIREMENTS

(See Article 5.1)

### 1. Maintenance Requirements

The Concessionaire shall, always, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, always during the Operation & Maintenance Period, conform to the Maintenance Requirements set forth in this Schedule.

The Concessionaire shall repair or rectify any defect or deficiency set forth in Clause 2 of this Schedule within the time limit specified therein & any failure in this behalf shall constitute a breach of the Agreement.

### 2. Repair/ Rectification of defects & deficiencies:

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair & rectification of defects & deficiencies in the Project within the time limit set forth in Annex-I of this Schedule.

The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

### 3. Other Defects & Deficiencies:

In respect of any defect or deficiency not specified in Annex I of this Schedule, the Concessionaire shall undertake repair or rectification in accordance with good engineering / good industry practices & within the time limit specified by North DMC.

In respect of any defect or deficiency not specified in Annex I of this Schedule, North DMC may, in conformity with Good Industry / good engineering Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications & Standards and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with good engineering / good industry practices & within the time limit specified by North DMC.

### 4. Extension of time limit:

Notwithstanding anything to the contrary specified in this Schedule, if the nature & extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good industry/ good engineering Practice. Such additional time shall be determined by North DMC and conveyed to the Concessionaire. In case of rejection of request for additional time limit, NORTH DMC shall convey to the Concessionaire with reasons thereof.

### 5. Emergency repairs/ restoration:

Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

### 6. Inspection by the Concessionaire:

The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project and maintain a record thereof in a register. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by NORTH DMC at any time during office hours.

Annex - I (Schedule)

The Concessionaire shall repair and rectify the defects and deficiencies (indicative list & not exhaustive) specified in this Annex - I to Schedule within the time limit set forth herein:

S N	Nature of defect or deficiency	Time limit for repair/ rectification
<b>Access Roads</b>		
	Damage of pavement edge exceeding 10 cm	15 days
	Debris on roads	2 hours
	Damage to shape or position of roadside furniture, signs and marking; poor visibility or loss of retro-reflectivity	24 hours
<b>Lighting at the Project Facilities</b>		
	Any major failure of the system	6 hours
	Faults and minor failures	2 hours
	Lighting level falling below [200] lux	1 hour

## SCHEDULE 5 SAFETY REQUIREMENTS

(See Article 5.1)

### 1. Guiding principles:

Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.

Safety Requirements apply to all phases of construction, development, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

Safety requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement & emergency response, with particular reference to the safety guidelines specified in Annex - 1 of this Schedule.

### 2. Obligations of the Concessionaire:

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits.
- (b) provisions of this Agreement.
- (c) relevant Standards/Guidelines contained in nationally accepted codes and
- (d) Good Industry Practice.

### 3. Safety measures during Operation and Maintenance Period:

The Concessionaire shall develop, implement and administer a safety programme for the project facilities which shall include correction of safety violations & deficiencies & all other actions necessary to provide a safe environment in accordance with this Agreement.

The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarized and submitted to NORTH DMC at the conclusion of every [month/quarter].

The Concessionaire shall submit to NORTH DMC before the [31<sup>st</sup> of March] every year, an annual report in 3 (three) copies containing, without limitation, a detailed listing and analysis of all accidents of the preceding Financial Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule for averting or minimizing such accidents in future.

### 4. Costs and expenses:

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule, shall be borne by the Concessionaire in accordance with the provisions of Article 5.1.

## Annex - I (Schedule-5) Safety Guidelines

### 1. System integrity

In the design of the Project Facilities, particular care shall be taken to minimize the likely incidence of failure.

### 2. Safety management



A safety programme shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Project and compliance thereof. The programme shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances 2 (two) copies of the programme shall be sent to North DMC within 15 (fifteen) days of the close of every year.

**3. Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “Disaster Management Manual”) to be prepared and published by the Concessionaire prior to Project COD. The Concessionaire shall provide 5 (Five) copies each of the Disaster Management Manual to NORTH DMC no later than [30 (thirty)] days prior to Project COD.

**4. Fire safety**

To prevent fire in the project, the Concessionaire shall use fire resistant materials in the construction thereof & shall avoid use of materials which are to some extent flammable or which emit smoke and harmful gases when burning.

To deal with incidents of fire, the Concessionaire shall provide a hydrant-based fire-fighting system in conformity with the Good Industry, good safety & engineering Practices.

**5. Surveillance and Safety Manual**

The Concessionaire shall, no later than [60 (sixty)] days prior to [Project COD], evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environmental protection.

**6. Watch and Ward**

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

SCHEDULE 6 PERFORMANCE SECURITY OR BANK GUARANTEE

[on appropriate stamp paper & of appropriate value]

(See Article 9.1)

The Municipal Commissioner of Authority

Address:

WHEREAS:

- A. .... (the “**Concessionaire**”), the [Municipal Corporation] **NORTH DMC & IndianOil** have entered in to a Concession Agreement (the “**Agreement**”) whereby NORTH DMC have agreed to the Concessionaire undertaking the development and operation of integrated MSW management system at \_\_\_\_\_ site in the GNCTD ..... (the “**Project**”) subject to and in accordance with the provisions of the Concession Agreement.
- B. The Agreement requires the Concessionaire to furnish a Performance Security to NORTH DMC a sum of ₹ ..... (Rupees ..... only) (the “**Guarantee Amount**”) as security for due & faithful performance of its obligations under & in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- C. We, ..... through our branch at ..... (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unequivocal, unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the [construction period], under and in accordance with the Agreement, and agrees and undertakes to pay to the State Government and/or NORTH DMC, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the State Government and/or NORTH DMC shall claim, without the State Government or NORTH DMC being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from NORTH DMC, under the hand of an officer not below the rank of [.....], that the Concessionaire 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 NORTH DMC shall be the judges as to whether the Concessionaire is in default in due and faithful performance of its obligations during the [Construction] Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between NORTH DMC and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, NORTH DMC shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire 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 NORTH DMC to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. NORTH DMC 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, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by NORTH DMC against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to NORTH DMC, and the Bank shall not be released from its liability and obligation under these presents by any exercise by NORTH DMC of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of NORTH DMC 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 NORTH DMC in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire 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 until the expiry of the construction period or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by NORTH DMC on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of NORTH DMC under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 100% (one hundred per cent) of the Bid project which is deemed to be ₹ ..... (Rupees ..... only) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, NORTH DMC shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of NORTH DMC 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.
10. 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 authorized 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 NORTH DMC that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the expiry of the construction period or until it is released earlier by NORTH DMC pursuant to the provisions of the Agreement.

Signed & sealed this \_\_\_\_ day of \_\_\_\_\_month & year 2021.

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 7 THE SITES

(See Article 10)

Sites of the Project Facilities shall include as given below:

1. Land admeasuring approx. 50 acres in 2 parcels at Ranikhera or alternate suitable municipal land within North DMC, New Delhi for setting up the integrated WtE plant, associated Waste Processing Facility & Sanitary Land Fill.
2. North DMC shall provide only the site layout plan and co-ordinates. All necessary technical investigations & surveys should be done by the Concessionaire at his cost.

Note:

- i. *Through suitable drawings and description in words, the land comprising the Project Sites shall each be specified briefly but precisely. In the event there are any buildings or structure on the project site, the same shall be marked in the drawings & briefly described in words.*
- ii. *An inventory of each Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by NORTH DMC Representative and the Concessionaire.*
- iii. *Additional land required for ancillary buildings, extension/ addition to the Project Facilities or for construction of works due to change of Scope of Work shall be provided by NORTH DMC in accordance with the Article 14.6.1(r) of this Agreement. Upon provision, such land shall form part of the Site and vest in NORTH DMC.*

## SCHEDULE 8 ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [●] day of [●] 20[●].

### AMONGST

1. [● LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [●] (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [● (name and particulars of Lenders' Representative)] and having its registered office at [●] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders' Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [● (name and particulars of the Escrow Bank)] and having its registered office at [●] (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
4. [North DMC], a body corporate constituted under the provisions of the [insert] and having its Administrative Office at

[●], hereinafter referred to as “the Concessioneing Authority” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns); and

5. IndianOil Corporation Limited ..... (hereinafter referred to as IndianOil or CBG and/ or Ethanol Buyer which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns)

### WHEREAS:

- (A) The Concessioneing Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the “Concession Agreement”) for undertaking the Project (as defined in the Concession Agreement) on build, operate and transfer (BOT) basis. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (B) IndianOil is agreeable to purchase and the Concessionaire has agreed to sell the CBG and/ or Ethanol produced from the Plant (as defined in Concession Agreement) in terms of the CBG Sale Purchase Agreement & Ethanol Sale Purchase Agreement respectively.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

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

“Escrow Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Budget” means the budget for construction/implementation expenses relating to the Project/Project Facilities and Services and O&M Expenses submitted by the Concessionaire in accordance with the provisions contained herein;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and shall include any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include any sub accounts thereof;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Lenders' Representative” means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

“Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“Quarter” means, any three month period from 1st April to 30th June, 1st July to 30th September, 1st October to 31st December or 1st January to 31st March.

## **1.2. Interpretation**

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3. References to Articles are, unless stated otherwise, references to Articles of this Agreement.

1.2.4. The rules of interpretation stated in Articles 1.3, 1.4 and 1.5 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## **2. ESCROW ACCOUNT**

### **2.1. Escrow Bank to act as trustee**

2.1.1. The Concessionaire hereby settles in trust with the Escrow Bank a sum of Rs. 100 (Rupees Hundred Only) appoints the Escrow Bank to act as trustee for the Concessioning Authority, the Lenders, the CBG and/ or Ethanol Buyer, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

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

## **2.2. Acceptance of Escrow Bank**

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

## **2.3. Establishment and operation of Escrow Account**

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

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

2.3.3. The Concessionaire shall submit to the Escrow Bank a Budget within 7 (seven) Days of the commencement of each Financial Year. Till the pendency of the financing Documents, such Budget shall be approved by the Lenders/Lenders Representative and thereafter by the Concessioning Authority.

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

## **2.4. Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the operating and maintaining expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1.1 (c).

## **2.5. Rights of the parties**

The rights of the Concessioning Authority, the CBG and/ or Ethanol Buyer, the Lenders (through the Lenders' Representative) and the Concessionaire in the monies held in the



Escrow Account are set forth in their entirety in this Agreement and the Concessioneing Authority, the CBG and/ or Ethanol Buyer, the Lenders' and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## **2.6. Substitution of the Concessionaire**

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

## **1. DEPOSITS INTO ESCROW ACCOUNT**

### **1.1. Deposits by the Concessionaire**

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

- (a) all monies received in relation to the Project from any source, including the Lenders;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all revenues from the buyers of the products and bye products produced from the Plant including CBG and Ethanol in respect of the Project/Project Facilities and Services accruing to the Concessionaire including termination payments; and
- (d) all proceeds received pursuant to any insurance claims.

For avoidance of doubt, all amounts received by the Concessionaire in respect of the Project/Project Facilities and Services (except for any monies collected as tax or cess to be paid to an authority concerned) shall be deposited in the Escrow Account.

### **3.2 Deposits by CBG and/ or Ethanol Buyer**

The CBG and/ or Ethanol Buyer agrees and undertakes that subject to the terms of the CBG Sale Purchase Agreement & Ethanol Sale Purchase Agreement, it shall deposit into and/or credit the Escrow Account with any money due and payable to the Concessionaire from CBG and/ or Ethanol Buyer under the CBG Sale Purchase Agreement & Ethanol Sale Purchase Agreement.

## **1. WITHDRAWALS FROM ESCROW ACCOUNT**

### **1.1. Withdrawals during Concession Period**

- 1.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub- Accounts for making due payments in a month :

- (a) all taxes due and payable by the Concessionaire;
- (b) all construction/implementation expenses relating to the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;

- (c) all expenses relating to operations and management of the Project/Project Facilities and Services, in accordance with the Budget and subject to limits if any set out under the Financing Documents;
- (d) towards its debt service obligations under the Financing Documents;
- (e) towards sums payable to the CBG and/ or Ethanol Buyer and liquidated damages, if any
- (f) towards sums payable to the Concessioneing Authority and liquidated damages, if any;
- (g) towards any reserve requirements in accordance with the Financing Documents; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the escrow account after all the aforesaid payments due in any Quarter have been made and/or adequate reserves have been created in respect thereof for that Quarter.

1.1.2. Not later than 60 (sixty) Days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

## 1.2. Withdrawals upon end of Concession Period

All amounts standing to the credit of the Escrow Account at the end of the Concession Period including amounts credited to the Escrow Account towards compensation payable in accordance with Article 17 of the Concession Agreement shall be appropriated in the following order of priority:

- (i) towards taxes and statutory dues payable by the Concessionaire;
- (ii) compensation to Lenders in terms of the Financing Documents towards discharge of the Concessionaire's liability under such Financing Documents;
- (iii) all amounts due to the CBG and/ or Ethanol Buyer
- (iv) all amounts due to the Concessioneing Authority and amounts payable towards transfer of the Project Facilities and Services by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Lenders, CBG and/ or Ethanol Buyer and the Concessioneing Authority and the Escrow Agent has received a confirmation of final settlement by the Lenders and/or CBG and/ or Ethanol Buyer/ Concessioneing Authority.

## 1.3. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project/Project facilities and Services, and the balance remaining, if any, shall be applied in accordance with the provisions con-

tained in this behalf in the Financing Documents.

#### **1.4. Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, in case the Escrow Bank receives a notice in writing from the Concession Authority that the rights of the Concessionaire are suspended in accordance with the Concession Agreement or a Termination Notice is issued, the Escrow Bank shall until such notice is withdrawn, act only on the instructions of the Concessioning Authority.

## **2. OBLIGATIONS OF THE ESCROW BANK**

### **2.1. Segregation of funds**

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

### **2.2. Notification of balances**

7 (seven) business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the CBG and/ or Ethanol Buyer, Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account as at the close of business on the immediately preceding business day.

### **2.3. Communications and notices**

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

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

### **2.4. No set off**

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

### **2.5. Regulatory approvals**

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

## **1. ESCROW DEFAULT**

### **1.1. Escrow Default**

1.1.1. Following events shall constitute an event of default by the Concessionaire (an “Escrow Default” ) unless such event of default has occurred as a result of Force Majeure or any act or omission of the CBG and/ or Ethanol Buyer, Concessioning Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit /cause the deposit of any receipts into the Escrow Account;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement.

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

## **1. TERMINATION OF ESCROW AGREEMENT**

### **1.1. Duration of the Escrow Agreement**

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

### **1.2. Substitution of Escrow Bank**

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

### **1.3. Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Documents including the payments specified in Article 4.2, and upon confirmation' of receipt of such payments, close the Escrow Account and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **2. SUPPLEMENTARY ESCROW AGREEMENT**

### **2.1. Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Escrow Account, creation of sub-accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of Financing Documents, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## **3. INDEMNITY**

### **3.1. General indemnity**

3.1.1. The Concessionaire will indemnify, defend and hold the Concessioneing Authority, CBG and/ or Ethanol Buyer, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

3.1.2. The Concessioneing Authority and CBG and/ or Ethanol Buyer will indemnify, defend and hold the, Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents.

3.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire, CBG and/ or Ethanol Buyer and Concessioneing Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

### **3.2. Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to con-

test or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

#### **4. MISCELLANEOUS PROVISIONS**

##### **4.1. Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. Any dispute arising under the Agreement shall endeavoured to be settled amicably. In the event a dispute cannot be settled amicably, the same shall be settled in arbitration by a tribunal of three arbitrators. The seat of arbitration shall be New Delhi and shall be conducted in accordance with the Rules of Delhi International Arbitration Centre (which Rules are deemed to be incorporated herein by reference) and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

##### **4.2. Waiver of sovereign immunity**

The Concessioning Authority unconditionally and irrevocably:

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

##### **4.3. Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

##### **4.4. Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

##### **4.5. Waiver**

- 4.5.1. Waiver by any Party of a default by another Party in the observance and

performance of any provision of or obligations under this Agreement:

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

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

#### **4.6. No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **4.7. Survival**

##### **4.7.1. Termination of this Agreement:**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

4.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### **4.8. Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

#### **4.9. Successors and assigns**

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

#### **4.10. Notices**

Unless otherwise stated, notices to be given under this Agreement including but not

limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex, facsimile or e-mail (notice by facsimile or e-mail to be followed by a confirmation copy by courier/airmail) transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Concessioneing Authority:

-----  
\_\_\_\_\_  
\_\_\_\_\_

Fax No:

Email:

The CBG and/ or Ethanol Buyer

.....

.....

Fax No:

Email:

The Concessionaire:

The MANAGING DIRECTOR

-----Ltd

\_\_\_\_\_  
\_\_\_\_\_

Fax No.    Email:

The Lenders/Lenders representative:



-----Ltd

\_\_\_\_\_  
\_\_\_\_\_

Fax No.    Email:

The Escrow Bank:

-----Ltd

\_\_\_\_\_  
\_\_\_\_\_

Fax No.    Email:

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile or e-mail, when transmitted properly addressed to such telex number or facsimile number or e-mail id, in each case. during 10 am to 5 pm on a business day or else deemed to be received on next business day.

**4.11. Language**

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

**4.12. Authorised representatives**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**4.13. Original Document**

This Agreement may be executed in five (5) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE by:

(Signature) (Name) (Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of LENDERS by the Lenders' Representative: (Signature)

(Name)

(Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by: (Signature)

(Name) (Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of Concessioneing Authority by: (Signature)

(Name) (Designation) (Address) (Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of CBG AND/ OR ETHANOL BUYER by: (Signature)  
(Name) (Designation) (Address)

In the presence of:

1.

2.

## SCHEDULE 9 SUBSTITUTION AGREEMENT

(See Article 12.4)

This Substitution Agreement is entered in to on this \_\_\_ day & month \_\_\_\_\_ & year 2021.

AMONGST

1. The North Delhi Municipal Corporation, incorporated under the [Act under which Authority has been established], represented by its Municipal Commissioner and having its principal offices at \_\_\_\_\_, India (hereinafter referred as the "NORTH DMC") which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [Name of the Concessionaire] with its registered office at [insert address], hereinafter referred to as the "Concessionaire", which expression shall unless repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns) has executed a concession agreement dated \_\_\_\_\_ NORTH DMC & IndianOil ("Concession Agreement") in relation to design, construction, operation and maintenance of integrated MSW management system at \_\_\_\_\_ by the Concessionaire.
3. \_\_\_\_\_ [name & particulars of Lenders' representatives] having its registered office at \_\_\_\_\_ acting for & behalf of the Senior Lenders \_\_\_\_\_ as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred as "Lenders' Representative") which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- A. [Name of the Concessionaire] with its registered office at [insert address], hereinafter referred to as the "Concessionaire", which expression shall unless repugnant to the context thereof, be deemed to include its successors-in-interest and permitted assigns) has executed a concession agreement dated \_\_\_\_\_ NORTH DMC & IndianOil ("Concession Agreement") in relation to design, construction, operation and maintenance of integrated MSW management system at \_\_\_\_\_ by the Concessionaire.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested NORTH DMC to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, NORTH DMC has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

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

### DEFINITIONS AND INTERPRETATION

## 1. Definitions

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

**“Agreement”** means this Substitution Agreement & any amendment thereto made in accordance with the provisions contained in this Agreement.

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months

**“Lenders’ Representatives”** means the person referred to as Lenders’ Representatives in the foregoing Recitals.

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 2013, selected by Lenders’ Representatives on behalf of Senior Lenders & proposed to NORTH DMC for assignment/transfer of the Concession as provided in this Agreement.

**“Notice of Financial Default”** shall have the meaning ascribed thereto in clause 3.2.1 &

**“Parties”** mean any of the Parties to this Agreement collectively & **“Party”** shall mean any of the Parties to this Agreement individually.

## 2. Interpretation

- a. References of Lenders’ Representatives shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representatives acting for & behalf of the Senior Lenders.
- b. References to Clauses are, unless stated otherwise, references to clauses of this Agreement.
- c. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- d. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

### ASSIGNMENT

#### 2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representatives pursuant to & in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

### SUBSTITUTION OF THE CONCESSIONAIRE

#### 3.1 Rights of substitution

- a. Pursuant to the rights, title & interest under clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company

under and in accordance with the provisions of this Agreement and the Concession Agreement.

- b. NORTH DMC & IndianOil hereby agree to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement (For the avoidance of doubt, the Senior Lenders of the Lenders' Representative shall not be entitled to operate & maintain the Project at \_\_\_\_\_ as Concessionaire either individually or collectively).

### 3.2 Substitution upon occurrence of Financial Default

- a. Upon occurrence of Financial Default, the Lenders' Representative may issue to the Concessionaire (the "**Notice of Financial Default**") with a copy to NORTH DMC and IndianOil. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- b. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- c. At any time after the Lenders' Representatives has issued a Notice of Financial Default, it may by notice require NORTH DMC &/ or IndianOil to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the facility in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, NORTH DMC and/ or IndianOil shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, NORTH DMC and /or IndianOil may terminate the Concession Agreement forthwith by issuing a Concession Period Notice in accordance with the provisions of the Concession Agreement, provided that upon written request from the Lenders' Representative & the Concessionaire, NORTH DMC and/ or IndianOil may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, Authority and/ or IndianOil expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### 3.3 Substitution upon occurrence of Concessionaire Default

- a. Upon occurrence of a Concessionaire Default, NORTH DMC shall by a notice inform the Lenders' Representatives of its intention to issue a Concession Period Notice & grant 15 (fifteen) days' time to the 'Lenders' Representative, to make a representation stating the intention to substitute the Concessionaire by a Nominated Company.
- b. In the event of the Lenders' Representative makes a representation to NORTH DMC and/ or IndianOil within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions

of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, NORTH DMC and/ or IndianOil shall either withhold Concession Period or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; Provided that upon written request from NORTH DMC and/ or IndianOil shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### 3.4 Procedure for substitution

- a. NORTH DMC, IndianOil and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to NORTH DMC under Clause 3.3.2, as the case may prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the facilities including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities & obligations of the Concessionaire towards NORTH DMC and/ or IndianOil under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- b. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by NORTH DMC and / or IndianOil for short listing the bidders for award of the Concession.
- c. Upon selection of a Nominated Company, the Lenders' Representative shall request NORTH DMC to:
  - i. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project facilities in accordance with the provisions of the Concession Agreement.
  - ii. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
  - iii. enter into a Substitution Agreement with the Lenders' Representative & the Nominated Company on the same terms as are contained in this Agreement.
- d. If Authority and/ or IndianOil has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 days (fifteen) from the date of the proposal made by the Lenders' Representative, give a reasoned order hearing the Lenders' Representative. If no such objections are raised by NORTH DMC and/ or IndianOil, the Nominated Company shall be deemed to have been accepted. NORTH DMC and/ or IndianOil thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; Provided that in the event of such objection by NORTH DMC and/ or IndianOil, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

#### 3.5 Selection to be binding

The decision of the Lenders' Representative, NORTH DMC and/ or IndianOil in selection of the Nominated Company shall be final and binding on the Concessionaire. The Con-

cessionaire irrevocably agrees Senior Lenders or NORTH DMC and/ or IndianOil taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or NORTH DMC and / or IndianOil and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain Lenders' Representative, NORTH DMC and / or IndianOil from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

#### **PROJECT AGREEMENTS**

##### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its consent, in place and liabilities and obligations of the Concessionaire in the event of such Nominated Company's assumption of the liabilities & obligations of the Concessionaire under the Concession Agreement.

#### **TERMINATION OF CONCESSION AGREEMENT**

##### **5.1 Concession Period upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require NORTH DMC and/ or IndianOil to terminate the Concession Agreement forthwith, and upon receipt of such notice, NORTH DMC and/ or IndianOil shall undertake Concession Period under and in accordance with the Agreement.

##### **5.2 Concession Period when no Nominated Company is selected**

If no Nominated Company acceptable to NORTH DMC and/ or IndianOil is selected & recommended by the Lenders' Representative within 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, NORTH DMC and/ or IndianOil may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

##### **5.3 Realization of Debt Due**

NORTH DMC and/ or IndianOil and the Concessionaire hereby acknowledge and agree that, without prejudice to their other rights or remedies, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Concession Period of the Concession Agreement. For realization of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

#### **DURATION OF THE AGREEMENT**

##### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a. Concession Period of the Agreement; or



- b. no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## INDEMNITY

### 7.1 General indemnity

- a. The Concessionaire will indemnify, defend and hold NORTH DMC and/ or IndianOil & the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- b. NORTH DMC and/ or IndianOil will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of NORTH DMC and/ or IndianOil to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by NORTH DMC and/ or IndianOil, its officers, servants and agents.
- c. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, this Agreement other than any loss, damage, cost and expense, officers, servants and agents.

### 7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party") shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim & shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## DISPUTE RESOLUTION

Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of NORTH DMC and/ or IndianOil, the Concessionaire and the Lenders' Representative. Such Arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996. The Arbitrators shall issue a reasoned award and such award shall be fi-

nal and binding on the Parties. The venue of the arbitration shall be New Delhi and the language of arbitration shall be English.

#### MISCELLANEOUS PROVISIONS

##### 9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Dispute Resolution clause above, the Courts at New Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

##### 9.2 Waiver of immunity

NORTH DMC and/ or IndianOil unconditionally and irrevocably:

- i. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose.
- ii. 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 from such proceedings shall be claimed by or on behalf of the State Government or NORTH DMC with respect to its assets.
- iii. 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
- iv. consents generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

##### 9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

##### 9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorized representatives of the Parties.

##### 9.5 Waiver

- a. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:
  - i. 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.
  - ii. shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
  - iii. shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third-party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

a. Concession Period of this Agreement:

- i. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
  - ii. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.
- b. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communica-

tion. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorized representatives

Each of the Parties shall by notice in writing designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the \_\_\_\_ day of \_\_\_\_\_ month & year 2021 hereunto affixed in the presence of \_\_\_\_\_, Director, who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED

For and on behalf of

NAME OF NORTH DMC by:

(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

IndianOil by:

(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

Senior Lenders by the Lenders' Representative by:

(Signature) (Name) (Designation) (Address) (Fax No.) (E-mail address)

In the presence of:

Witness 1.

Witness 2.

Note: To be affixed in accordance with the articles of association of the Concessionaire.

## SCHEDULE 10 SCOPE OF INSPECTION, SUPERVISION, REVIEW

NORTH DMC shall supervise the construction, development, operation and maintenance of the Project Facilities to monitor compliance with the KPIs.

1. North DMC reserves the right to comment, provide observations on the Designs and Drawings to be provided by the Concessionaire. These will include, inter-alia, the site layout plan, process design, drawings, structural calculations, mechanical, electrical and instrumentation works, quality plans, implementation schedules, and the environment, health & safety plans for all Project Facilities.
2. During relevant Construction Periods, North DMC shall form a Project Management Unit (PMU) comprising members from North DMC, IndianOil, the Concessionaire & an independent agency of GNCTD to be roped in by North DMC as per the scope of inspection, review. The PMU shall inspect the relevant Project Facilities at periodic intervals to be mutually decided and prepare an inspection report, setting out the progress of the construction of the relevant Project Facilities, defects or deficiencies, if any, and status of compliance with the Construction Plan, and the Guaranteed Interim Availability.
3. The PMU shall facilitate review & monitoring of various milestones to be achieved by the Concessionaire as per the provisions of this Agreement & shall submit its recommendations to North DMC from time to time during the Construction period.
4. The PMU shall review & monitor the implementation of the approved environment, health & safety plan by the Concessionaire.
5. The PMU shall review the construction progress of the Project as per the Project Milestones proposed by the Concessionaire and issue Project Milestone Certificates.
6. At the end of the Construction Period for different Project Facilities, based on the recommendation of the PMU, North DMC shall review the relevant Project Facilities and provide respective Construction Completion Certificates to the Concessionaire to certify completion of construction of such Project Facilities, and the satisfaction of all other conditions required to be fulfilled by the Concessionaire.
7. PMU shall monitor the Trial Operations of different Project Facilities during their respective Trial Periods & based on its recommendations, North DMC shall issue the respective COD Certificates to the Concessionaire. The review shall be based on the Trial Operations Procedures outlined in the Concession Agreement and include the following:
  - (a) Verify operation of equipment and workmanship.
  - (b) [Verify the Standards/quality of the By-Products;]
8. North DMC shall review & approve the O&M Manual and the Scheduled Maintenance Program submitted by the Concessionaire.
9. During the O&M Period, North DMC shall inspect all the Project Facilities periodic intervals to be mutually decided with the Concessionaire and prepare an inspection report, setting out the defects or deficiencies, if any, and status of compliance with the relevant KPIs and Standards.
10. North DMC shall inspect laboratories where tests are conducted on samples to ensure conformance and compliance with laboratory procedures and requirements.
11. North DMC shall review the reports generated from the Online Monitoring Systems of dif-

ferent Project Facilities to assess adherence to their relevant KPIs.

12. North DMC shall participate in the survey to determine the Hand-back Conditions as per the Hand-back Requirements.

## SCHEDULE 11 DRAWINGS

*(See Article 1.2.1)*

### **Drawings**

In compliance with the obligations set forth in Article 14 of this Agreement, the Concessionaire shall furnish to NORTH DMC, free of cost, all Drawings required as part of the Project:

[Note: North DMC may list and describe all the Drawings that the Concessionaire is required to furnish under Article 14.]

### **Additional Drawings**

If the NORTH DMC determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed hereinabove, it may by notice require the Concessionaire to furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to NORTH DMC as if such drawings formed part of this Schedule 11.



## SCHEDULE 12 MILESTONES & CONSTRUCTION COMPLETION SCHEDULE

(See Article 1.3.1)

### 1. Construction Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule for each of the Project milestones and Scheduled Construction Completion Date (the “Project Completion Schedule” in [15(fifteen)] days of the date of each Project Milestone, the Concessionaire shall notify NORTH DMC of such compliance along with necessary particulars thereof.

### 2. Project Milestone - I

Project Milestone-I shall occur on the date falling on the 90<sup>th</sup> (ninetieth) day from the Executed Date (the “**Project Milestone - I**”). Prior to the occurrence of Project Milestone-I, the Concessionaire shall have satisfied the Conditions Precedent on the part of the Concessionaire & commenced soil testing, contour survey, groundwater testing or any other technical study required for design of WtE project site(s), Basic Design & Engineering design & engineering of Project Facilities.

### 3. Project Milestone - II

Project Milestone - II shall occur on the date falling on the 180<sup>th</sup> (one hundred and eightieth) day from the Executed Date (the **Project Milestone - II**). Prior to the occurrence of Project Milestone-II, the Concessionaire must have completed soil testing, contour survey, groundwater testing or any other technical study required for design of WtE project site(s), development, design & engineering of Project Facilities and. The Concessionaire must have completed the design & engineering of the project facilities & should have mobilized necessary men, materials & machinery at the project site for commencement of construction activities.

### 4. Project Milestone - III

Project Milestone - III shall occur on the date falling on the 365<sup>th</sup> (three hundred and sixty fifth) day from the Compliance Date (the **Project Milestone - III**). Prior to the occurrence of Project Milestone - III, the Concessionaire must have developed project facilities to process & handle at least 50% of 2500 TPD of the mixed MSW to be supplied by North DMC.

### 5. Project Milestone - IV

Project Milestone-IV shall occur on the date falling on the 730<sup>th</sup> (seven hundred and thirtieth) day from the Compliance Date (the **Project Milestone - IV**). Prior to the occurrence of Project Milestone - IV, the Concessionaire must have developed project facilities to process & handle 100% of 2500 TPD of the mixed MSW to be supplied by North DMC.

### 6. Scheduled Construction Completion Date

The Scheduled Completion Date shall occur on the 2<sup>nd</sup> (second) anniversary of the Compliance Date. On or before the Scheduled Construction Completion Date, the Concessionaire shall have completed the Project Facilities in accordance with this Agreement.

### 7. Extension of period

For any delays & reasons solely not attributable to the Concessionaire substantiated with proper documentation & data, North DMC may suitably revise the project mile-

stones & other timelines relating to setting up of the WtE plant. The responsibility of proving the reasons for delay as not attributable to the Concessionaire shall rest upon the Concessionaire & North DMC undertakes to act reasonably as far as possible & holding good the principles & law of natural justice. Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Construction Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

## SCHEDULE 13 ENVIRONMENT, HEALTH & SAFETY

(See Article 1.4)

### 1. **Link to the Environment and Social Management Framework (ESMF) to be followed for Projects:**

Environmental and Social Management Framework of Project:

[http://-- \\_\\_\\_\\_\\_ - \\_\\_\\_\\_\\_ - \\_\\_\\_\\_\\_ -](http://-- _____ - _____ - _____ -)

### 2. **Requirements for preparation of ESHS Management Strategies and Implementation Plans (ESHS-MSIP)**

The Concessionaire shall submit comprehensive and concise Environmental, Social, Health and Safety Management Strategies and Implementation Plans (ESHS-MSIP). These strategies and plans shall describe in detail the actions, materials, equipment, management processes etc. that will be implemented by the Concessionaire, and its sub-contractors.

In developing these strategies and plans, the Concessionaire shall have regard to the ESHS provisions of the Concession Agreement including those as may be more fully described in the following:

- a. Works Requirements described in Concession Agreement.
- b. Environmental and Social Impact Assessment (ESIA).
- c. Environmental and Social Management Plan (ESMP).
- d. Consent Conditions (regulatory authority conditions attached to any permits or approvals for the project).

### 3. **Metrics for Progress Reports**

The following Metrics should be used for regular reporting:

- a. environmental incidents or non-compliances with Concession Agreement requirements, including contamination, pollution or damage to ground or water supplies.
- b. health and safety incidents, accidents, injuries and all fatalities that require treatment;
- c. interactions with regulators: identify agency, dates, subjects, outcomes (report the negative if none);
- d. health and safety supervision:
- e. safety officer: number days worked, number of full inspections & partial inspections, reports to construction/project management;
- f. number of workers, work hours, metric of PPE use (percentage of workers with full personal protection equipment (PPE), partial, etc.), worker violations observed (by type of violation, PPE or otherwise), warnings given, repeat warnings given, follow-up actions taken (if any);
- g. environmental and social supervision:
- h. environmentalist: days worked, areas inspected and numbers of inspections of each part of the Facilities created, highlights of activities/findings (including vio-

lations of environmental and/or social best practices, actions taken), reports to environmental and/or social specialist/construction/site management;

- i. Traffic and vehicles/equipment:
- j. traffic accidents involving project vehicles & equipment: provide date, location, damage, cause, follow-up;
- k. accidents involving non-project vehicles or property (also reported under immediate metrics): provide date, location, damage, cause, follow-up;
- l. overall condition of vehicles/equipment (subjective judgment by environmentalist); non-routine repairs and maintenance needed to improve safety and/or environmental performance (to control smoke, etc.).
- m. Environmental mitigations and issues (what has been done):
- n. dust: number of working bowlers, number of watering/day, number of complaints, warnings given by environmentalist, actions taken to resolve; control (covers, sprays, operational status); % of rock/muram/spoil lorries with covers, actions taken for uncovered vehicles;
- o. quarries, borrow areas, spoil areas, asphalt plants, batch plants: identify major activities undertaken this month at each, and highlights of environmental and social protection: land clearing, boundary marking, topsoil salvage, traffic management, decommissioning planning, decommissioning implementation;
- p. spill cleanups, if any: material spilled, location, amount, actions taken, material disposal (report all spills that result in water or soil contamination);
- q. waste management: types and quantities generated and managed, including amount taken offsite (and by whom) or reused/recycled/disposed on-site;
- r. details of tree plantings and other mitigations required undertaken this month;
- s. details of water and swamp protection mitigations required undertaken this month.
- t. compliance:
- u. compliance status for conditions of all relevant consents/permits, for the Work, including quarries, etc.): statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- v. compliance status of ESMP/ESIP requirements: statement of compliance or listing of issues and actions taken (or to be taken) to reach compliance
- w. other unresolved issues from previous months related to environmental and social: continued violations, continued failure of equipment, continued lack of vehicle covers, spills not dealt with, continued compensation or blasting issues, etc. Cross-reference other sections as needed.

#### **4. Requirements for the preparation of the Code of Conduct**

The Concessionaire shall submit the Code of Conduct that will apply to the Concessionaire's employees and subcontractors. The Code of Conduct shall ensure compliance with the ESHS provisions of the Concession Agreement, including those as may be more fully described in the following:

- a. Works Requirements described in Concession Agreement;

- b. Environmental and Social Impact Assessment(ESIA);
- c. Environmental Management Plan(EMP);
- d. Consent Conditions (regulatory authority conditions attached to any permits or approvals for the project).

**5. MINIMUM REQUIREMENTS FOR THE CODE OF CONDUCT**

A minimum requirement for the Code of Conduct should be set out, taking into consideration the issues, impacts, and mitigation measures identified in:

- project reports e.g. ESIA/ESMP
- consent/permit conditions
- required standards including World Bank Group EHS Guidelines and Performance Standards
- national legal and/or regulatory requirements and standards (where these represent higher standards than the WBG EHS Guidelines and PS)
- Relevant standards eg. Worker’s Accommodation: Process and Standards (Indian Standards, and in the absence of such Indian Standards those of IFC and EBRD)
- relevant sector standards e.g. workers accommodation
- grievance redressal mechanisms.

The types of issues identified could include risks associated with: labor influx, spread of communicable diseases, sexual harassment, gender based violence, illicit behavior and crime, and maintaining a safe environment etc.

A satisfactory code of conduct will contain obligations on all project staff (including sub- contractors and day workers) that are suitable to address the following issues, as a minimum.

Compliance with Applicable Laws, rules, and regulations of the jurisdiction

1. Compliance with applicable health and safety requirements (including wearing prescribed personal protective equipment, preventing avoidable accidents and a duty to report conditions or practices that pose a safety hazard or threaten the environment)
2. The use of illegal substances
3. Non-Discrimination (for example on the basis of family status, ethnicity, race, gender, religion, language, marital status, birth, age, disability, or political conviction)
4. Interactions with community members (for example to convey an attitude of respect and non- discrimination)
5. Sexual harassment (for example to prohibit use of language or behavior, in particular towards women or children, that is inappropriate, harassing, abusive, sexually provocative, demeaning or culturally inappropriate)
6. Violence or exploitation (for example the prohibition of the exchange of money, employment, goods, or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior)

7. Protection of children (including prohibitions against abuse, defilement, or otherwise unacceptable behavior with children, limiting interactions with children, and ensuring their safety in project areas)
8. Sanitation requirements (for example, to ensure workers use specified sanitary facilities provided by their employer and not open areas)
9. Avoidance of conflicts of interest (such that benefits, Concession Agreement, or employment, or any sort of preferential treatment or favors, are not provided to any person with whom there is a financial, family, or personal connection)
10. Respecting reasonable work instructions (including regarding environmental and social norms)
11. Protection and proper use of property (for example, to prohibit theft, carelessness or waste)
12. Duty to report violations of this Code
13. Non retaliation against workers who report violations of the Code, if that report is made in good faith.

The Code of Conduct should be written in plain language and signed by each worker to indicate that they have:

- received a copy of the code.
- had the code explained to them.
- acknowledged that adherence to this Code of Conduct is a condition of employment.
- and understood that violations of the Code can result in serious consequences, up to and including dismissal, or referral to legal authorities.

**6. Minimum Requirements and Guidelines for the preparation of the Screening Report**

The extent of assessment required to identify and mitigate the impacts largely depends upon the complexities of project activities. The scrutiny and screening will be based on a detailed Environment and Social Screening exercise, summarized in the following Format:

Environment and Social information format for screening			
	Project Title: Implementing agency: Project cost: Project components: Project location (Area/ district)		
S N	Screening Criteria	Assessment of category	Explanatory note for categorization

		(High/low)	
1	<p>Is the project in an eco-sensitive area or adjoining an eco-sensitive area? (Yes/No) If Yes, which is the area? Elaborate impact accordingly.</p>		
2	<p>Will the project create significant/ limited/ no social impacts?</p> <p>Involuntary land taking resulting in loss of income from agricultural land, plantation or other existing land-use.</p> <p>Involuntary land taking resulting in relocation of title holder or non-titleholder households.</p> <p>Any displacement or adverse impact on tribal settlement(s).</p> <p>Any specific gender issues.</p>		

3	<p>Will the project create significant / limited / no environmental impacts during the construction stage? (Significant / limited / no impacts)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Clearance of vegetation/ tree-cover</li> <li><input type="checkbox"/> Direct discharge of construction runoff, improper storage and disposal of excavation spoils, wastes and other construction materials adversely affecting water quality and flow regimes.</li> <li><input type="checkbox"/> Flooding of adjacent areas</li> <li><input type="checkbox"/> Improper storage and handling of substances leading to contamination of soil and water</li> <li><input type="checkbox"/> Elevated noise and dust emission Disruption to traffic movements</li> <li><input type="checkbox"/> Damage to existing infrastructure, public utilities, amenities etc.</li> <li><input type="checkbox"/> Failure to restore temporary construction sites</li> <li><input type="checkbox"/> Possible conflicts with and/or disruption to local community</li> <li><input type="checkbox"/> Health risks due to unhygienic conditions at workers' camps</li> </ul> <p>Safety hazards during construction</p>		
4	<p>Will the project create significant / limited / no environmental impacts during the operational stage? (Significant / limited / no impacts)</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Impacts to water quality due to effluent discharge</li> <li><input type="checkbox"/> Gas emissions</li> <li><input type="checkbox"/> Safety hazards</li> </ul>		



5	Do projects of this nature / type require prior environmental clearance either from the MOEF&CC or from a relevant state Government department? (MOEF&CC/ relevant State Government department/ No clearance at all)		
6 •	Does the project involve any prior clearance from the MOEF&CC or State Forest department for either the conversion of forest land or for tree-cutting? (Yes/No). If yes, which?		
7	Please attach photographs and location maps along with this completed Environmental Information Format For Screening.		
Overall assessment			

\*Detailed explanation/ justification for arriving at specific category (high/ low) to be provided in the specified column.

(Designation) (Designation)

(Address) (Address)

## SCHEDULE 14 TESTS

*(See Article 16.1.3)*

### **1. Schedule for Tests**

The Concessionaire shall, no later than [30 (thirty)] days prior to the likely completion of the Construction Period, notify NORTH DMC of its intent to subject the Project Facilities to Tests, and no later than [7 (seven)] days prior to the actual date of Tests, furnish to NORTH DMC detailed inventory and particulars of all works and equipment forming part of the Project Facilities.

The Concessionaire shall notify NORTH DMC of its readiness to subject the Project Facilities to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, NORTH DMC shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to NORTH DMC who may designate its representative to witness the Tests. NORTH DMC shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule.

### **2. Tests**

The Concessionaire shall conduct all tests at periodic intervals, at its own cost & efforts to satisfy all the provisions of this Agreement & Statutory approvals that need to be maintained & satisfied throughout the Construction, Operation & Maintenance Period.

### **3. Agency for Conducting Tests**

All Tests required to comply with the provisions of this Agreement & Statutory approvals shall be conducted by the Concessionaire at its cost & by appointing an independent / suitably accredited agency or person in consultation & with the approval of with NORTH DMC. Such independent agency shall submit the results of the Test report to North DMC directly.

SCHEDULE 15 FORMAT FOR COMPLETION CERTIFICATE

(See Article 1.12.2 (e ))

**To whomsoever it may concern**

In consideration of the requirements of conditions of the Agreement and the Concessionaire's application for a Completion Certificate & NORTH DMC hereby grants the Completion Certificate.

This Completion Certificate is issued on the understanding that the conditions of the Agreement have been met except for minor outstanding work that does not affect the use and safety of the Project Facilities and their intended use as certified by NORTH DMC through its letter dated

Completion Certificate does not relieve the Concessionaire of any requirements or obligations within the Agreement.

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

AGREED, ACCEPTED AND SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Concessionaire by:

NORTH DMC by:

(Signature)

(Signature)

(Name)

(Name)

SCHEDULE 16 FORMAT FOR DAILY WEIGHT SHEET

Weighbridge details	
Location	
Capacity	
Date	
Time in	
Time out —	
Truck no.	
Tier weight (tons)	
Full weight (tons)	
Waste quantity (Full weight tier weight)	

## SCHEDULE 17 CRITERIA FOR PREPARING THE LIST OF CHARTERED ACCOUNTANT FIRMS

*(See Article 30.2)*

The Firm of Chartered Accountants (FCA):

1. Should be in operation for the past 10 (ten) years
2. Should not have been barred or blacklisted by any entity like Central, State Government Body or Public Sector Undertaking PSU (Central/State) or any other Statutory Body.
3. Should have a branch in [Name of the State]
4. Should have at least 3 (three) qualified Chartered Accountants out of whom at least 1 (one) should be FCA.

## SCHEDULE 18 CBG SALE PURCHASE AGREEMENT

### AGREEMENT FOR SALE, SUPPLY AND PURCHASE OF COMPRESSED BIO GAS (CBG) TO BE PRODUCED BY THE SELLER FROM THE WASTE TO ENERGY PLANT AT ..... OPERATED BY THE SELLER IN TERMS OF THE CONCESSION AGREEMENT

*(retailing shall be as per Model A i.e. Seller shall deliver CBG from its CBG Plant at Buyer's Retail Outlet (within 25 Km) at \_\_\_\_\_ through Cascades operated and maintained by the Seller. The Equipment(s) for dispensing CBG at Buyer's Retail Outlet shall be installed and maintained by the Buyer. However, the CBG nozzles shall be manned & operated by Retail Outlet Dealer. The meter installed in the CBG dispensing unit(s) at the Retail Outlet shall be the "Point of Sale".)*

This Agreement for production, sale and supply of Compressed Bio Gas (CBG) (hereinafter referred to as "CBG Agreement") is made on this \_\_\_ day of \_\_\_\_\_, 20\_\_

#### By and Between

**INDIAN OIL CORPORATION LIMITED**, a company duly incorporated and validly existing under the Companies Act, 1956 and having its registered office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai-400051 (hereinafter referred to as "IndianOil" or "Buyer" which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors and permitted assigns) of the **First Part**.

#### AND

\_\_\_\_\_, a company duly incorporated and validly existing under the laws of ..... with Corporate Identity Number ..... and having its registered office at \_\_\_\_\_ (hereinafter referred to as "XXXX" or "Seller" or "Concessionaire" which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns of the **Second Part**.

IndianOil and XXXX may hereinafter be individually referred to as a "Party" and collectively as "Parties".

#### WHEREAS:

- a) Pursuant to the Concession Agreement between North DMC, Concessionaire and IndianOil, IndianOil has agreed to purchase CBG to be produced from the Waste to Energy Plant to be set up by the Concessionaire in terms of the Concession Agreement.
- b) The Concession mandates upon the Concessionaire to primarily produce CBG and sell the entire quantum of CBG produced to IndianOil.

The Parties wish to enter into this Agreement to record the terms and conditions of the sale and purchase of CBG.

**NOW, THEREFORE FOR SUFFICIENT AND VALUABLE CONSIDERATION, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

#### DEFINITIONS AND INTERPRETATION:

##### i. Definitions:

In this Agreement, unless the subject or context otherwise requires, the following words and expressions shall have the following meanings:

1. "Business day" means any day (other than 2nd and 4th Saturday, Sunday, Gazetted holidays and holidays declared as per Negotiable Instruments Act-1881) on which nationalized Banks are open for business at Principal Place of Business of Seller and Buyer.
2. "Buyer" means the entity buying CBG under this Agreement viz. IndianOil.
3. "Cascades" means group of cylinders (that may be mounted on a trailer/tractor) used for carrying/transportation of CBG from the CBG Plant to the Retail Outlet(s).
4. "CBG" means Compressed Bio Gas as defined in IS 16087:2016 of Bureau of Indian Standards (BIS) specifications or any of its revised version.
5. "CBG Plant" means the CBG production unit of the Seller constructed/proposed to be constructed and located at \_\_\_\_\_ from where CBG shall be supplied to the Buyer under this Agreement.
6. Concession Agreement means Agreement entered into between ....., IndianOil and North DMC for .....
7. Concessionaire shall mean .....
8. "Dealer" means a Person appointed by the Buyer under a dealership agreement between such Person and the Buyer, to operate Retail Outlet and includes a Person appointed by the Buyer for operating a retail outlet owned and operated by the Buyer (COCO).
9. "Equipment" means gas compressor, storage cascade, meter and check master meter, dispenser, diesel generator set and other fixtures and ancillary equipment including pipelines and all equipment and accessories thereto required for compression of CBG and filling into customer's Vehicles.
10. "Financing Documents" means the agreements, deeds and other documents executed by the Seller in respect of financial assistance/credit facilities availed/to be availed from the Lender(s).
11. "Lender" means any financing institution or bank, who has provided credit facilities/financial assistance to the Seller for meeting the debt component under the Concession Agreement
12. "Person" shall include natural persons, company, bodies corporate and associations, whether incorporated or not.
13. "Point of Sale" means the place at which delivery of CBG is given by the Seller to the Buyer thereby transferring the ownership and possession of CBG from the Seller to the Buyer.
14. "Principal Place of Business" in reference to this Agreement means for the Seller, \_\_\_\_\_ and for the Buyer New Delhi.
15. "Retail Outlet" means the retail outlet(s) of the Buyer used for dispensing Motor Spirit and/or High Speed Diesel, as identified by the Buyer under this Agreement, within a radius of twenty-five kilometers from the CBG Plant, for the purpose of marketing/retailing of CBG.
16. "Safety Procedures" mean the procedures, directions, guidelines, rules, regulations and measures as prescribed by government/statutory bodies/ or as communicated by the

Buyer (notified by the industry or the Buyer) for safe handling, transport, storage, supply and/or sale/dispensation of CBG.

17. "Seller" means the entity selling CBG under this Agreement viz. XXXX
18. "Site" means the land on which the Retail Outlet of the Buyer is situated.
19. "Supply Plan" shall have meaning ascribed to it under Clause 8.3.
20. "Standards" shall inter-alia include, IS 15130 (Part 3), ISO 6326-3, IS 15319, AIS 024, Petroleum and Explosives Safety Organization (PESO) Standards, safety Standards as per IS 16087 : 2016 and any other applicable national or international standards relevant to the CBG business.
21. "Taxes" means all forms of taxation and statutory, governmental, supra-governmental, state, principal, local governmental or municipal impositions, duties, contributions and levies, imposts, tariffs and rates and all penalties, charges, costs and interest payable in connection with any failure to pay or delay in paying them and any associated deductions or withholdings of any sort, and as may revised from time to time by statutory authorities.
22. "Total Supply Price" means the price at which CBG shall be purchased by the Buyer from the Seller and shall be inclusive of all Taxes payable by the Seller. Details of the Total Supply Price is provided at Annexure I.
23. "TPD" means tonnes per day.
24. "Vehicle(s)" means a motor vehicle as defined under the Motor Vehicles Act, 1988.

**ii. Interpretation:**

- i. Unless the context otherwise requires, a reference to a singular shall include a reference to plural thereof and vice-versa; and a reference to any gender shall include a reference to the other gender.
- ii. Unless the context otherwise requires, a reference to any article, clause, appendix, schedule, attachment or annexure shall be to an Article, Clause, Appendix, Schedule, Attachment or Annexure of this Agreement as may be amended, modified, supplemented and extended from time to time.
- iii. The appendices, schedules, annexures and/or attachments to this Agreement shall form an integral part of this Agreement.
- iv. Reference to any law includes a reference to that law as from time to time amended, modified, supplemented, extended or re-enacted.
- v. Reference to this Agreement shall include a reference to this Agreement as may be amended, modified, supplemented, and extended from time to time.
- vi. Reference to any other agreement shall include a reference to that agreement as may be amended, modified, supplemented, and extended from time to time.
- vii. Any reference to time shall, except where the context otherwise requires, be construed as a reference to the Indian Standard Time. and reference to any Month shall mean to refer to a Gregorian English calendar month.
- viii. The headings and the side-headings/notes of the Clauses, Appendices, Schedules, Attachments and Annexures in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.



- ix. The words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases.
- x. Unless the context otherwise requires, any period of time referred to shall be deemed to expire at the end of the last date of such period.
- xi. The terms "Seller", "Buyer" and "Dealer" shall include their respective officers, managers, employees and their authorized representatives.
- xii. This Agreement is made and executed in the English Language, which shall be the governing text for all purposes.
- xiii. In the event of conflict between any provisions of main body of this Agreement and the provisions of the Appendices, Schedules, Annexures and Attachments; the provisions of the main body of this Agreement shall prevail.
- xiv. All terms and conditions mentioned in tender .... and Concession Agreement so far as pertain to the sale and purchase of CBG shall be deemed to be included in this Agreement by reference.
- xv. In the event of any conflict between ....., Concession Agreement and CBG Sale and Purchase Agreement, provisions of this Agreement shall prevail.

**2. Scope and Business Model:**

**2.1. Scope of Agreement:**

- 2.1.1 The Seller agrees to produce and supply and the Buyer agrees to purchase CBG under the terms of this Agreement. The CBG shall be sold by the Buyer to its end customers and marketed through its sales channel network under "IndianOil" brand name or any other brand name as may be determined by the Buyer, as per the business model outlined in Clause 2.2, in the quantities, and at Total Supply Price determined in accordance with, and subject to, the terms and conditions of this Agreement.
- 2.1.2 The Retail Outlet identified by the Buyer for the purpose of this Agreement is \_\_\_\_\_ at \_\_\_\_\_.
- 2.1.3 It is agreed that new Retail Outlet(s) may be added by the Buyer, from time to time at its sole discretion, for marketing of CBG produced from the CBG Plant. The Retail Outlet(s) so added shall be within a radius of twenty-five (25) kilometers from the CBG Plant.
- 2.1.4 The CBG Plant from which the CBG shall be supplied under this Agreement is/shall be located at \_\_\_\_\_.

**2.2. Business Model:**

- 2.2.1 The Seller shall deliver CBG at the Retail Outlet of Buyer through Cascades operated and maintained by the Seller.
- 2.2.2 All Equipment as specified in Annexure II, for dispensing CBG at the Retail Outlet shall be installed, operated and maintained by the Buyer, on the terms and conditions hereinafter contained.
- 2.2.3 The Seller shall sell CBG to Buyer at the meter installed in the CBG dispensing unit(s) at the Retail Outlet, which shall be the "Point of Sale".
- 2.2.4 The Cascade shall remain connected to the inlet flange of the booster compressor unit of CBG at the Retail Outlet till the dispensation is operationally feasible.

- 2.2.5 The CBG nozzles shall be manned and operated by the Driveway Sales Men (DSMs) employed by the Dealer for the dispensation of CBG into customer's Vehicles.
- 2.2.6 Pursuant to the above outlined business model, CBG shall be sold under the brand name of "IndianOil" or any other brand name finalized solely by the Buyer. All the work required for branding shall be done by the Buyer.
- 2.2.7 The Buyer is entitled to appoint other suppliers for the supply of CBG at the Retail Outlet. Seller agrees not to dispute, object or challenge the appointment of other sellers / suppliers of CBG for the Retail Outlet by the Buyer. The Seller shall not be entitled to any compensation, remuneration, commission or allowance whatsoever for such appointment / sales by the Buyer.

**3. CBG Plant and its operations:**

- 3.1. The CBG Plant, any facilities installed therein and the Cascades used for transportation of CBG from its CBG Plant to the Retail Outlet shall be installed, commissioned, operated and maintained by the Seller, at his own cost, and the Buyer shall not be entitled to claim any right, title or interest therein. Nothing herein contained shall be deemed to create any lease, license or other right in Buyer with respect to the CBG Plant, facilities at the CBG Plant and/or the Cascades, except as provided in this Agreement.
- 3.2. The Seller shall be responsible for planning, preparation (including arranging the entire land, capital and finance), engineering, execution, installation, testing, commissioning, continuous operation and maintenance, of the CBG Plant including storage of raw material, at its own cost and expense.
- 3.3. The Seller shall, at no cost or expense to the Buyer, obtain and maintain, or cause to be obtained and maintained, all approvals required from government/statutory/concerned authorities under Applicable Laws, for its CBG Plant and other facilities installed by it for the purposes of this Agreement.
- 3.4. The Seller shall ensure that the facilities installed at the CBG Plant and the CBG Plant at all times meet the requirements laid under the Standards.
- 3.5. The Seller shall be responsible for arranging the feedstock and other material required for running the CBG Plant on continuous basis.
- 3.6. Based on design capacity of the CBG plant, the Seller confirms that the initial production/supply from the CBG Plant shall be \_\_\_\_\_TPD and the production/supply of CBG shall be increased gradually to be synchronized with the market demands. Full capacity utilization of CBG Plant may be achieved within twelve to eighteen (12-18) months from the date of commencement of commercial supply of CBG, as per market conditions and at full capacity utilization, the Seller confirms \_\_\_\_\_ TPD of daily supply to the Retail Outlets.
- 3.7. Seller shall be responsible for managing the by-products and wastes from the CBG Plant as per existing central / state norms.
- 3.8. All approvals required from the government/statutory/concerned authorities with regard to CBG Plant shall be the responsibility of the Seller. The Seller shall ensure to obtain any other statutory license (or amendment of existing license if applicable) for commencing and carrying on production and supply of CBG to the Retail Outlet, and its renewal from time to time.

**4. Retail Outlet and its operations:**

- 4.1. The Site, Retail Outlet and the Equipment(s) are constructed, installed, operated and maintained by the Buyer or his Dealer, at their own cost, and the Seller shall not be entitled to claim any right, title or interest therein. Nothing herein contained shall be deemed to create any lease, license or other right in Seller with respect to the Site, Retail Outlet and/or Equipment(s), except as provided in this Agreement.
- 4.2. All approvals required from the government/ statutory/ concerned authorities with regard to Equipment(s) and the Retail Outlet shall be the responsibility of the Buyer. Buyer and/or its Dealer shall ensure to obtain any other statutory license (or amendment of existing license if applicable) for commencing and carrying on sale of CBG at the Retail Outlet, and its renewal from time to time.
- 4.3. The Seller acknowledges that the Buyer or its Dealer has incurred considerable sum in setting up/ construction of the Site/Retail Outlet and installing Equipment(s) at the Retail Outlet. In case of any damage by the Seller/its agents/servants while bringing the Cascade to the Retail Outlet or otherwise, to Buyer's Equipment(s), Retail Outlet or other facilities installed by the Buyer/its Dealer at the Retail Outlet/Site, the Seller shall be completely responsible and liable for all cost, losses, consequences, that the Buyer may suffer due to any act or omission of its employees, agents or third parties engaged by it.

**5. Commercial Supply:**

- 5.1. Seller shall immediately upon signing of this Agreement, notify the Buyer the likely month and year when the CBG Plant is expected to start producing the CBG, so as to enable the Buyer to set up Equipment(s) at Retail Outlet. The Seller shall re-notify the Buyer, at least thirty (30) days in advance of the expected date of start of commercial supply from the CBG Plant, specifying the expected date of start of commercial supply with a window of 2-3 days. The Seller shall give a final notice, seven (7) days in advance, specifying of the expected date of commercial supply. Upon receipt of notice(s) aforesaid, the Parties shall co-ordinate to synchronize their activities and firm up on the final date of commercial supply.
- 5.2. The date of commercial supply of CBG shall be a date on which the Seller shall commence actual supply determined in accordance with Clause 5.1, but such date shall not be later than 2 (two) years from the date of Concession Agreement or such other period as may be extended by the Buyer as mentioned in clause 5.4 below ("Commercial Supply").
- 5.3. In the event that the Commercial Supply does not occur within the aforesaid timeline, due to any failure or non-performance of the Seller, then without prejudice to any other right or remedy available to the Buyer, the Buyer shall be entitled to encash the Bank Guarantee submitted by the Seller.
- 5.4. It is agreed between the Parties that if at any time, the Seller is not able to commence Commercial Supply within a period of 2 (Two) years from the date of LOI, the Seller shall notify the Buyer of the same and request for extension of time within three (3) months of the expiry of the two year period from the date of LOI, explaining the reasons of delay. The Buyer may consider such request of the Seller for future probability of supply from the CBG Plant and the same shall be at the sole discretion of the Buyer.

**6. Transportation through Cascades:**

- 6.1. The Seller shall be responsible for transportation of CBG in Cascades, from the CBG Plant to the Point of Sale. In order to facilitate such transportation, the Seller undertakes to arrange, operate and maintain the Cascades. The Seller shall also ensure that the dimensions, specifications and operating characteristics of such Cascades meet the requirements of the Parties under this Agreement.
- 6.2. The Seller shall, at no cost or expense to the Buyer, obtain and maintain, or cause to be obtained and maintained, all approvals required from government/statutory/concerned authorities under applicable laws, for the Cascades to be loaded with CBG, transport to the Retail Outlet and deliver the CBG at the Point of Sale.
- 6.3. The Seller confirms that, save as specified in this Agreement, the Seller shall not be entitled to any separate remuneration or compensation of any nature whatsoever, for the transportation of CBG through Cascades or appointment of the Seller for supplying CBG under this Agreement. The Seller agrees that the same is covered in the Price provided in Annexure-I.
- 6.4. The CBG shall, at all times, be stored and transported through Cascades (cylinders) conforming to IS 7285 (Part 2) Standards. Each cylinder shall be marked with following information
  - Name of the material
  - Indications of source of manufacture, initials or trademarks, if any
  - Volume of the contents in liters
  - Lot / Batch No.
  - Month and year of manufacture
- 6.5. The Seller shall be responsible for ensuring that the Cascades are maintained such that they operate in proper working condition, at all times.
- 6.6. In case of any break down in or damage to or defect in the Cascades, the Seller shall promptly arrange to repair/replace the same at its cost and expense. It is agreed that the Seller shall respond and take immediate corrective action in real time (being no later than two (2) hours of breakdown), in the event of any emergency threatening loss or damage to the property, or any threatened injury to or death of any Person or any threat or danger to public safety or any environmental damage due to such leakage, breakdown, damage or defect.
- 6.7. The Buyer confirms that it shall, at any time at the Retail Outlet, permit the authorized officers or representatives of the Seller to enter upon the Site/ Retail Outlet for the purpose of inspection, maintenance and servicing of the Cascades, if required. In case where repair would take time, the Seller shall take back the damaged Cascade and provide the Buyer with a replacement. In the case of emergency, the Buyer authorizes the Seller's officers or authorized representatives, complete access to the premises of the Retail Outlet at any time to prevent any accident, which may result in loss of life, injury or damage to the Retail Outlet / its facilities or Equipment(s).
- 6.8. In case of any damage to Cascades on account of the sole and gross negligence by the Buyer/its employees or its Dealer/their employees, the cost of repairs and replacement of such Cascades shall be payable by the Buyer, but only to the extent that the same is not covered by insurance as required under this Agreement.

**7. Title Transfer of CBG :**

- 7.1. The transfer of ownership of CBG from the Seller to the Buyer shall take place at the Point of Sale.
- 7.2. The transfer of ownership of CBG from Buyer/ Dealer to the end customer shall take place at the end of the CBG delivery nozzle when the CBG is dispensed to the end customer's Vehicle at the Retail Outlet.
- 7.3. The schematic diagram of CBG dispenser depicting inlet, outlet and nozzle is attached at Annexure - III.

**8. Quantities:**

- 8.1. Based on the designed capacity of the CBG Plant, it is expected that the CBG Plant shall produce CBG @ \_\_\_\_\_ TPD when the CBG Plant is running on full capacity.
- 8.2. The Buyer shall off-take and the Seller shall provide the quantities of CBG as agreed in the Supply Plan.
- 8.3. Within a period of .....days of execution of this Agreement, the Parties shall mutually draw out a detailed plan so as to determine the monthly quantities for supply and off-take of CBG for the entire tenure of this Agreement (**Supply Plan**) at the procurement rate as may be determined as per the terms of this Agreement, from the date of Commercial Supply. The Supply Plan shall be annexed to this Agreement as '**Annexure V**' and form part of this Agreement.
- 8.4. Based on the monthly quantities as agreed upon as above in the Supply Plan, daily off-take schedules (daily schedule) shall be made in mutual consultation. Parties agree that during the first six months, there may not be adequate off-take of CBG through the Retail Outlet. In such circumstances, while drawing the Supply Plan, the Parties shall synchronize their production and marketing activities accordingly for the said period.
- 8.5. It is specifically agreed between the Parties that in the event that the Seller's CBG Plant is producing CBG more than the quantities specified in a Supply Plan, then:
  - (a) In the event Buyer is not able to off-take CBG as per Supply Plan for a period of three (3) months, the Buyer shall endeavor (but shall not be obliged) to facilitate in sale of CBG at other retail outlet(s) of the Buyer or industrial bulk customers of the Buyer. Such sale to industrial bulk customers of Buyer will be as per mutual agreement by both parties. Notwithstanding the same, the Buyer shall nevertheless be obligated to and shall make monthly payments as per the Supply Plan to the Seller.
  - (b) In the event that the CBG Plant is producing less than the agreed quantity as per the Supply Plan, then the Parties may discuss in good faith ways to increase production of the CBG Plant and mitigate losses, however, the Buyer may at his sole discretion, encash the Bank Guarantee submitted by the Seller, without prejudice to other rights and remedy available to it.

**9. Supply Disruption:**

The Seller acknowledges that Buyer has invested in the Retail Outlet for the purpose of serving customers, and shall suffer loss in case CBG supplies are not maintained by the Seller as per the Supply Plan. Accordingly, in the event supplies are not maintained for a continuous period or such regular intermittent periods which the Buyer believes is adversely affecting the CBG sale at the Retail Outlet, it shall be free to encash the

Bank Guarantee and to either suspend supplies or terminate the Agreement as provided hereunder and obtain CBG/CNG from other sources at the sole risk & cost of the Seller.

**10. Quality of CBG :**

- 10.1. The quality of CBG supplied by the Seller shall be of automotive grade and in strict conformity to IS 16087:2016 or its latest version and to the "Specifications" as provided at Annexure - IV.
- 10.2. If the CBG offered is not as per Specifications ("Off-Spec"), the Buyer shall have the right to reject such Off-Spec CBG. The Buyer shall be further entitled to suspend all deliveries for such period as deemed fit and without prejudice to any of its rights, may encash Bank Guarantee and/or seek compensation for any loss incurred by the Buyer on this account including procurement of CBG at risk and cost of the Seller, for such Off-Spec deliveries. Further, the Seller shall be responsible to use all its best endeavors to carry out remedial works, as are necessary, if any, at no added charge to the Buyer, to bring future deliveries of CBG within the Specifications as soon as possible.
- 10.3. Seller shall have, at its CBG Plant, online Gas Chromatograph/ Gas Analyzer and all relevant testing equipment to ensure that the quality of each Cascade of CBG delivered to the Buyer meets all parameters of the above said BIS Standards.
- 10.4. All the laboratory equipment, measuring instruments maintained by the Seller shall be calibrated periodically and duly certified periodically by a Government Approved Testing Laboratory.
- 10.5. Cascade-wise test reports/quality certificates shall be issued. The samples, test reports / quality certificates shall be preserved in laboratory till their validity period, for future references.
- 10.6. Test reports/ quality certificates duly certified by the Seller, shall be accompanied with every Cascade of CBG supply.
- 10.7. In addition, the Buyer shall also have the right to install quality assurance equipment and/or test the samples of CBG independently at any laboratories accredited for conducting quality check on the CBG. The quality assessment by the Buyer shall be final and binding upon the Parties.
- 10.8. The representative samples of CBG shall be drawn as per sampling plan prescribed under IS 15125. The method of testing of individual components shall be as per the following test methods:

Constituent gas in CBG	Testing method
Methane (CH <sub>4</sub> )	IS 15130 (Part 3)
Total sulfur (incl. Hydrogen Sulfide H <sub>2</sub> S)	ISO 6326-3
CO <sub>2</sub> + N <sub>2</sub> + O <sub>2</sub>	IS 15130 (Part 3)
Only CO <sub>2</sub>	IS 15130 (Part 3)

Constituent gas in CBG	Testing method
Oxygen (O <sub>2</sub> )	IS 15130 (Part 3)
Odour	IS 15319

**11. Measurements:**

- 11.1. The quantity of CBG sold shall be calculated on the basis of the meter readings on the CBG dispenser(s), jointly taken by the Seller and Buyer or their authorized representative(s).
- 11.2. Readings shall be jointly taken and signed by the authorized representative(s) of the Seller and the Buyer/Dealers representative at the time of start of delivery from each CBG cascade, in duplicate (joint ticket). Such joint ticket readings shall be binding on both the Parties.
- 11.3. For such purpose of taking meter readings/joint ticket, as the case may be, to calculate the quantity of CBG sold, Buyer confirms that it shall permit authorized officers or representatives of the Seller to enter upon the Retail Outlet.
- 11.4. The Buyer shall intimate the Seller prior to such re-calibration(s) and the Seller or his authorized representatives, if so desired, may be present at such time.

**12. Price:**

- 12.1. The Total Supply Price of CBG including delivery thereof, as agreed between the Parties is given in Annexure-I.
- 12.2. The Total Supply Price shall be applicable for the period commencing from the date of Commercial Supply till ..... I.

**13. Billings and Payments:**

- 13.1. The Seller shall sell CBG to the Buyer in accordance with the terms of the Agreement at the Total Supply Price as specified in Annexure-I and Buyer shall pay the Seller the same.
- 13.2. Based on the joint ticket prepared by the Parties recording the quantities of CBG sold, as mentioned in clause 11.2, fortnightly invoices shall be raised by the Seller on the Buyer.
- 13.3. Invoices shall provide details of all applicable Taxes included in the invoice amount.
- 13.4. Buyer shall make payments to the Seller in Indian Rupees, under this Agreement, within fifteen (15) Business Days from the date of receipt of the original invoice.
- 13.5. Disputed invoices:
  - (a) In the event that the Buyer disputes an invoice, the Buyer shall as soon as possible notify the Seller of the reasons for such disagreement, on or before the due date for payment.
  - (b) In case of manifest error in respect of an invoice, the Buyer may inform the Seller of such error and if the Seller agrees with such error, or if the Seller discovers such

error, the Seller shall advise the Buyer and the Seller shall reissue the relevant invoice with appropriate correction(s), thereafter which the Buyer shall make the payment with respect to such corrected invoice within fifteen (15) days of receipt of such corrected invoice.

**14. Taxation**

- 14.1. The Buyer or its Dealer as the case may be, shall bear and pay all property taxes, municipal taxes, out-goings, rents, rates, assessments or levies in respect of the Site/Retail Outlet.
- 14.2. The Seller shall bear in full, all liabilities of Taxes or statutory levies/duties including interest, penalties etc., arising from supply of CBG to the Buyer. Should any Taxes/levies/ duties be imposed by statutory authorities under this Agreement, which are not recoverable from end customers in pricing, these shall also be borne by the Seller. To the extent that the Buyer is required to pay any Taxes in the first instance, the Seller shall promptly reimburse the same to the Buyer.
- 14.3. If after execution of Agreement, any new Tax is introduced (applicable to invoices raised on the Buyer) in lieu of one or more of the then existing taxes and the rate and impact of the new taxes is in excess in aggregate of the rate and impact of existing tax or taxes which it replaces, the Buyer shall on satisfactory proof reimburse the Seller the additional tax paid by the Seller as the result of the imposition of the new taxes provided they are within the term of this Agreement. Nothing herein shall apply to any corporate taxes, direct taxes or taxes on the income of the Concessionaire.
- 14.4. If on the other hand, the rate and impact of the new tax is less than the aggregate rate and impact of the tax(es) which it replaces, the Seller shall pass on to the Buyer the benefit thereof by reduction on the amount payable by Buyer to the Seller.
- 14.5. The above will be applicable if new taxes permit such case. In case the impact of new taxes is directly passed on to the customer, the same shall be followed.

Explanation: For the purpose of this clause impact means and includes the addition/reduction of taxes suffered on inputs, input services & capital goods. Further impact of stranded taxes on interstate purchases, entry tax/ octroi etc. (if applicable) also would be considered.
- 14.6. It would be the responsibility of the Seller to get the registration with the respective Tax authorities. Any taxes/duties/levies being charged by the Seller would be claimed by issuing proper Tax Invoice indicating details /elements of all taxes charged and necessary requirements as prescribed under the respective tax laws and also to mention correct and valid registration number(s) on all invoices raised on the Buyer.
- 14.7. The Seller would be liable to reimburse or make good of any loss/claim by the Buyer towards tax credit rejected /disallowed by any tax authorities due to non deposit of taxes or non compliance of tax laws by the Seller.
- 14.8. The Seller will be under obligation for charging correct rate of tax as prescribed under the respective Tax laws. Further the Seller shall avail and pass on the benefits of all exemptions/ concessions/ benefits/ waiver or any other benefits of similar nature or kind available under the Tax laws. In no case, differential Tax claims due to wrong classification of goods and/ or services or understanding of law or rules or regulations or any other reasons of similar nature shall be entertained by the Buyer.
- 14.9. Modalities for tax payment under GST -



Currently, GST @ 5% is applicable on biogas. Reimbursement of tax will be done on the basis of submission of Tax Invoice in physical form.

The Sales Invoice of CBG shall be uploaded by the Seller in GSTN portal for claiming input Tax Credit.

Any loss of Input Tax Credit due to non-submission of invoice or non-uploading of the tax details, within the prescribed time limits as per GSTN portal, shall be deductible from the running bills of the Seller.

## **15. Insurance**

- 15.1. The Seller shall obtain and maintain, at its own cost, during the Term, adequate comprehensive insurance cover for corresponding to the risk and liability for the optimum stock of CBG in Cascades (in transit from the CBG Plant) that will be stored and delivered at any given point of the time at the Retail Outlet (as the Cascade is to remain connected with the inlet flange of the booster compressor of the CBG unit at the Retail Outlet till the dispensation is operationally feasible). Such insurance shall inter alia cover the risks associated with the storage and supply of CBG including risks to life and property of the Buyer, the Dealer and any third party including public liability and these shall cover fire, theft and all allied risks. The Seller shall also obtain suitable third party public liability insurance in accordance with the applicable laws and good industry practice. The Seller may assign/create charge over all such insurance contracts in favour of the Lenders /security trustee, except those related to the risks to life and property of the Buyer, towards security for the credit facilities availed/to be availed.
- 15.2. All insurance policies obtained by the Seller pursuant to this clause shall include waiver of any and all rights of subrogation or recovery of the insurers there under against Buyer/its Dealer and their respective assigns, successors, employees, officers, 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. The Seller shall provide copies of such valid insurance policies to Buyer.

## **16. Bank Guarantee**

- 16.1. The Seller has provided an unconditional and irrevocable bank guarantee ("Bank Guarantee") for a sum of Rs. \_\_\_\_\_ lakh from a bank accepted by the Buyer and in such form and substance as accepted by the Buyer, for the performance of its obligations under this Agreement i.e. production and supply of CBG. The Bank Guarantee shall be valid for the entire term of this Agreement and shall be renewed by the Seller thirty (30) days before expiry of the existing Bank Guarantee.
- 16.2. The final or the last Bank Guarantee shall remain valid until six (6) months after the expiry of the Term.
- 16.3. The Buyer shall have the right to enforce and encash the Bank Guarantee without any demur or protest by the Seller or its bank and without any notice to the Seller in the event of:
- a) the Commercial Supply does not occur within a period of 2 (Two) years from the date of Concession Agreement, due to any failure or non-performance of the Seller

- b) Agreement is terminated upon breach by the Seller of any provision(s) of this Agreement; or
- c) If the Seller fails to renew or extend or replace the Bank Guarantee at least thirty (30) Days prior to the expiry of the Bank Guarantee (in case such renewal becomes necessary due to any reason whatsoever); or
- d) For any other breach of this Agreement, including any breach for which this Agreement contemplates a right of invocation of the Bank Guarantee.

The Parties agree that the invocation of the Bank Guarantee in the aforesaid circumstances constitutes is not by way of penalty, but towards damages that would be incurred by the Buyer in the circumstances contemplated herein.

**17. Marketing of CBG at the Retail Outlet:**

- 17.1. The Buyer has a separate dealership/operatorship agreement with its Dealer/ at the Retail Outlet. The operation of this Agreement shall be independent of the Buyer's dealership/ operatorship agreement already in existence with the Dealer of Retail Outlet.
- 17.2. Except with the prior written consent of the Buyer, the Seller shall not enter into any separate arrangement or contract or understanding with the Dealer, of whatsoever nature.
- 17.3. Even after termination of dealership agreement between the Buyer and its Dealer, Seller shall not enter into a similar agreement for supply of CBG to a retail outlet of the Buyer, without prior written consent of the Buyer.
- 17.4. In case the sale of CBG from a Retail Outlet is stopped or suspended owing to action(s) by statutory authorities or any action against the Dealer under Buyer's policies consequent to which the sale/supply and marketing of CBG gets affected, Buyer shall not be liable for any loss, expenses, costs or liabilities whatsoever to the Seller on account of the same. The Buyer however, shall endeavor to facilitate in sale of CBG at other retail outlet(s) of the Buyer or industrial bulk customers of the Buyer as mentioned under 8.10 above.
- 17.5. The Seller shall ensure that Buyer's employees or its Dealer/ Dealer's employees engaged in CBG retailing activities, and DSMS are trained by the Seller on various parameters including operations, technical and safety, reasonably before the sales of CBG to the end customers commences and that such training shall be provided periodically.
- 17.6. The Seller shall remain responsible for maintaining final product output quality being dispensed from the Retail Outlet.
- 17.7. The Buyer shall observe all Safety Procedures and Standards while dispensing CBG into end customer's Vehicles.
- 17.8. The Buyer or its Dealer as the case may be shall employ or make available adequate personnel (including dispensing operators, supervisors, accounts clerks) to operate the dispenser and dispense the CBG into customer's Vehicles, to collect the payments from end customers and to do all other activities pertaining to sale of CBG to end customers.
- 17.9. The Buyer reserves the right, during the continuance of this Agreement, to make direct or indirect sale(s) of CBG to any customer without any reference or consent from the Seller.

**18. Compliance with Safety and laws:**

- 18.1. The Seller shall follow Safety Procedures and Standards while supplying CBG from its Cascades to the inlet flange of booster compressor at the Retail Outlet.
- 18.2. The Seller shall at all times, observe, perform and carry out the directions, instructions and guidelines given by the Buyer or its representative(s), from time to time, on safe practices, operation and functioning.
- 18.3. The Seller shall not contravene any laws or legal requirements which could reasonably be expected to have an adverse effect on its ability to meet its obligations under this Agreement or cause it to be in breach in any material respect of its obligations under this Agreement.

**19. Representations and Warranties :**

These representations and warranties shall survive the execution and delivery of this Agreement.

**19.1. The Seller represents and warrants to the Buyer that:**

- (a) The Seller is and shall continue to be in compliance with all applicable laws.
- (b) The Seller has obtained all licenses, permissions, consents, approvals and authorizations from any government/statutory authorities required under law, and all management and shareholder approvals necessary to enable the Seller to perform its obligations under this Agreement and all such necessary approvals, licenses, permissions, consents, approvals and authorizations are valid and effective, and covenants that the same shall remain valid and effective through the Term and shall obtain any additional approvals, licenses, permissions, consents and authorizations that are required to enable the Buyer to perform its obligations under this Agreement.
- (c) The Seller and the CBG Plant is not under any liquidation, court receivership, or any similar legal proceedings nor any other steps have been taken or notice received for its winding-up or dissolution.
- (d) The Seller has in place /shall have the requisite infrastructure, facilities to perform its obligations under the Agreement, and shall maintain the adequacy of its infrastructure during the period of this Agreement, without any cost to Buyer.
- (e) The Seller is the rightful owner of or has sufficient right, title and interest in its CBG Plant, the facilities installed at its CBG Plant and/or Retail Outlet and Cascades used for transportation of CBG from its CBG Plant to the Retail Outlet.
- (f) The Seller has clear title to the CBG being sold under this Agreement and the Buyer shall acquire the same, free from any encumbrances.
- (g) The Seller shall supply and tender for delivery at the Point of Sale, CBG in the quantities, at the times and at the prices determined in accordance with, and subject to, the terms and conditions of this Agreement, and that it has necessary ability to do so.
- (h) There is no restriction or impediment preventing the Seller from selling CBG to the Buyer and from performing its obligations hereunder.
- (i) Subject to clause 22.1A, the Seller shall not without the prior written consent of the Buyer, undertake or allow any 'Change in Constitution'. 'Change in Constitution' shall mean; (a) change in sole proprietor of a sole proprietorship, (b) change in partner(s) of

partnership firm or a limited liability partnership, (c) change in member of a one person company, (d) change in shareholder of a private limited company or unlisted public limited company, (e) change in 'promoter' or any member of the 'promoter group' of a listed public limited company, (f) change in committee representative (person identified as 'committee representative' in case of a registered co-operative society at the time of making an application for appointment as CS) of registered co-operative society, or (g) change in karta of a hindu undivided family, or (h) change in legal status.

- (j) The Seller shall, within 15 days from the date of execution of Financing Documents, provide to the Buyer the details of Lenders along with a copy of the Financing Documents.
- (k) The CBG sold by the Seller to the Buyer under this Agreement shall be free from any encumbrances or charges.
- (l) The Seller further represents and warrants to the Buyer that:
  - (a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated herein;
  - (b) this Agreement has been duly executed by it and is a legal, valid and binding document enforceable against it in accordance with its terms;
  - (c) the execution of this Agreement does not violate any law, or any document constituting the Party, or any permit granted to such Party or any agreement to which such Party is a party;
  - (d) it shall always act as a reasonable and prudent operator;
  - (e) it confirms that all its representations and warranties set forth in this Agreement are independent of each other and true, complete and correct in all respects at the time as of which such representations and warranties were made or deemed made, and shall continue to have full effect during the period of this Agreement; and
  - (f) It has the necessary power to perform its respective obligations under this Agreement.

**19.2. The Buyer represents and warrants to the Seller that:**

- (a) The Buyer is and shall continue to be in compliance with all applicable laws.
- (b) The Buyer has obtained all governmental licenses, permissions, consents, approvals and authorizations from any government/statutory authorities and all management and shareholder approvals as necessary to enable the Buyer to perform its obligations under this Agreement and all such necessary approvals, licenses, permissions, consents and authorizations are valid and effective and covenants that the same shall remain valid and effective through the Term and shall obtain any additional approvals, licenses, permissions, consents and authorizations that are required to enable the Buyer to perform its obligations under this Agreement.
- (c) The Buyer has in place /shall have the requisite infrastructure, facilities to perform its obligations under the Agreement, and shall maintain the adequacy of its infrastructure during the period of this Agreement, without any cost to Seller.

- (d) The Buyer shall take delivery of the CBG at the Point of Sale, in the quantities, at the times and at the prices determined in accordance with, and subject to, the terms and conditions of this Agreement.
- (e) The Buyer is not under any any liquidation, court receivership, or any similar legal proceedings, nor any other steps have been taken or notice received for its winding-up or dissolution.
- (f) The Buyer further represents and warrants to the Seller that:
  - a) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated herein;
  - b) this Agreement has been duly executed by it and is a legal, valid and binding document enforceable against it in accordance with its terms;
  - c) the execution of this Agreement does not violate any law, or any document constituting the Party, or any permit granted to such Party or any agreement to which such Party is a party;
  - d) it shall always act as a reasonable and prudent operator;
  - e) it confirms that all its representations and warranties set forth in this Agreement are independent of each other and true, complete and correct in all respects at the time as of which such representations and warranties were made or deemed made, and shall continue to have full effect during the period of this Agreement; and
  - f) It has the necessary power to perform its respective obligations under this Agreement.

**20. Indemnity and Liability:**

- 20.1. The Seller shall at all times be liable and responsible for all losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer, its directors, employees, Dealer and Dealer's employees and representatives due to the quality of CBG not meeting the Specifications, non-compliance of statutory duty or non-payment of taxes by the Seller.
- 20.2. The Seller shall indemnify and keep indemnified Buyer for all losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer, its directors, employees, Dealer and Dealer's employees and representatives on account of use of or damage due to Cascade and/or other facilities installed /brought by Seller at the Retail Outlet/ Site unless such losses, damages, claims, actions, proceedings, costs, charges and expenses arise due to gross negligence of the Buyer.
- 20.3. The Seller shall indemnify and keep indemnified Buyer and its Dealer, their employees, officers and directors against any losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer on account of loss or injury to any person in connection with performance of this Agreement, unless such losses, damages, claims, actions, proceedings, costs, charges and expenses arise due to gross negligence of the Buyer.
- 20.4. The indemnity provisions herein contained shall survive the expiry or termination of this Agreement.

20.5. Unless otherwise provided in this Agreement, neither Party shall be liable for any remote, consequential, punitive and indirect loss or damage sustained by it as a result of any act or omission in the course of or in connection with the performance of this Agreement.

**21. Term:**

21.1. This Agreement shall come into force from the date of signing of this Agreement and shall be valid for a period of ..... ("Term"), unless earlier terminated, due to the events hereinafter mentioned.

21.2. Both the Parties may agree to extend the same for a further period on such terms and conditions as may be mutually agreed upon.

**22. Termination**

**22.1. Event of Termination :**

22.1.1. The Seller may at any time, by rendering a thirty (30) days written notice to Buyer and copy to Lenders, terminate this Agreement, if

- a) The Buyer fails to pay to the Seller any sum due by it under this Agreement within fifteen (15) days of the due date; or
- b) Any representation or warranty by the Buyer given herein or in pursuance of this Agreement is found to be materially incorrect; or
- c) The Buyer ceases to carry on its business or suspends all or substantially all of its operations; or
- d) The Buyer is unable to pay its debts or becomes unable to pay its debts as and when due or makes any composition or arrangement with or for the benefit of its creditors; or
- e) A liquidator, receiver or administrator or any beneficiary under an encumbrance takes possession of or is appointed over the whole or any part of the assets of the Buyer; or
- f) A resolution for winding up of the Buyer is passed or a petition for its winding up is filed against the Buyer; or
- g) Any consent, approval, license or permission required by the Buyer to enable it to carry on its business or to sell CBG is suspended, canceled or withdrawn or expires and is not renewed despite efforts by the Buyer.

22.1.2. The Buyer may at any time, by rendering a thirty (30) days written notice to the Seller, terminate this agreement if:-

- a) The Seller fails to comply with any of its obligations or undertakings or commits any breach of the covenants or conditions, representations and/or warranties that shall be observed, performed or fulfilled on its part or fails to make regular supply of CBG and as per the quality Specifications.
- b) The Seller fails to commence supplies within a period of 2 (Two) years from the date of Concession Agreement (unless extended by the Buyer).
- c) Termination of Concession Agreement
- d) The Seller ceases to carry on its business or suspends all or substantially all of its operation; or

- e) A liquidator, receiver or administrator or any beneficiary under an encumbrance takes possession of or is appointed over the whole or any part of the assets of the Seller or initiation of corporate insolvency resolution process; or
- f) A resolution for winding up of the Seller is passed or a petition for its winding up is filed against the Seller; or
- g) Any consent, approval, license or permission required by the Seller to enable it to carry on its business or to sell CBG is suspended, cancelled or withdrawn or expires and is not renewed despite efforts by the Seller.
- h) The Seller causes or permits any Change in its Constitution without prior written consent of the Buyer.
- i) If bank guarantee is not submitted/renewed by the Seller within the stipulated timeframe.
- j) An event of Force Majeure occurs as per the Concession Agreement and lasts for a period of more than ..... days

The Buyer may immediately terminate this Agreement in the event of termination of Concession Agreement by North DMC

22.1.2A . A copy of notice referred to in 22.1.2 may also be sent to the Lenders.

22.1.3. Notwithstanding anything contained above, if there is any material adverse change or any change in applicable law, rules, regulations, directives or guidelines which prevent the sale / supply of CBG, then in that case, without prejudice to any other right or remedy available to the Buyer, the Buyer may terminate this Agreement immediately by giving seven (7) days notice to the Seller. The Buyer may also send a copy of the said notice to the Lenders .

22.1.4. 22.1.4. Notwithstanding what is stated in Clause 22.1.1(a), 22.1.1(b), 22.1.2(a), 22.1.2(b), no such termination shall be effected by either Party, unless it gives to the other Party a notice specifying the grounds/ breach on which it intends to terminate the agreement, and giving a thirty (30) days' notice period to the other Party to cure such breach/ remove the grounds for termination. A copy of such notice shall be provided to the Lenders by the Parties concerned.

## **22.1A . Substitution**

22.1A.1. Notwithstanding anything herein above, the Parties hereby irrevocably agree that upon the occurrence of an event of default under the Financing Documents, the Lender/s shall, without prejudice to any other right or remedies available to them under applicable laws or under the Financing Documents, have the right to substitute the Seller in this Agreement by a person selected by the Lender/s (the "Selectee") for the remainder of the term of the Agreement and the Buyer has no objection to the same. Upon identification of the Selectee, the Lenders shall provide to the Buyer the details of the Selectee to complete the formalities required for effecting substitution. The Buyer shall give its consent or otherwise within 15 (fifteen) days from the date of such communication. If the Buyer has no objection, the Buyer and the Selectee shall thereupon execute the CBG Sale Purchase Agreement or such agreements as may be necessary to give effect to substitution. Pursuant to such substitution, the Selectee shall have all the rights and obligations under this Agreement. In the event of any objection by the Buyer, the Lenders may

propose another Selectee whereupon the procedure set forth herein above shall be followed for substitution.

It is expressly agreed that if no substitution can be effected pursuant to clause 22.1A1, within a period of 150 days from the date of initial notice by the Buyer under clause 22.1, the Buyer may forthwith terminate the Agreement. However, the Buyer may, upon request from the Lenders, extend the aforementioned period for substitution by a further period not exceeding 60 days for completing substitution.

22.1A.2. The Lender shall, before exercising the right of substitution pursuant to an event of default under the Financing Documents, intimate the Buyer in writing of its intention to substitute the Seller. In cases where the Buyer has issued a notice under clause 22.1.2, 22.1.4, 23.6 or 22.1.3, as the case may be, such written intimation shall have to be provided within the notice period of thirty (30) days or seven (7) days (for notice under clause 22.1.3), as the case may be.

### **22.2. Effect of Termination:**

- (a)1. Unless termination is on account of clause 22.1.2(a), 22.1.2(b) or 22.1.2(c), upon the termination of this Agreement, the Buyer shall forthwith pay to the Seller the Total Supply Price for all CBG supplied from the date of the last invoice by the Seller to the Buyer till the date of termination of this Agreement in accordance with the provisions of Clause 13.
- (a)2. In the event the Agreement is terminated on account of clause 22.1.2(a) or 22.1.2(b), without prejudice to its other rights, the Buyer shall also be entitled to continue to make sales of the unsold CBG in the Cascades at the Retail Outlet and/or purchase CBG from any third party at the risk and cost of the Seller.
- (a)3. In the event the Buyer opts to continue making sales of the unsold CBG lying in the Cascades standing at the Retail Outlet post termination of this Agreement, the Buyer shall forthwith pay to the Seller the Total Supply Price for all CBG sold.
- (a)4. In the event the Buyer opts not to sell the unsold CBG lying in the Cascades at the Retail Outlet, the Buyer shall intimate the Seller about the same and the Seller shall, immediately and no later than thirty (30) days from the date of termination, remove the Cascade(s) and unsold CBG from the Retail Outlet at its own cost and without affecting the routine operations of the Retail Outlet.
- (a)5. For the said limited purpose, the Seller and its authorized officers and representatives shall be allowed to enter upon the Site/Retail Outlet.
- (a)6. In case of failure of the Seller to remove the Cascade and unsold CBG within time so stipulated by the Buyer, the Buyer shall be entitled to deal with the Cascade and unsold CBG, as it deems fit

### **22.3. Obligations to survive termination:**

The termination of this Agreement for any reason shall not relieve or affect the rights or remedies of either Party in relation to any accrued rights or unperformed obligations, arising prior to or upon the date of such termination and shall not affect any claims which a Party may have against the other Party with respect to any antecedent breach.

Further, any provision of this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, shall survive



any such termination or expiry, such as Indemnity, Confidentiality, Governing Law, Dispute Resolution, Jurisdiction.

**23. Force Majeure :**

- 23.1. Neither the Buyer nor the Seller shall, in any way, except for any payment-related obligations, be held liable for non-performance either in whole or in part of this Agreement or for any delay in the performance thereof on account of Force Majeure as provided under Concession Agreement so far as it relates to the performance of Parties under this Agreement
- 23.2. The parties agree that the provision of Article ... under the Concession Agreement shall apply mutatis mutandis to this Agreement.

**23 A Escrow Arrangement**

- 23 A.1. The Seller shall, prior to availing of loan from the Lenders, open and establish an escrow account with a Bank (the "Escrow Bank"). The escrow agreement to be executed between the North DMC, Seller, Buyer, Lenders and Escrow Bank. All cash inflows and outflows arising out of this Agreement or matters incidental thereto shall be credited and debited, as the case may be, in accordance with the provisions of the escrow agreement.
- 23 A. 2. The Seller may, with prior intimation of at least 4 weeks to the Buyer in writing, create charge over the Escrow Account in favor of the Lenders/security trustee towards security for the credit facilities availed/to be availed by the Seller for setting up of the CBG Plant.
- 23 A.3 All expenses and liabilities towards arrangement of such escrow account and escrow agreement shall be borne by the Seller and except for making the payment in terms of the Agreement in the escrow account instead of making the payment directly to the Seller, the Buyer shall have no responsibility or obligation whatsoever in this regard.

**24. Confidentiality :**

- 24.1. The parties agree that the provision of Article ... pertaining to Confidentiality under the Concession Agreement shall apply mutatis mutandis to this Agreement

**24.2. Governing Law and Jurisdiction:**

This Agreement shall be governed and construed in accordance with the laws of India including without limitation, the relevant Central and State acts and the rules, regulations and notifications issued and amended there under from time to time; and subject to Clause 26 below, the courts of Delhi shall have exclusive jurisdiction in relation to all disputes arising from or relating to the Agreement.

**25. Dispute Resolution :**

- 25.1. A Dispute shall be deemed to have arisen under this Agreement, when either Party notifies the other Party of any issue, difference or dispute in writing to that effect. ("Dispute").
- 25.2. Any Dispute arising out of this Agreement shall be resolved amicably through discussions in good faith with a view to expeditiously resolve such Dispute. In the event the Dispute cannot be resolved amicably within a period of thirty (30) days from the date of its occurrence, either Party may refer the Dispute for resolution through conciliation in accordance with provisions of Indian Oil Conciliation Rules, if applicable.

- 25.3. In the event of non-resolution of Dispute by conciliation within a period of sixty (60) days (or any period thereafter, which the Parties may agree to mutually extend) or non-applicability of IndianOil Conciliation Rules, the Parties agree to settle the Dispute by arbitration in accordance with the Rules of SCOPE Forum of Conciliation and Arbitration (SFCA). The venue for arbitration shall be New Delhi and the language of arbitration shall be English. The arbitrator shall pass a reasoned award and the award of arbitrator shall be final and binding on the Parties.
- 25.4. When a matter is referred to resolution under this Clause 26, it shall not prevent or constitute a valid excuse for either Party from performing their respective obligations (to the extent possible) under this Agreement.

**26. Miscellaneous :**

**26.1. Relationship**

Nothing contained in this Agreement shall constitute partnership, agency or joint venture between the Parties nor shall any relationship of employer or employee be deemed to be created between Seller and Buyer. Neither Party shall be liable for the acts of commission or omission of other Party or its employees, personnel or representatives.

**26.2. Benefits of this Agreement**

This Agreement and the respective rights and obligations of the Parties hereto under this Agreement shall inure to the benefits of and be binding on their respective successors and permitted assigns.

**26.3. Assignment**

- 26.3.1. Neither Party shall assign this Agreement or all or any of its rights or obligations hereunder to any person, without the prior written consent of the other Party.
- 26.3.2. Notwithstanding the above, the Seller may, under written intimation to the Buyer, assign or create charge over the Agreement in favour of its Lenders/security trustee towards security for the credit facilities availed/to be availed by the seller for setting up of the CBG Plant, production and supply of CBG and allied activities.

**26.4. Costs and Expenses**

Each Party shall bear its own expenses in connection with negotiation and finalization of this Agreement.

**26.5. Partial Invalidity**

The illegality, invalidity or unenforceability of any provisions of this Agreement under the law of any jurisdiction to which any Party hereto is a subject, shall not affect the legality, validity or enforceability under the law of any other jurisdiction or the legality, validity or enforceability of the other provisions hereof.

**26.6. Further Acts**

Each of the Parties hereto undertakes to execute, do and take all such steps as may be required to give effect to the provisions of this Agreement.

**26.7. Modification**

No term of this Agreement shall be amended, changed or modified unless such amendment, change or modification is mutually agreed to in writing by and between the Parties.

**26.8. Waiver**

Failure of either Party to enforce at any time or for any period of time any provision hereof shall not be construed to be waiver of any provisions or of the right thereafter to enforce each and every provision; nor shall any single or partial exercise of any right, power or privilege preclude any other future exercise thereof operate as a waiver.

**26.9. Entirety of Agreement**

This Agreement together with the Concession Agreement constitutes and contains the entire agreement between the Parties relating to the supply of CBG during the Term and, except for this Agreement, no prior promises, agreements, warranties, or understandings whether written or oral, shall be of any force or effect.

**26.10. Compliance with laws**

“IndianOil” and “XXXX” shall perform their obligations in strict compliance with all applicable laws in India, along with rules and regulations of duly constituted Governmental Authorities in India and shall obtain all licenses, registrations or other approvals, if any, required by laws in India in connection with this Agreement.

**26.11. Exclusivity**

Subject to the terms and conditions of this Agreement, during the Term of this Agreement, the Seller shall not enter into any agreement with any third party including other Oil Marketing Companies (OMCs) pertaining to supply of CBG from the CBG Plant. The Seller agrees that it shall sell 100% of the CBG from the CMG Plant to the Buyer (or to nominees of the Buyer). The Seller agrees that the Buyer shall not be subject to any restrictions as to exclusivity and may enter into similar arrangements (including for identified Retail Outlets) with any number of CBG suppliers.

**27. Notices :**

27.1. All notices or demands or other communications given or made under this Agreement shall be in writing and be made in English language. A notice may be delivered personally, sent by prepaid registered post, or facsimile. Oral communication and e-mails, however, do not constitute notice for purposes of this Agreement.

To

\_\_\_\_\_  
**IndianOil Corporation Limited.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 27.2. All Notices required to be send to the Lenders under the terms of this Agreement shall be sent to the Lenders in the address as provided by the Seller under clause or as may be notified to the Buyer in writing by the Lenders.
- 27.3. Any such notice, demand from the sender shall be deemed to have been duly served if given personally on delivery thereof to the address of the recipient or made by facsimile transmission immediately on receipt of the transmission report by the sender, or given by registered post three days after the date of posting the same by registered post.
- 27.4. The above addresses may be changed by two (2) weeks written notice thereof to the other Party.

**28. Counter parts :**

This Agreement may be executed in counter parts, each of which when executed and delivered shall constitute a duplicate original but each of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF the Parties hereto have executed these presents on the day and year first hereinabove mentioned.

Indian Oil Corporation Limited

Concessionaire

(Authorized Signatory)

(Authorized Signatory)

Name :

Name :

Designation :

Designation :

Date :

Place: New Delhi

Date :

Place: New Delhi

Witnesses:

Witnesses:

- 1.
- 2.

- 1.
- 2.

## ANNEXURE- I

### Total Supply Price

Item	Unit	Price
Price of CBG meeting IS 16087: 2016 Standard, compressed at 250 bar and delivered at IndianOil Retail Outlet in Cascades.	₹ /kg	
Total supply price (excluding GST)	₹ /kg	
GST @ 5%	₹ /kg	
Final supply price (including GST)	₹ /kg	

- 1.1 There shall be periodic revision of "R<sub>CBG</sub>" = ₹ \_\_\_ per kg i.e. the cumulative procurement price of Compressed Bio Gas (CBG) by IndianOil as given below:
- a. For CBG, based on revision in selling price of CNG in the Delhi market
  - b. Upon completion of every 3 years of the Concession Agreement there will be a review of the pricing mechanism of Compressed Bio Gas (R<sub>CBG</sub>) based on mutual agreement between the IndianOil and the Concessionaire.
  - c. Applicable Goods & Service Tax shall be paid extra on R<sub>CBG</sub>.
- 1.2 Currently the selling price of CNG at Retail Outlets inclusive of all taxes in New Delhi is ₹ 43.40/kg.
- 1.3 If the selling price of CNG in Delhi market is increased over a period by 1% (One percentage) or more, then the fixed Compressed Bio Gas procurement price i.e. R<sub>CBG</sub> shall be increased by the same percentage increase.
- 1.4 Till the cumulative increase in the selling price of CNG at Retail Outlets inclusive of all taxes in Delhi is less than 1%, there shall be no revision in the price of Compressed Bio Gas for the bidder.
- 1.5 The price review mechanism of Compressed Bio Gas to be supplied by Concessionaire to IndianOil shall be undertaken every 3 years from the date of commencement of supplies. In case Parties are unable to agree upon the price revision in accordance with the aforesaid mechanism, the Buyer may in its discretion terminate this Agreement.

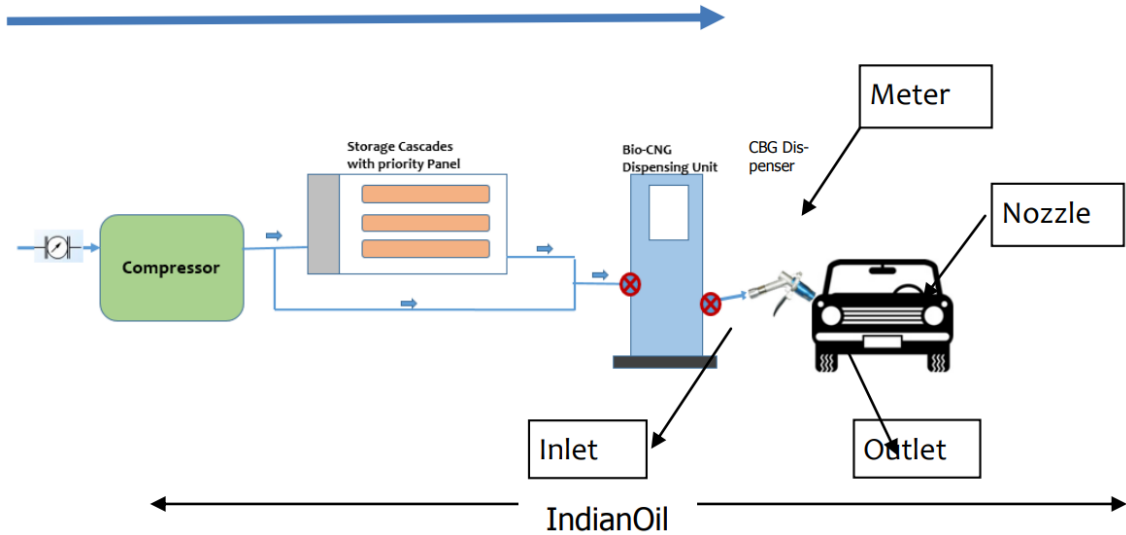
Annexure II

DETAILS OF EQUIPMENT (As per clause 2.2.2 of this Agreement)

SN	Description of the Equipment
1	
2	
3	
4	

### ANNEXURE -III

Flow direction of CBG to end Customer



- “Inlet” is defined as the entry point of CBG flow just before the totalizer unit of the CBG Dispenser.
- ‘Dispenser’ is defined as the equipment which dispenses CBG and records delivery quantity through totalizer unit,
- “Outlet” is defined as the exit point of CBG flow just after the totalizer unit of the CBG Dispenser and is the point just before the delivery Nozzle.
- “Nozzle” is defined as the delivery equipment through which CBG gets transferred into the Customer’s Vehicle tank.



**Annexure - IV**  
**SPECIFICATIONS**

Compressed Bio Gas (CBG) to be supplied shall meet **IS 16087:2016** specifications of BIS (detailed below), compressed at 250 Bar and supplied through Cascades, and any other further revisions in the said specifications. The exact specifications are stated as under:

SN	Characteristic	Requirement
1	Methane percentage (CH <sub>4</sub> ), minimum	90.0 %
2	Only Carbon Dioxide percentage (CO <sub>2</sub> ), maximum	4%
3	Carbon Dioxide (CO <sub>2</sub> )+ Nitrogen (N <sub>2</sub> )+ Oxygen (O <sub>2</sub> ) percentage maximum	10%
4	Oxygen (O <sub>2</sub> ) percentage maximum	0.5%
5	Total sulphur (including H <sub>2</sub> S) mg/m <sup>3</sup> , maximum	20 mg/m <sup>3</sup>
6	Moisture mg/m <sup>3</sup> , maximum	5 mg/m <sup>3</sup>

Also as per the **IS 16087:2016** specifications, the following shall also be met

- CBG shall be free from liquids over the entire range of temperature and pressure encountered in storage and dispensing system
- The CBG shall be free from particulate matter such as dirt, dust, etc.
- CBG delivered shall be odorized similar to a level found in local distribution (ref. IS 15319)

**ANNEXURE V**

**SUPPLY PLAN**

**ANNEXURE VI**  
**FORM OF BANK GUARANTEE FOR CBG SUPPLY PERFORMANCE SECURITY**  
**(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)**

BG NO:

DATED:

VALID UP TO:

CLAIM EXPIRY DATE:

To,

INDIAN OIL CORPORATION LIMITED

Alternate Energy & Sustainable Development,

5th Floor, Core-6, SCOPE Complex,

New Delhi-110003.

Dear Sirs,

In consideration of Indian Oil Corporation Limited (Alternate Energy & Sustainable Development, Planning & Business Development Division) (hereinafter called "the Corporation" which expression shall include its successors and assigns), having awarded certain work for and relative to Supply of Compressed Bio Gas (CBG) to IndianOil under Concession Agreement signed with \_\_\_\_\_ (Name and address of the Contractor) (hereinafter called "the Contractor" which expression shall include its successors and assigns), upon certain terms and conditions inter-alia mentioned in the Corporation's Letter of Intent No. \_\_\_\_\_ dated \_\_\_\_\_ read with the relative Tender Documents (hereinafter collectively called "the Contract", which expression shall include any formal contract entered into between the Corporation and the Contractor in supersession of the said Letter of Intent and all amendments and/or modifications in the contract) inclusive of the condition that the Corporation may accept a Bank Guarantee/Undertaking of a Scheduled Bank in India in lieu of Cash Deposit of the Initial Security Deposit as provided for in Conditions of Contract (Bank Guarantee) forming part of the said Letter of Intent.

We \_\_\_\_\_ (Name of the Bank), a body registered/constituted under the \_\_\_\_\_ Act, having our Registered Office/Head Office at \_\_\_\_\_ (hereinafter called "the Bank" which expression shall include its successors and assigns), at the request of the Contractor and with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably undertake to pay to the Corporation at New Delhi forthwith on first demand without protest or demur or proof or satisfaction and without reference to this guarantee up to an aggregate limit of ₹ 1,50,00,000 (Rupees One Crore Fifty Lakh only).

AND the Bank doth hereby further agrees as follows :-

- i. This Guarantee/Undertaking shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Corporation upon the Bank made up to the midnight of ..... provided that the Bank shall upon the written request of the Corporation made upon the Bank at any time within 6 (six) months from the said date extend the validity of the Bank Guarantee by a further 6 (six) months so as to enable claims to be

made under this Guarantee by a further 6 (six) months from the said date with the intent that the validity of this Guarantee shall automatically stand extended by a further 6 (six) months upon such request by the Corporation.

- ii. The Corporation shall have the fullest liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee/Undertaking, at any time and/or from time to time to amend or vary the Contract and/or any of the terms and conditions thereof or relative to the said Initial Security Deposit or to extend time for performance of the said Contract in whole or part or to postpone for any time and/or from time to time any of the obligations of the Contractor and/or the powers or remedies exercisable by the Corporation against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract or the said Initial Security Deposit or the securities available to the Corporation or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank hereunder shall remain in full force and effect notwithstanding any exercise by the Corporation of the liberty with reference to any or all the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by the Corporation to the Contractors or of any other act, matter or thing whatsoever which under the law relating to sureties or otherwise which could but for the provision have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.
- iii. The obligations of the Bank to the Corporation hereunder shall be as principal to principal and shall be wholly independent of the contract and it shall not be necessary for the Corporation to proceed against the Contractor before proceeding against the Bank and the Guarantee/Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other Guarantee/undertaking or security for any indebtedness of the Contractor to the Corporation (including relative to the said Security Deposit) and notwithstanding that any such undertaking or security shall at the time when claim is made against the Bank or proceedings taken against the Bank hereunder, be outstanding or unrealised.
- iv. The amount stated by the Corporation in any demand, claim or notice made with reference to this guarantee shall as between the Bank and the Corporation for the purpose of these presents be conclusive of the amount payable by the Bank to the Corporation hereunder.
- v. The liability of the Bank to the Corporation under this Guarantee/undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Corporation, the Contractor and the Bank and/or the Bank and the Corporation or otherwise howsoever touching or affecting these presents for the liability of the Contractor to the Corporation, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to the Corporation under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to the Corporation in terms hereof.
- vi. The Bank shall not revoke this undertaking during its currency except with the constitution of the Contractor or the Bank or the Corporation shall not discharge the Bank's liability hereunder.

- vii. Without prejudice to any other mode of service, a demand or claim or other communication may be transmitted by fax. If transmitted by fax, the transmission shall be complete as soon as acknowledged by bank.
- viii. Notwithstanding anything contained herein:
- a. The Bank's liability under this guarantee/undertaking shall not exceed ₹ **1,50,00,000 (Rupees One Crore Fifty Lakh only)**;
  - b. This guarantee/undertaking shall remain in force up to ..... and any extension(s) thereof; and
  - c. The Bank shall be released and discharged from all liability under this guarantee/undertaking unless a written claim or demand is issued to the Bank on or before 16.03.2023 or the date of expiry of any extension(s) thereof if this guarantee/undertaking has been extended.
- ix. The Bank doth hereby declare that Shri \_\_\_\_\_ (Name of the person signing on behalf of the Bank) who is \_\_\_\_\_ (his designation), is authorised to sign this undertaking on behalf of the Bank and to bind the Bank hereby.

Dated this \_\_\_\_ day \_\_\_\_ of 202\_\_.

Yours faithfully,

Signature: \_\_\_\_\_

Name & Designation: \_\_\_\_\_

Name of the Branch: \_\_\_\_\_

Dated: \_\_\_\_\_

## SCHEDULE 19 ETHANOL SALE PURCHASE AGREEMENT

(On Non-Judicial Stamp Paper as prescribed in the respective State)

Articles of agreement made at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ two thousand \_\_\_\_\_ between INDIAN OIL CORPORATION LIMITED, a Company incorporated Under the Indian Companies Act 1956, being an undertaking of the Govt. of India and having its Registered Office at G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai 400 051 hereinafter referred to as “Buyer” or “IndianOil” of the One part

And

\_\_\_\_\_, a company duly incorporated and validly existing under the laws of ..... with Corporate Identity Number ..... and having its registered office at \_\_\_\_\_ (hereinafter referred to as “XXXX” or “Seller” or “Concessionaire” which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors and permitted assigns of the **Second Part**).

IndianOil and XXXX may hereinafter be individually referred to as a “Party” and collectively as “Parties”.

### WHEREAS:

- a) Pursuant to the Concession Agreement between North DMC, Concessionaire and IndianOil, IndianOil has agreed to purchase Denatured Anhydrous Ethanol as per IS 15464: 2004 to be produced from the Waste to Energy Plant to be set up by the Concessionaire in terms of the Concession Agreement.
- b) The Concession mandates upon the Concessionaire to primarily produce Ethanol and sell the entire quantum of Ethanol produced to IndianOil.

The Parties wish to enter into this Agreement to record the terms and conditions of the sale and purchase of Ethanol.

**NOW, THEREFORE FOR SUFFICIENT AND VALUABLE CONSIDERATION, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:**

WHEREAS the Sellers have agreed with the Buyer for the supply of the said material specified in the said schedule upon certain terms and conditions hereinafter provided and WHEREAS the parties are desirous of reducing to writing the terms and conditions of the contracts on which the Sellers have agreed with the Buyer for the supply of the said Materials. NOW IT IS HEREBY AGREED by and between the parties hereto as under:

### 1. DEFINITIONS:

The following expressions used in these terms and conditions and in the purchase order shall have the meaning indicated against each of these:

- 1.1 BUYER: Buyer means INDIAN OIL CORPORATION LIMITED, a Company incorporated Under the Indian Companies Act 1956, being an undertaking of the Govt. of India and having its Registered Office at G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai 400 051 And shall include its successors and assigns..
- 1.2 SELLER: Seller means the Concessionaire as per the Concession Agreement signed between North DMC, IndianOil & the Concessionaire and shall include its successors and assigns.

- 1.3 INSPECTOR: Person/agency deputed by IndianOil for carrying out inspection, checking/testing of items ordered and for certifying the items conforming to the purchase order specifications.
- 1.4 GOODS/MATERIALS: means any of the articles, materials, machinery, equipment, supplies, drawing, data and other property and all services including but not limited to design, delivery, installation, inspection, testing and commissioning specified or required to complete the order.
- 1.5 CONTRACT means the agreement for supply of goods/ Materials between Buyer and Seller, for a fixed period of time at a rate and quantities specified by the Seller from time to time and communicated via a purchase order.
- 1.6 DELIVERY means the transfer of Ethanol from the Seller in through sealed calibrated tank-trucks (calibrated by statutory agencies and also complying to all statutory regulations tank trucks of capacity 20 (twenty) KL or more contracted by the Buyer at the Point of Sale, with a corresponding issuance of an applicable invoice by the Seller.
- 1.7 POINT OF SALE means the Buyer's Tikri Kalan, Official Fuel Station located at NH 10, Tikri Kalan, New Delhi - 110041.
- 1.8 DELIVERED RATE mentioned in the purchase order shall be inclusive of transportation cost and all the applicable duties, taxes, levies (including but not limited to Octroi Entry tax/ LBT/, Export Fee & Import Fee), apart from basic material cost. The supplier will not be paid anything extra unless it is specified. However purchase tax in lieu of GST wherever applicable will be paid in ₹ per KL, as quoted.
- 1.9 START DATE shall mean the date as mutually decided by the Buyer and Seller under this Agreement and as intimated by the Buyer to the Seller through a notice in writing.
- 1.10 SUPPLY SCHEDULE shall mean the schedule as intimated in writing by the Buyer to the Seller and which may be updated by the Buyer from time to time.

**2. SPECIFICATIONS FOR ANHYDROUS ETHANOL:**

SN	Characteristics	Specification	Methods of Test as per Annex of IS 15464 : 2004
1.	Relative density at 15.6 C / 15.6 C max.	0.7956	A
2.	Ethanol content % by volume at 15.6 C / 15.6 C min.	99.6	B
3.	Miscibility with water	Miscible	C
4.	Alkalinity	Nil	D
5.	Acidity (as CH <sub>3</sub> COOH), mg/l, Max.	30	D
6.	Residue on evaporation, percent by mass, Max.	0.005	E

SN	Characteristics	Specification	Methods of Test as per Annex of IS 15464 : 2004
7.	Aldehyde content (as CH <sub>3</sub> CHO) mg / l, Max	60	F
8.	Copper, mg/kg, Max	0.1	G
9.	Conductivity, S/m, Max	300	H
10.	Methyl alcohol, mg/litre, Max	300	J
11.	Appearance	Clear & bright and free from suspended matter	Visual

#### **DENATURANTS:**

- a. The denaturant should be added with Ethanol in suitable dosage as per IS: 4117 in line with IS-15464 and as per prescribed Excise regulation from time to time conforming to the automotive fuel requirements. Denaturants may be considered as a part of Ethanol and component of the fuel. Ethanol should not have more than 0.4% max impurities including permitted denaturants. These denaturants should not have detrimental effect on specification and stability of Motor Gasoline.
- b. Some of the Prohibited denaturants for Ethanol that cannot be used are Pyroles, Methanol, Turpentine, Ketones, Tar, Benzene, Organo-metallic compounds.
- c. The denaturants should be pre mixed at Ethanol manufacturer end before transporting the Ethanol to the Point of Sale. The name and dosage of the denaturants used should be clearly mentioned on the delivery documents duly endorsed by State Excise Authorities where ever state excise control exists, or otherwise by the authorized person in the distillery

#### **3. SALE AND PURCHASE / PRICE:**

- 3.1 The Seller agrees to produce and supply and the Buyer agrees to purchase Ethanol under the terms of this Agreement. The parties agree that this Agreement set out the Price and the overall terms on the basis of which the Seller shall produce and supply and the Buyer may purchase Ethanol from the Seller. However, any firm obligation to purchase Ethanol by the Buyer shall only be pursuant to the issuance of one of more purchase orders by the Buyer to the Seller setting out therein the relevant quantities and other terms on which the Buyer may purchase Ethanol. Any purchase order issued pursuant hereto shall be read in conjunction with this Agreement and to the extent of any conflict or contradiction between the terms hereof and the terms of the purchase order, the terms of the purchase order shall prevail.



- 3.2 There shall be periodic revision of “ $R_{Eth}$ ” = ₹ \_\_\_ per litre i.e. the cumulative procurement price of Ethanol by IndianOil as given below:
- a. For Ethanol, the revision in weighted avg. purchase price of Ethanol (for the quarter of Ethanol supply year i.e. Dec to Nov period) by Mktg. division, IndianOil at Tikrikalan, New Delhi.
  - b. Delivered rate per litre mentioned shall be inclusive of transportation costs etc.
  - c. Upon completion of every 3 years of the Concession Agreement there will be a review of the pricing mechanism of Ethanol ( $R_{Eth}$ ) based on mutual agreement between the IndianOil and the Concessionaire.
  - d. Applicable Goods & Service Tax shall be paid extra on  $R_{Eth}$ .
- 3.3 Currently the selling price of Ethanol for Q1 of Ethanol Supply year (ESY) i.e. Dec 2020 to Feb 2021 is ₹ 58.20/l.
- 3.4 If the purchase price of Ethanol is increased over a period by 1% (One percentage) or more, and the fixed Ethanol procurement price i.e.  $R_{Eth}$  shall be increased by the same percentage increase.
- 3.5 Till the cumulative increase in the purchase price of Ethanol by Mktg. division, IndianOil at Tikrikalan, New Delhi is less than 1%, there shall be no revision in the price of Ethanol for the bidder.
- 3.6 The price review mechanism of Ethanol to be supplied by Concessionaire to IndianOil shall be undertaken every 3 years from the date of commencement of supplies. In the event that the Parties are unable to agree upon a price revision as aforesaid, the Buyer may in its discretion terminate this Agreement.
- 3.7 Increase/decrease in excise duty, GST on the date of delivery during the scheduled delivery period on finished materials will be on IndianOil’s account. Any upward variation in statutory levies after contractual delivery date shall be to Seller’s account. The distance may be considered as per route advised by Excise Dept. In case excise route does not mention distance but only landmarks, shortest motorable distance between landmarks may be considered. In other cases, shortest motorable distance would be considered.

#### 4. DELIVERY OBLIGATIONS:

- 4.1 Subject to the provisions of this Agreement, the Seller shall sell and make available for Delivery and the Seller shall purchase and take Delivery of the desired quantity and quality of the ethanol at the Point of Sale in accordance with the Supply Schedule and subject to the terms of any purchase orders issued by the Buyer from time to time. The Supplier will effect delivered supply through sealed calibrated tank-trucks (calibrated by statutory agencies and also complying to all statutory regulations) to Buyer’s (IndianOil’s designated Points of Sale as per Buyer’s Supply Schedule and the terms of application purchase orders and the Seller shall ensure desired quantity and quality at the time of delivery.
- 4.2 The Seller shall be given reasonable access to the Point of Sale during normal business hours upon reasonable prior notice; provided that the Seller’s access shall be without disruption to the Buyer’s business operations at the Point of Sale.
- 4.3 The Seller will ensure that no malpractice with respect to ethanol being carried takes place en-route.

4.4 The custody of Material will transfer from Seller to Buyer at the Point of Sale ,subject to quantity & quality checks (specifically prescribed in Clause 11 of this Agreement) .

4.5 Delivery of the Ethanol sold pursuant this agreement shall be delivered to the Point of Sale via tank trucks. The Seller understands and acknowledges that tank truck operations within the premises of the Buyer, including at the Points of Sale are subject to the rules and procedures prescribed by the Buyer from time to time, which rules and procedures shall be deemed to be incorporated herein and shall be binding on the Seller. The rules and procedures of Buyer's locations will be binding for tank-truck and tank-truck crew sent by the Seller.

**5. TAXES AND DUTIES:**

All vendors shall have GST registration in the concerned State and vendor shall quote their GSTN on the Invoice as applicable Seller shall submit the tax invoice to the Buyer. Provisions of TCS will be as applicable from time to time.

**6. IMPORT FEE/ ENTRY TAX/ LBT :**

The Import fee/ Entry Tax & or LBT consideration amount wherever applicable has been included in the delivered rate or the PO rate. However, the actual Import fees/ Entry Tax/ LBT, if paid by IndianOil, will be deducted from the payments due to the Seller.

**7. PAYMENT TERMS:**

- a. At the time of the delivery of Ethanol, the Seller shall within a period of [] days from the completion of delivery of Ethanol, issue a tax invoice, showing description, value, tax charged thereon and such other particulars as may be prescribed in the applicable invoice rules.
- b. Payments for Ethanol receipts will be made on submission of original tax invoice as applicable.
- c. 100% payment shall be made within 21 days from date of receipt and acceptance of Materials at our sites & submission of following documents in triplicate.
- d. Provisions of TCS will be as applicable from time to time.

**8. DOCUMENTS TO BE ACCOMPANIED ALONG WITH ETHANOL TANK TRUCK:**

Department of Food & Public Distribution (DFPD) would provide a mechanism of certification to differentiate Ethanol produced from B Heavy molasses and Sugarcane juice / Sugar/ Sugar syrup route.

**9. PRICE REDUCTION CLAUSE:**

The Supply or Pay clause shall be applicable as the Price Reduction clause. The modalities shall be as under:

- a. The location/shall place monthly indents/schedule for supply of Ethanol by the Seller for the the year and will be given along with the purchase order.
- b. The Seller shall strictly adhere to the Supply Schedule and shall achieve supply performance of min. 85% of monthly indents and min. 95% of indents on quarterly ba-

sis. If the Seller does not achieve min. 85% on monthly basis and 95% on quarterly basis, the Price Reduction Clause will apply.

- c. If the supply falls below 85% during any month and also 95% during a quarter, an amount equivalent to 1% of the basic cost shall be payable by the Seller for
- d. the undelivered quantity ( 85% of the monthly indented quantity less supplied quantity on month to month basis and/or 95% of quarterly indented quantity less supplied quantity, whichever is higher) and these shall be deducted from the payment due to the Sellers or by encashing security deposit.

Offer for higher quantity for next month

- a. In case, any Seller wishes to offer higher quantity for next month as compared to pro-rata monthly indent he needs to submit written offer to concerned location with one month advance notice, in case the location is in a position to receive such higher quantity, the location will give written Revised Indent to the Seller for next month. It may be noted that the higher monthly quantity offered is out of purchase order quantity only.
- b. In case of multiple sellers offering higher quantity, the additional quantity will be distributed in proportion of original indent and The "Supply or Pay" Clause will be applicable as above.
- c. The pro-rata monthly indents as given along with purchase order will, however, be effective for forthcoming months till contracted quantity is exhausted.

This option can be exercised multiple times subject to mutual agreement.

If the Seller is able to supply 100% of quarterly quantity as per purchase order in a quarter, keeping the overall lapse due to TT capacity below 12 KL in the quarterly purchase order quantity/pro-rata purchase order quantity and if Buyer is able to receive the quantity at the same location or any other location, monthly penalty shall not be applicable to the Seller.

Additionally if the Seller is able to supply 100% of the quantity as per purchase order for the entire year including the quantity lapsed during the earlier quarters of the year by the end of the particular year keeping the overall lapse due to TT capacity below 12 KL and if the IndianOil is able to receive the quantity at the same location or any other location, then penalty shall not be applicable to the Seller .

IndianOil's decision in the above cases shall be final.

#### 10. **TRANSIT INSURANCE:**

11. The transit insurance for Ethanol being delivered at the Point of Sale will be in the scope of the Seller. The rates quoted by the Sellers should be inclusive of insurance charges.**QUALITY**

The Buyer/ Buyer's representative will check sample from each compartment of the Tank-Truck to ensure that same meets desired specification (specifically set out in Clause 2 of this Agreement) and thereafter take decision regarding acceptance/ rejection of the truck load. The decision of the Buyer regarding acceptance/ rejection on quality ground will be binding on the Seller.

The Buyer/ Buyer's representative will take dips of tank-trucks on receipt and perform other quantity checks (before & after decanting). In case of any observed shortages/

malpractices, take any of following actions and Supplier will not have objection for the same :

- (i) Return the truck load, if major shortages are observed.
- (ii) Book the shortages as observed and deduct the amount from pending bills of the Seller.

If repeated/ major shortages are observed in truck loads, Buyers will have the right to advise Seller not to send any particular truck, transporter and/or truck crew and Seller will have to abide by the same.

:

## **12. SECURITY DEPOSIT/ BANK GUARANTEE:**

The Seller, who within 15 days of placement of LOI by the Buyer location shall deposit a bank guarantee or demand draft for an amount equivalent to 1% of the LOI value.

This bank guarantee shall be valid (shall remain in force) for guarantee period (as mentioned in the guarantee clause), with an invocation period of six months thereafter. As per RBI guidelines, Structured Financial Messaging System (SFMS) has been adopted by most of the Banks for online bank guarantee confirmations. IndianOil shall be incorporating the same system for bank guarantee verification & confirmations.

bank guarantee shall be given on a non-judicial stamp paper of appropriate value. Bank guarantee format is attached as per Annexure - I.

The Bank Guarantee shall be valid for the entire term of this Agreement and shall be renewed by the Seller thirty (30) days before expiry of the existing Bank Guarantee.

The final or the last Bank Guarantee shall remain valid until six (6) months after the expiry of the Term.

The Buyer shall have the right to enforce and encash the Bank Guarantee without any demur or protest by the Seller or its bank and without any notice to the Seller in the event of:

- e) Agreement is terminated upon breach by the Seller of any provision(s) of this Agreement; or
- f) If the Seller fails to renew or extend or replace the Bank Guarantee at least thirty (30) Days prior to the expiry of the Bank Guarantee (in case such renewal becomes necessary due to any reason whatsoever); or
- g) For any other breach of this Agreement, including any breach for which this Agreement contemplates a right of invocation of the Bank Guarantee.

The Parties agree that the invocation of the Bank Guarantee in the aforesaid circumstances constitutes is not by way of penalty, but towards damages that would be incurred by the Buyer in the circumstances contemplated herein.

## **13. FORCE MAJEURE CLAUSE:**

Definition: The term Force Majeure means any event or circumstance or combination of events or circumstances that affects the performance by the Seller of its obligations pursuant to the terms of this Contract (including by preventing, hindering or delaying such performance), but only if and to the extent that such events and circumstances are not within the Seller's reasonable control and were not reasonably foreseeable and the effects of which the Seller could not have prevented or overcome by acting as a reasonable and prudent person or, by the exercise of reasonable skill and care. Force Majeure events and circumstances shall in any event include the following events and circumstances to the extent they or their consequences satisfy the requirements set forth above in this Clause:

the effect of any element or other act of God, including any storm, flood, drought, lightning, earthquake, tidal wave, tsunami, cyclone or other natural disaster; (ii) fire, accident, loss or breakage of facilities or equipment, structural collapse or explosion; epidemic, plague or quarantine; air crash, shipwreck, or train wreck; acts of war (whether declared or undeclared), sabotage, terrorism or act of public enemy (including the acts of any independent unit or individual engaged in activities in furtherance of a programme of irregular warfare), acts of belligerence of foreign enemies (whether declared or undeclared), blockades, embargoes, civil disturbance, revolution, rebellion or insurrection, exercise of military or usurped power, or any attempt at usurpation of power; (vi) radioactive contamination or ionizing radiation;

Notice and Reporting:

The Seller shall as soon as reasonably practicable after the date of commencement of the event of Force Majeure, but in any event no later than seven (7) days after such commencement date, notify IndianOil in writing of such event of Force Majeure and provide the following information:

- reasonably full particulars of the event or circumstance of Force Majeure and the extent to which any obligation will be prevented or delayed; such date of commencement and an estimate of the period of time required to enable the Seller to resume full performance of its obligations; and all relevant information relating to the Force Majeure and full details of the measures the Seller is taking to overcome or circumvent such Force Majeure.
- The Seller shall, throughout the period during which it is prevented from performing, or delayed in the performance of, its obligations under this Agreement, upon request, give or procure access to examine the scene of the Force Majeure including such information, facilities and sites as the other Party may reasonably request in connection with such event. Access to any facilities or sites shall be at the risk and cost of the Party requesting such information and access.

Mitigation Responsibility:

The Seller shall use all reasonable endeavours, acting as a reasonable and prudent Person, to circumvent or overcome any event or circumstance of Force Majeure as expeditiously as possible, and relief under this Clause shall cease to be available to the Seller claiming Force Majeure if it fails to use such reasonable endeavours during or following any such event of Force Majeure.

- (i) The Seller shall have the burden of proving that the circumstances constitute valid grounds of Force Majeure under this Clause and that it has exercised reasonable diligence efforts to remedy the cause of any alleged Force Majeure. The Seller

shall notify the Buyer when the Force Majeure has terminated or abated to an extent which permits resumption of performance to occur and shall resume performance as expeditiously as possible after such termination or abatement.

Consequences of Force Majeure. Provided that the Seller has complied and continues to comply with the obligations of this Clause and subject to the further provisions:

- (i) the obligations of the Parties under this Contract to the extent performance thereof is prevented or impeded by the event of Force Majeure shall be suspended and the Parties shall not be liable for the non-performance thereof for the duration of the period of Force Majeure; and
- (ii) the time period(s) for the performance of the obligations of the Parties under this Agreement to the extent performance thereof is prevented or impeded by the event of Force Majeure shall be extended for the duration of the relevant period of Force Majeure except as provided herein.

Force Majeure Events Exceeding 60 Days

- (i) If an event or series of events (alone or in combination) of Force Majeure occur, and continue for a period in excess of 60 consecutive days, then Buyer shall have the right to terminate this agreement, whereupon the Parties shall meet to mitigate the impediments caused by the Force Majeure event.

#### **14. Representations and Warranties :**

These representations and warranties shall survive the execution and delivery of this Agreement.

##### **14.1 The Seller represents and warrants to the Buyer that:**

- (a) The Seller is and shall continue to be in compliance with all applicable laws.
- (b) The Seller has obtained all licenses, permissions, consents, approvals and authorizations from any government/statutory authorities required under law, and all management and shareholder approvals necessary to enable the Seller to perform its obligations under this Agreement and all such necessary approvals, licenses, permissions, consents, approvals and authorizations are valid and effective, and covenants that the same shall remain valid and effective through the Term and shall obtain any additional approvals, licenses, permissions, consents and authorizations that are required to enable the Buyer to perform its obligations under this Agreement.
- (c) The Seller and Project Facilities (as defined under the Concession Agreement) is not under any liquidation, court receivership, or any similar legal proceedings nor any other steps have been taken or notice received for its winding-up or dissolution.
- (d) The Seller has in place /shall have the requisite infrastructure, facilities to perform its obligations under the Agreement, and shall maintain the adequacy of its infrastructure during the period of this Agreement, without any cost to Buyer.
- (e) The Seller is the rightful owner of or has sufficient right, title and interest in Project Facilities (as defined under the Concession Agreement), and tank trucks used for transportation of Ethanol to the Point of Sale.
- (f) The Seller has clear title to the Ethanol being sold under this Agreement and the Buyer shall acquire the same, free from any encumbrances.

- (g) The Seller shall supply and tender for delivery at the Point of Sale, Ethanol in the quantities, at the times and at the prices determined in accordance with, and subject to, the terms and conditions of this Agreement and the purchase orders, and that it has necessary ability to do so.
- (h) There is no restriction or impediment preventing the Seller from selling Ethanol to the Buyer and from performing its obligations hereunder.
- (i) The Seller shall not without the prior written consent of the Buyer, undertake or allow any 'Change in Constitution'. 'Change in Constitution' shall mean; (a) change in sole proprietor of a sole proprietorship, (b) change in partner(s) of partnership firm or a limited liability partnership, (c) change in member of a one person company, (d) change in shareholder of a private limited company or unlisted public limited company, (e) change in 'promoter' or any member of the 'promoter group' of a listed public limited company, (f) change in committee representative (person identified as 'committee representative' in case of a registered co-operative society at the time of making an application for appointment as CS) of registered co-operative society, or (g) change in karta of a hindu undivided family, or (h) change in legal status.
- (j) The Seller shall, within 15 days from the date of execution of Financing Documents, provide to the Buyer the details of Lenders along with a copy of the Financing Documents.
- (k) The Ethanol sold by the Seller to the Buyer under this Agreement shall be free from any encumbrances or charges.
- (l) The Seller further represents and warrants to the Buyer that:
  - (g) it is duly incorporated and validly existing under the laws of its place of incorporation and has the power, capacity and authority to own its assets and to conduct its business as currently conducted and as contemplated herein;
  - (h) this Agreement has been duly executed by it and is a legal, valid and binding document enforceable against it in accordance with its terms;
  - (i) the execution of this Agreement does not violate any law, or any document constituting the Party, or any permit granted to such Party or any agreement to which such Party is a party;
  - (j) it shall always act as a reasonable and prudent operator;
  - (k) it confirms that all its representations and warranties set forth in this Agreement are independent of each other and true, complete and correct in all respects at the time as of which such representations and warranties were made or deemed made, and shall continue to have full effect during the period of this Agreement; and
  - (l) It has the necessary power to perform its respective obligations under this Agreement.

**15. Indemnity and Liability:**

- a. The Seller shall at all times be liable and responsible for all losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer, its directors, employees, and representatives due to the quality of Ethanol not meeting the Specifications, non-compliance of statutory duty or non-payment of taxes by the Seller.

- b. The Seller shall indemnify and keep indemnified Buyer for all losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer, its directors, employees, and representatives on account of use of or damage due to tank truck and/or other facilities brought by Seller at the Point of Sale unless such losses, damages, claims, actions, proceedings, costs, charges and expenses arise due to gross negligence of the Buyer.
- c. The Seller shall indemnify and keep indemnified Buyer and its employees, officers and directors against any losses, damages, claims, actions, proceedings, costs, charges and expenses that may be suffered or incurred by the Buyer on account of loss or injury to any person in connection with performance of this Agreement, unless such losses, damages, claims, actions, proceedings, costs, charges and expenses arise due to gross negligence of the Buyer.
- d. The indemnity provisions herein contained shall survive the expiry or termination of this Agreement.
- e. Unless otherwise provided in this Agreement, neither Party shall be liable for any remote, consequential, punitive and indirect loss or damage sustained by it as a result of any act or omission in the course of or in connection with the performance of this Agreement.

**16. LIABILITY CLAUSE:**

In case where it is necessary for employees or representatives of the Seller to go upon the premises of owner, Seller agrees to assume the responsibility for the proper conduct of such employees/representatives while on said premises and to comply with all applicable Workmen's Compensation Law and other applicable Government Regulations and Ordinances and all plant rules and regulations particularly in regard to safety precautions and fire hazards. If this order requires Seller to furnish labour at site, such Seller's workmen or employees shall under no circumstances be deemed to be in owners employment and Seller shall hold himself responsible for any claim or claims which they or their heirs, dependent or personal representatives, may have or make, for damages or compensation for anything done or committed to be done, in the course of carrying out the work covered by the purchase order, whether arising at owners premises or elsewhere and agrees to indemnify the owner against any such claims, if made against the owner and all costs of proceedings, suit or actions which owner may incur or sustain in respect of the same.

**17. COMPLIANCE OF REGULATIONS:**

Seller warrants that all goods/Materials covered by this order have been produced, sold, dispatched, delivered and furnished in strict compliance with all applicable laws, regulations, labour agreement, working condition and technical codes and statutory requirements as applicable from time to time. The Seller shall ensure compliance with the above and shall indemnify owner against any actions, damages, costs and expenses of any failure to comply as aforesaid.

**18. EXCLUSIVITY**

Subject to the terms and conditions of this Agreement, during the Term of this Agreement, the Seller shall not enter into any agreement with any third party including other Oil Marketing Companies (OMCs) pertaining to supply of Ethanol. The Seller agrees that it shall sell 100% of the Ethanol produced by it under the Concession



Agreement to the Buyer (or to nominees of the Buyer). The Seller agrees that the Buyer shall not be subject to any restrictions as to exclusivity.

**19. RECOVERY OF SUMS DUE:**

Whenever, any claim against Seller for payment of a sum of money arises out of earlier contracts and/or under the current contract, the owner shall be entitled to recover such sums from any sum then due or when at any time thereafter may become due from the Seller under this or any other contract with the owner and should this sum be not sufficient to cover the recoverable amount of claim(s), the Seller shall pay to Buyer on demand the balance remaining due. All outstanding payments w.r.t. past EOIs will be recovered from vendors running bills/BG if not settled by the Seller; unless the matter is sub-judice.

**20. REJECTION, REMOVAL OF REJECTED GOODS AND REPLACEMENT:**

In case the testing and inspection at any stage by Inspectors reveal that the equipment, materials and workmanship do not comply with specification and requirements, the same shall be removed by the Seller at his/its own expense and risk, within the time allowed by the owner. The owner shall be at liberty to dispose off such rejected goods in such manner as he may think appropriate. In the event the vendor fails to remove the rejected goods within the period as aforesaid, all expenses incurred by the owner for such disposal shall be to the account of the vendor. The freight paid by the owner, if any, on the inward journey of the rejected materials shall be reimbursed by the Seller to the owner before the rejected materials are removed by the Seller. The Seller r will have to proceed with the replacement of the equipment or part of equipment without claiming any extra payment if so required by the owner. The time taken for replacement in such event will not be added to the contractual delivery period.

**21. NON-WAIVER:**

Failure of the Owner to insist upon any of the terms or conditions incorporated in the purchase order or failure or delay to exercise any rights or remedies herein, or by law or failure to properly notify Seller in the event of breach, or the acceptance of or payment of any goods hereunder or approval of design shall not release the Seller and shall not be deemed a waiver of any right of the Owner to insist upon the strict performance thereof or of any of its or their rights or remedies as to any such goods regardless of when such goods are shipped, received or accepted nor shall any purported oral modification or revision of the order by IOCL (NAME OF THE OIL COMPANY) act as waiver of the terms hereof. Any waiver to be effective must be in writing. Any lone incident of waiver of the any condition of this agreement by IOCL (NAME OF THE OIL COMPANY) shall not be considered as a continuous waiver or waiver for other condition by IOCL (NAME OF THE OIL COMPANY).

**22. CANCELLATION:**

Buyer reserves the right to cancel the contract/purchase order or any part thereof through a written notice to the Seller if-

- a) The Seller fails to comply with the terms of this purchase order/contract;
- b) The Seller becomes bankrupt or goes into liquidation;
- c) The Seller fails to deliver the goods on time and/or replace the rejected;goods

promptly.

- d) The Seller makes a general assignment for the benefit of creditors;
- e) A receiver is appointed for any of the property owned by the Seller .

Upon receipt of the said cancellation notice, the Seller shall discontinue all work on the purchase order matters connected with it. Buyer in that event will be entitled to procure the requirement in the open market and recover excess payment over the vendors agreed price if any, from the Seller and also reserving to itself the right to forfeit the security deposit if any, made by the vendor against the contract. The Seller is aware that the said goods are required by Buyer for the ultimate purpose of materials production and that non-delivery may cause loss of production and consequently loss of profit to the Buyer. In this event of the Buyer exercising the option to claim damages for non delivery other than by way of difference between the market price and the contract price, the Seller shall pay to the Buyer, fair compensation to be agreed upon between the Buyer and the Seller. The provision of this clause shall not prejudice the right of Buyer from invoking the provisions of Price Reduction Clause

Seller shall be entirely responsible for the execution of the contract in all respects in accordance with the terms and conditions as specified in the document.

Timely supplies are the essence of the contract. Applications for necessary NOCs/Permits/Import/Export permits etc will be made available by the Buyer. It will be the responsibility of the Seller to arrange for all the approvals/clearances/permits for supply of ethanol to the Point of Supply as per the Clause 4 " of this Contract .

### **23. ILLEGAL GRATIFICATIONS:**

Any bribe, commission, gift or advantage given, promised or offered by the Seller or by any body on his behalf, to the Buyer or any person on his behalf either friend or relative, in relation to obtaining or execution of this particular or any other contract/(s) with the Buyer for showing favour or disfavour to any person in relation to this particular or any other contract/s as aforesaid shall subject the Seller to the cancellation of the particular and / or any other all contracts entered into with them by the Buyer and also to payment of any loss or damage resulting from any such cancellation to the like extent provided in the Agreement.

Any dispute or difference of opinion arising in respect of either the interpretation effect or application of this particular condition of the Contract or of the amount recoverable hereunder from the Seller shall be decided by Arbitrator and his decision shall be final and conclusive.

### **24. LAW GOVERNING THE CONTRACT:**

This Agreement shall be governed and construed in accordance with the laws of India including without limitation, the relevant Central and State acts and the rules, regulations and notifications issued and amended there under from time to time; and subject to Clause 25 below, the courts of Delhi shall have exclusive jurisdiction in relation to all disputes arising from or relating to the Agreement.

### **25. DISPUTE RESOLUTION**

- a. A Dispute shall be deemed to have arisen under this Agreement, when either Party notifies the other Party of any issue, difference or dispute in writing to that effect. ("Dispute").

- b. Any Dispute arising out of this Agreement shall be resolved amicably through discussions in good faith with a view to expeditiously resolve such Dispute. In the event the Dispute cannot be resolved amicably within a period of thirty (30) days from the date of its occurrence, either Party may refer the Dispute for resolution through conciliation in accordance with provisions of Indian Oil Conciliation Rules, if applicable.
- c. In the event of non-resolution of Dispute by conciliation within a period of sixty (60) days (or any period thereafter, which the Parties may agree to mutually extend) or non-applicability of IndianOil Conciliation Rules, the Parties agree to settle the Dispute by arbitration in accordance with the Rules of SCOPE Forum of Conciliation and Arbitration (SFCA). The venue for arbitration shall be New Delhi and the language of arbitration shall be English. The arbitrator shall pass a reasoned award and the award of arbitrator shall be final and binding on the Parties.
- d. When a matter is referred to resolution under this Clause 25, it shall not prevent or constitute a valid excuse for either Party from performing their respective obligations (to the extent possible) under this Agreement.

**26. CONFIDENTIALITY**

The Parties agree that the provision of Article ... pertaining to Confidentiality under the Concession Agreement shall apply mutatis mutandis to this Agreement

**27. AGREEMENT:**

A copy of the General Instruction to Bidder, Definitions, Special conditions and Amendments in the Bid document is deemed to be incorporated by reference into this agreement & the parties have studied and agreed to be bound by the same by signing this agreement.

Both the parties acknowledge and agree that this agreement is executed in pursuance to the Govt. of India National Policy on Biofuels / Ethanol blending programme and this agreement may be amended in line with any revisions / amendments / modifications / instructions issued by the Govt. of India in this regard.

This agreement is subject to the terms and conditions stipulated in our schedule and or following purchase order / LOI and subsequent amendments, if any, issued from time to time.

IN WITNESS WHEREOF the Parties hereto have executed these presents on the day and year first hereinabove mentioned.

Indian Oil Corporation Limited

Concessionaire

(Authorized Signatory)

Name :

Designation :

Date :

Place: New Delhi

(Authorized Signatory)

Name :

Designation :

Date :

Place: New Delhi

Witnesses:

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Witnesses:

1.

2.

**FORM OF BANK GUARANTEE FOR CBG SUPPLY PERFORMANCE SECURITY  
(ON NON-JUDICIAL STAMP PAPER OF APPROPRIATE VALUE)**

BG NO:

DATED:

VALID UP TO:

CLAIM EXPIRY DATE:

To,

INDIAN OIL CORPORATION LIMITED

Alternate Energy & Sustainable Development,

5th Floor, Core-6, SCOPE Complex,

New Delhi-110003.

Dear Sirs,

In consideration of Indian Oil Corporation Limited (Alternate Energy & Sustainable Development, Planning & Business Development Division) (hereinafter called "the Corporation" which expression shall include its successors and assigns), having awarded certain work for and relative to Supply of Ethanol to IndianOil under Concession Agreement signed with \_\_\_\_\_ (Name and address of the Contractor) (hereinafter called "the Contractor" which expression shall include its successors and assigns), upon certain terms and conditions inter-alia mentioned in the Corporation's Letter of Intent No. \_\_\_\_\_ dated \_\_\_\_\_ read with the relative Tender Documents (hereinafter collectively called "the Contract", which expression shall include any formal contract entered into between the Corporation and the Contractor in supersession of the said Letter of Intent and all amendments and/or modifications in the contract) inclusive of the condition that the Corporation may accept a Bank Guarantee/Undertaking of a Scheduled Bank in India in lieu of Cash Deposit of the Initial Security Deposit as provided for in Conditions of Contract (Bank Guarantee) forming part of the said Letter of Intent.

We \_\_\_\_\_ (Name of the Bank), a body registered/constituted under the \_\_\_\_\_ Act, having our Registered Office/Head Office at \_\_\_\_\_ (hereinafter called "the Bank" which expression shall include its successors and assigns), at the request of the Contractor and with the intent to bind the Bank and its successors and assigns, do hereby unconditionally and irrevocably undertake to pay to the Corporation at New Delhi forthwith on first demand without protest or demur or proof or satisfaction and without reference to this guarantee up to an aggregate limit of ₹ [insert].

AND the Bank doth hereby further agrees as follows :-

- i. This Guarantee/Undertaking shall be a continuing guarantee and shall remain valid and irrevocable for all claims of the Corporation upon the Bank made up to the midnight of ..... provided that the Bank shall upon the written request of the Corporation made upon the Bank at any time within 6 (six) months from the said date extend the validity of the Bank Guarantee by a further 6 (six) months so as to enable claims to be made under this Guarantee by a further 6 (six) months from the said date with the intent that the validity of this Guarantee shall automatically stand extended by a further 6 (six) months upon such request by the Corporation.

- ii. The Corporation shall have the fullest liberty without reference to the Bank and without affecting in any way the liability of the Bank under this Guarantee/Undertaking, at any time and/or from time to time to amend or vary the Contract and/or any of the terms and conditions thereof or relative to the said Initial Security Deposit or to extend time for performance of the said Contract in whole or part or to postpone for any time and/or from time to time any of the obligations of the Contractor and/or the powers or remedies exercisable by the Corporation against the Contractor and either to enforce or forbear from enforcing any of the terms and conditions of or governing the said Contract or the said Initial Security Deposit or the securities available to the Corporation or any of them and the Bank shall not be released from its liability under these presents and the liability of the Bank hereunder shall remain in full force and effect notwithstanding any exercise by the Corporation of the liberty with reference to any or all the matters aforesaid or by reason of time being given to the Contractor or any other forbearance, act or omission on the part of the Contractor or of any indulgence by the Corporation to the Contractors or of any other act, matter or thing whatsoever which under the law relating to sureties or otherwise which could but for the provision have the effect of releasing the Bank from its liability hereunder or any part thereof and the Bank hereby specifically waives any and all contrary rights whatsoever.
- iii. The obligations of the Bank to the Corporation hereunder shall be as principal to principal and shall be wholly independent of the contract and it shall not be necessary for the Corporation to proceed against the Contractor before proceeding against the Bank and the Guarantee/Undertaking herein contained shall be enforceable against the Bank notwithstanding the existence of any other Guarantee/undertaking or security for any indebtedness of the Contractor to the Corporation (including relative to the said Security Deposit) and notwithstanding that any such undertaking or security shall at the time when claim is made against the Bank or proceedings taken against the Bank hereunder, be outstanding or unrealised.
- iv. The amount stated by the Corporation in any demand, claim or notice made with reference to this guarantee shall as between the Bank and the Corporation for the purpose of these presents be conclusive of the amount payable by the Bank to the Corporation hereunder.
- v. The liability of the Bank to the Corporation under this Guarantee/undertaking shall remain in full force and effect notwithstanding the existence of any difference or dispute between the Contractor and the Corporation, the Contractor and the Bank and/or the Bank and the Corporation or otherwise howsoever touching or affecting these presents for the liability of the Contractor to the Corporation, and notwithstanding the existence of any instructions or purported instructions by the Contractor or any other person to the Bank not to pay or for any cause withhold or defer payment to the Corporation under these presents, with the intent that notwithstanding the existence of such difference, dispute or instruction, the Bank shall be and remain liable to make payment to the Corporation in terms hereof.
- vi. The Bank shall not revoke this undertaking during its currency except with the constitution of the Contractor or the Bank or the Corporation shall not discharge the Bank's liability hereunder.
- vii. Without prejudice to any other mode of service, a demand or claim or other communication may be transmitted by fax. If transmitted by fax, the transmission shall be complete as soon as acknowledged by bank.

viii. Notwithstanding anything contained herein:

- a. The Bank's liability under this guarantee/undertaking shall not exceed ₹ [insert];
- b. This guarantee/undertaking shall remain in force up to ..... and any extension(s) thereof; and
- c. The Bank shall be released and discharged from all liability under this guarantee/undertaking unless a written claim or demand is issued to the Bank on or before [insert] or the date of expiry of any extension(s) thereof if this guarantee/undertaking has been extended.

ix. The Bank doth hereby declare that Shri \_\_\_\_\_ (Name of the person signing on behalf of the Bank) who is \_\_\_\_\_ (his designation), is authorised to sign this undertaking on behalf of the Bank and to bind the Bank hereby.

Dated this \_\_\_\_ day \_\_\_\_ of 202\_\_.

Yours faithfully,

Signature: \_\_\_\_\_

Name & Designation: \_\_\_\_\_

Name of the Branch: \_\_\_\_\_

Dated: \_\_\_\_\_