PUBLIC PRIVATE PARTNERSHIP

In

DEVELOPMENT AND OPERATIONS OF 4.0 MMT CAPACITY COMMERCIAL CUM STRATEGIC PETROLEUM RESERVES INCLUDING DEDICATED SPM AND ASSOCIATED ON-SHORE AND OFF-SHORE PIPELINES ON DBFOT (DESIGN, BUILD, FINANCE, OPERATE AND TRANSFER) BASIS

At

CHANDIKHOL, ODISHA, INDIA

CONCESSION AGREEMENT

_____ [Insert Date]

INDIAN STRATEGIC PETROLEUM RESERVES LIMTIED (ISPRL)

(A wholly-owned subsidiary of OIDB)

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Date: 2026.10.31 11:19:09 IST

CONTENTS

Part I
Preliminary **11**

Recitals **12**

1. Definitions and Interpretation **14**
1.1 Definitions 14
1.2 Interpretations 14
1.3. Measurements and arithmetic conventions 17
1.4 Priority of agreements, clauses and schedules 17

Part II
The Concession **18**

2. Scope of the Project **19**

3. Grant of Concession **20**
3.1 The Concession 20
3.2 Concession Period 21

4. Conditions Precedent **22**
4.1 Conditions Precedent 22
4.2 Damages for delay by the Authority 24
4.3 Damages for delay by the Concessionaire 24
4.4 Commencement of the Concession Period 24
4.5 Termination upon delay 24

5. Obligations of the Concessionaire **26**
5.1 General obligations of the Concessionaire 26
5.2 Obligations relating to Project Agreements 28
5.3 Obligations relating to Change in Ownership 29
5.4 Obligations relating to management of the Concessionaire 30
5.5 Obligations relating to employment of foreign nationals 31
5.6 Obligations relating to the single point mooring and onshore and offshore pipeline 31
5.7 Obligations relating to employment of trained personnel 32
5.8 Obligations relating to medical aid 32
5.9 Sole purpose of the Concessionaire 32
5.10 Adherence to Standards 32
5.11 Obligations relating to Taxes 33
5.12 Obligations relating to Information 33
5.13 Maintenance of Secrecy 33
5.14 Obligations relating to branding of the Project 33
5.15 Intellectual Property Permits 34
5.16 Obligations relating to noise control 34

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

5.17 Obligations relating to other charges 34

6. Obligations of the Authority 35
6.1 General Obligations of the Authority 35
6.2 Obligations relating to refinancing 36

7. Representations, Warranties and Undertakings 37
7.1 Representations, warranties and covenants of the Concessionaire 37
7.2 Representations, warranties and covenants of the Authority 39
7.3 Disclosure 39

8. Disclaimer 41

Part III

Development and Operation 42

9. Performance Security 43
9.1 Performance Security 43
9.2 Appropriation of Performance Security 43
9.3 Release of Performance Security 44
9.4 Deemed Performance Security 44
9.5 Appropriation of Deemed Performance Security 44
9.6 References to Performance Security 44

10. Access to Project Site 46
10.1 The Project Site 46
10.2 Access to the Project Site 46
10.3 Procurement of the Project Site 47
10.4 Project Site to be free from Encumbrances 48
10.5 Protection of Project Site from encroachments 48
10.6 Special or temporary Right of Way 48
10.7 Access to the Authority, Independent Expert 48
10.8 Geological and archaeological finds 48
10.9 Permitted Use 49

11. Utilities and Associated Roads 50
11.1 Existing utilities and roads 50
11.2 Shifting of obstructing utilities 50
11.3 Felling of Trees 50

12. Development of Project 51
12.1 Obligations relating to Development Works 51
12.2 Drawings 51
12.3 Construction and Development of Project 52
12.4 Tests upon Completion 53
12.5 Safety certification prior to Project COD 53
12.6 Safe for Operations 53

13. Monitoring of Development Works 55

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

	13.1	Monthly progress reports	55
	13.2	Inspection	55
	13.3	Tests	55
	13.4	Delays during construction	56
	13.5	Suspension of unsafe Development Works	56
	13.6	Video Recording	57
14.	**Completion Certificate**		**58**
	14.1	Provisional Certificate	58
	14.2	Completion Certificate	58
	14.3	Withholding of Provisional or Completion Certificate	59
	14.4	Deemed Completion Certificate	59
	14.5	Rescheduling of Tests	59
15.	**Entry into Commercial Service**		**60**
	15.1	Commercial Operation Date	60
	15.2	Delay in achieving Project COD	60
16.	**Change of Scope**		**61**
	16.1	Change of Scope	61
	16.2	Procedure for Change of Scope	61
	16.3	Payment for Change of Scope	62
	16.4	Restrictions on certain works	62
	16.5	Power of the Authority to undertake works	63
	16.6	Reduction in Scope of the Project	63
17.	**Operation and Maintenance**		**64**
	17.1	O&M obligations of the Concessionaire	64
	17.2	Maintenance Requirements	65
	17.3	Maintenance Manual	65
	17.4	Maintenance Programme	65
	17.5	Authority's right to take remedial measures	66
	17.6	Overriding powers of the Authority	66
	17.7	Restoration of loss or damage to the Project	67
	17.8	Modifications of the Project	67
	17.9	Excuse from performance of obligations	67
	17.10	De-commissioning due to Emergency	67
	17.11	Unscheduled Maintenance	68
	17.12	Breakdowns and accidents	68
18.	**Environment, Health and Safety Requirements**		**69**
	18.1	EHS Requirements	69
	18.2	Expenditure on EHS Requirements	69
	18.3	Environmental Damages	69
	18.4	Damages for breach of EHS Requirements	69
19.	**Monitoring of Operation and Maintenance**		**70**
	19.1	Annual Status Reports	70
	19.2	Inspection	70

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

	19.3	Tests	70
	19.4	Remedial measures	70
20.	**Safety and Security**		**71**
	20.1	Security obligations of the Concessionaire	71
21.	**Revenue Generating Activities**		**72**
	21.1	Use of Non-Mandatory Strategic Portion	72
	21.2	Use of Ancillary Facilities	72
	21.3	Use of Debris	73
	21.4	Available Space	73
22.	**Oil Shortage Event**		**75**
	22.1	Oil Shortage Notification	75
	22.2	Drawdown Requirement	75
	22.3	Payment for the Drawdown	75
23.	**Key Performance Indicators**		**76**
	23.1	Key Performance Indicators	76
24.	**Independent Expert**		**77**
	24.1	Independent Expert	77
	24.2	Duties and Functions	77
	24.3	Authorised signatories	77
	24.4	Remuneration	77
	24.5	Termination	78
	24.6	Dispute Resolution	78
	24.7	Interim arrangement	78
Part IV			
Financial Covenants			**79**
25.	**Financial Close**		**80**
	25.1	Financial Close	80
	25.2	Termination due to failure to achieve Financial Close	80
26.	**Grant**		**82**
	26.1	Grant	82
	26.2	Support during Development Obligations	82
	26.3	Premium	82
27.	**Concession Fee**		**83**
	27.1	Concession Fee	83
	27.2	Additional Concession Fee	83
	27.3	Payment of Concession Fee	84
	27.4	Delayed Payments	84
28.	**Escrow Account**		**85**
	28.1	Escrow Account	85

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

28.2 Deposits into Escrow Account 85
28.3 Withdrawals during Concession Period 85
28.4 Withdrawals upon Termination 86

29. Insurance 88
29.1 Insurance during Concession Period 88
29.2 Insurance Cover 88
29.3 Notice to the Authority 88
29.4 Evidence of Insurance Cover 89
29.5 Remedy for failure to insure 89
29.6 Waiver of subrogation 89
29.7 Concessionaire's waiver 89
29.8 Application of insurance proceeds 90
29.9 Compliance with conditions of insurance policies 90

30. Accounts And Audit 91
30.1 Audited accounts 91
30.2 Appointment of Auditors 91
30.3 Certification of claims by Statutory Auditors 92

Part V
Force Majeure and Termination 93

31. Force Majeure 94
31.1 Force Majeure 94
31.2 Non-Political Event 94
31.3 Indirect Political Event 95
31.4 Political Event 95
31.5 Duty to report Force Majeure Event 96
31.6 Effect of Force Majeure Event on the Concession 97
31.7 Allocation of costs arising out of Force Majeure 97
31.8 Termination Notice for Force Majeure Event 98
31.9 Termination Payment for Force Majeure Event 98
31.10 Dispute Resolution 98
31.11 Excuse from performance of obligations 99
31.12 Relief for Unforeseen Events 99

32. Compensation for breach of Agreement 101
32.1 Compensation for default by the Concessionaire 101
32.2 Compensation for default by the Authority 101
32.3 Extension of Concession Period 101
32.4 Compensation to be in addition 101
32.5 Mitigation of costs and damage 101

33. Suspension of Concessionaire's Rights 102
33.2 Suspension upon Concessionaire Default 102
33.2 Authority to act on behalf of Concessionaire 102
33.3 Revocation of Suspension 102
33.4 Substitution of Concessionaire 103

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

33.5 Termination 103

34. Termination 104
34.1 Termination for Concessionaire Default 104
34.2 Termination for Authority Default 106
34.3 Termination for failure to comply with Oil Shortage Notification 107
34.4 Termination Payment 107
34.5 Certain limitations on Termination Payment 108
34.6 Extension of Concession Period 109
34.7 Other rights and obligations of the Authority 109
34.8 Survival of rights 110

35. Divestment of Rights and Interest 111
35.1 Divestment Requirements 111
35.2 Inspection and cure 112
35.3 Cooperation and assistance on transfer of Project 112
35.4 Vesting Certificate 113
35.5 Divestment costs 113

36. Defects Liability after Termination 114
36.1 Liability for Defects after Termination 114
36.2 Inspection by Independent Expert 114

Part VI
Other Provisions 115

37. Assignment and Charges 116
37.1 Restrictions on assignment and charges 116
37.2 Permitted assignment and charges 116
37.3 Substitution Agreement 116
37.4 Assignment by the Authority 117
37.5 Mortgage of Project Assets 117

38. Change in Law 119
38.1 Increase in costs 119
38.2 Reduction in costs 119
38.3 Protection of NPV 120
38.4 Restriction on cash compensation 120

39. Liability and Indemnity 121
39.1 General Indemnity 121
39.2 Indemnity by the Concessionaire 121
39.3 Notice and contest of claims 122
39.4 Defence of claims 122
39.5 No consequential claims 123
39.6 Limitation of Liability 124
39.7 Survival on Termination 124

40. Rights To The Site 125

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

40.1 Rights to the Project Site 125
40.2 Access rights of the Authority and others 125
40.3 Property taxes 125
40.4 Restriction on sub-letting 125

41. Dispute Resolution 126
41.1 Dispute Resolution 126
41.2 Conciliation 126
41.3 Arbitration 126
41.4 Adjudication by Regulatory Authority or Commission 127

42. Disclosure 128
42.1 Disclosure of Specified Documents 128
42.2 Disclosure of Documents relating to safety 128
42.3 Withholding disclosure of Protected Documents 128

43. Miscellaneous 129
43.1 Governing law and jurisdiction 129
43.2 Waiver of immunity 129
43.3 Depreciation and interest 129
43.4 Delayed Payments 129
43.5 Waiver 130
43.6 Liability for review of documents and drawings 130
43.7 Exclusion of implied warranties 130
43.8 Survival 131
43.9 Entire Agreement 131
43.10 Severability 131
43.11 No partnership 131
43.12 Third Parties 132
43.13 Successors and assigns 132
43.14 Notices 132
43.15 Language 133
43.16 Confidentiality 133
43.17 Stamp Duty 133
43.18 Counterparts 133

44. Definitions 134
44. Definitions 134

Schedules
Schedule A **144**
Schedule B **142**
Schedule C **152**
Schedule D **159**
Schedule E **155**
Schedule F **156**
Schedule G **164**
Schedule H **166**

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

Schedule I	**168**
Schedule J	**170**
Schedule K	**170**
Schedule L	**178**
Schedule M	**182**
Schedule N	**175**
Schedule O	**189**
Schedule P	**190**
Schedule Q	**201**
Schedule R	**203**
Schedule S	**204**
Schedule T	**206**
Schedule U	**207**

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

CONCESSION AGREEMENT

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

Part I
PRELIMINARY

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CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** ("**Agreement**") is entered into on this [●], 2026 at [●]

BETWEEN

1. **INDIAN STRATEGIC PETROLEUM RESERVES LIMITED** a subsidiary of Oil Industry Development Board (**OIDB**) and having its registered office at 301, World Trade Centre, Babar Road, New Delhi-110 001, represented by its [●] and having its principal offices at OIDB Bhawan, 3rd Floor, Plot No.2, Sector-73, Noida-201301 (hereinafter referred to as the "**Authority**" or "**ISPRL**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of One Part;

AND

2. _____**LIMITED**, a company incorporated under the provisions of the Companies Act, 2013 with its registered office at _____, India (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

The Authority and the Concessionaire shall collectively be referred to as "**Parties**" and individually as a "**Party**".

WHEREAS:

(A) The Authority intends to undertake development of the Commercial Cum Strategic Petroleum Reserve (*as defined hereinafter*), single point mooring and onshore and offshore pipeline connectivity to the Commercial Cum Strategic Petroleum Reserve on Design, Build, Finance, Operate and Transfer basis ("**DBFOT**") at Chandikhol, Odisha ("**Project**") on a public private partnership mode.

(B) The Authority has acquired land measuring 400 (four hundred) acres situated at Chandikhol, Odisha and intends to develop the Commercial Cum Strategic Petroleum Reserve on the Project Site (*as defined hereinafter*) on a DBFOT basis in accordance with the terms and conditions set forth in this Agreement.

(C) The Authority had accordingly invited proposals under its [Request for Proposal No. [●][1] dated [●] (the "**Request for Proposal**" or "**RFP**") for selection of bidders for undertaking the Project. Pursuant to the terms of the RFP, bids were received by the Authority on or before [●]. {The Selected Bidder/consortium comprising [●] and [●] (collectively the "Consortium" [●] with [●] as its lead member (the "**Lead Member**") was one of the bidders who had submitted its bid for the Project (the "**Bid**").}[2]

(D) Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [●] dated [●] (the "**Letter of Award**" or **"LOA**") to the Selected Bidder, *inter- alia*,

[1] To be inserted upon issuance of the RFP.
[2] To be appropriately modified once the Bidder is selected under the RFP process.

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Date: 2026.10.31 11:19:09 IST

requiring it to incorporate a private limited company under the Companies Act (*as defined hereinafter*) and execution of this Agreement within 30 (thirty) days of the date of issue thereof.

(E) The {Selected Bidder/Consortium} has since incorporated the Concessionaire and has requested the Authority, by its [letter dated [●][3], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium} including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the {Selected Bidder/Consortium} for the purposes hereof.

(F) The Authority, through its letter dated [●][4], had agreed to the request of the Selected Bidder, and accordingly intends to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS HEREIN CONTAINED, THE ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED AND CONFIRMED, THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE SET OUT BELOW.

[3] Relevant details to be inserted.
[4] Relevant details to be inserted.

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Date: 2026.10.31 11:19:09 IST

Article 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 44) 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.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

(h) references to "**provisions of this Agreement**" mean, unless the context otherwise requires, the provisions of Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement;

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Date: 2026.10.31 11:19:09 IST

(i) any reference to any period of time shall mean a reference to such time according to Indian Standard Time;

(j) 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;

(k) any reference to day shall mean a reference to a calendar day;

(l) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the Government of Odisha on which Banks in Odisha are generally open for business;

(m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(o) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(p) the words importing singular shall include plural and vice versa;

(q) references to any gender shall include the other and the neutral gender;

(r) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(s) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(t) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors.

(u) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as

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amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause 1.2.1 (u) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(v) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

(w) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;

(x) references to Recitals, Articles, Sub-Articles, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Articles, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure 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 Annexure, as the case may be, in which such reference appears;

(y) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per-diem* basis or otherwise, are mutually agreed genuine pre-estimate of loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

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

1.2.2 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such document with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

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

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

1.2.5 Unless expressly provided otherwise in this Agreement, no extension of time or additional cost will be permitted under this Agreement.

1.3 **Measurements and arithmetic conventions**

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

1.4 **Priority of agreements, clauses and schedules:**

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

(a) this Agreement;

(b) the Letter of Award ;

(c) documents submitted by the Selected Bidder in response to the RFP;

(d) the RFP; and

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

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

(a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;

(b) between the Articles of this Agreement and the Schedules, the Articles shall prevail;

(c) between any two Schedules, the Schedule more relevant to the issue under consideration 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.

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Part II
THE CONCESSION

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Article 2
SCOPE OF THE PROJECT

2.1 The scope of the Project during the Concession Period shall mean the following (the "**Scope of the Project**"):

(a) to design, finance and construct the Project on the Project Site set forth in Schedule A in conformity with the Specifications and Standards set forth in Schedule C and in accordance with the provisions of this Agreement;

(b) to develop the Project in accordance with the Development Obligations set forth in Article 12 and as further specified in Schedule B;

(c) to operate and maintain the Project in accordance with the provisions of this Agreement;

(d) to use the Commercial Cum Strategic Petroleum Reserve for commercial purposes in accordance with the provisions of this Agreement;

(e) to transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement; and

(f) to perform and fulfil all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 **Development of Ancillary Facilities**

The Concessionaire shall be entitled to develop the Ancillary Facilities on the land above the surface of the Project Site for the purpose of the utilization of unused portions of the Project Site, if any, with the prior approval of the Authority, which approval shall not be unreasonably withheld. The Concessionaire shall undertake the development of the Ancillary Facilities such that the Project is not adversely affected in any manner and in accordance with the provisions of this Agreement.

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Article 3
GRANT OF CONCESSION

3.1 **The Concession**

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Authority, awards to the Concessionaire the concession set forth herein including exclusive right, license and authority to construct, operate and maintain the Project and use the Commercial Cum Strategic Petroleum Reserve for storing of oil for commercial use (the "**Concession**"), for the Concession Period, 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.

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

(a) licence, access and Right of Way to use the Project Site for the purpose of developing the Project, to the extent conferred by the provisions of this Agreement;

(b) design, finance, construct the Project during the Construction Period in accordance with the provisions of this Agreement;

(c) achieve Project COD in accordance with the provisions of Clause 15.1 and subsequently, operate and maintain the Project throughout the Concession Period;

(d) pay Concession Fee to the Authority in accordance with the provisions of Article 27;

(e) perform and fulfil all the obligations of the Concessionaire under and in accordance with the provisions of this Agreement;

(f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under the provisions of this Agreement;

(g) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under and in accordance with the provisions of this Agreement;

(h) upon Termination of the Concession Period comply with the Divestment Requirements set forth in Clause 35.1, and *inter alia* transfer the Project to the Authority in accordance with the provisions of this Agreement;

(i) unless otherwise specified in this Agreement, neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Site, nor sell, transfer, exchange, lease or part possession thereof;

(j) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, development, management, operation or maintenance of the Project and the Project Site, subject only to the provisions of this Agreement;

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Date: 2026.10.31 11:19:09 IST

(k) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and maintain the Project;

(l) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period; and

(m) demand, collect and appropriate fee for various Revenue Generating Activities that the Concessionaire may undertake and refuse usage if the fee due is not paid.

3.2 **Concession Period**

3.2.1 Subject to early termination of this Agreement in accordance with its provisions, the term of this Agreement is 60 (sixty) years from the Appointed Date (the "**Concession Period**").

3.2.2 The Authority shall have the right, subject to Applicable Laws and the provisions of Clause 34.6 to extend the Concession Period for a term as mutually decided by the Parties by issuing a notice to the Concessionaire by no later than 6 (six) months prior to the date of expiry of the Concession Period.

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Date: 2026.10.31 11:19:09 IST

Article 4
CONDITIONS PRECEDENT

4.1 **Conditions Precedent**

4.1.1 Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 11, 16, 24, 27, 30, 36, 37, 39, 42, 43, 44 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 Clause 4.1 (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 Clauses 4.1.2 or 4.1.3, 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 Clause 4.1.1.

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9 and at any time after 15 (fifteen) days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) days of receipt of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Concessionaire the Right of Way to the Project Site in accordance with Article 10;

(b) mandated the National Oil Marketing Companies to include the location of the Commercial Cum Strategic Petroleum Reserve as a crude oil offtake point under its tender documents;

(c) procured for the Concessionaire an approval under Applicable Laws to enable crude oil transportation (including coastal movements) by foreign vessels from the Commercial Cum Strategic Petroleum Reserve; and

(d) procured and provided to the Concessionaire copies of all Applicable Permits as provided in Part A of Schedule E, including permits in relation to environmental protection and conservation.

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 180 (one hundred and eighty) days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) provided the Performance Security to the Authority pursuant to Article 9;

(b) executed and procured execution of the Escrow Agreement and opened and operationalised the Escrow Account in accordance with Article 28;

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Date: 2026.10.31 11:19:09 IST

(c) execute and procure execution of the Substitution Agreement;

(d) delivered to the Authority the documents demonstrating Construction Experience in accordance with the provisions of the RFP;

(e) delivered to the Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Clauses 7.1.12,7.1.13 and 7.1.14;

(f) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

(g) delivered to the Authority the copies (certified as true copies by a duly authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;

(h) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire;

(i) delivered to the Authority 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;

(j) delivered to the Authority copies (certified as true copies by a director of the Concessionaire) of all resolutions adopted by the board of directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement;

(k) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire; and

(l) procured all Applicable Permits as provided in Part B of Schedule E, 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.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

4.1.4 Each Party shall make all reasonable endeavours 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.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

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Date: 2026.10.31 11:19:09 IST

4.1.6 The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 **Damages for delay by the Authority**

In the event that: (i) the Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure Event, the Authority 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 fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 **Damages for delay by the Concessionaire**

In the event that: (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Concessionaire shall pay Damages to the Authority of an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due and payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 **Commencement of the Concession Period**

The date on which all the Conditions Precedent specified in Clause 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

4.5 **Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 365 (three hundred and sixty five) 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 Appointed Date is for reasons attributable to the Concessionaire, the Performance Security or the Bid Security, as the case may be, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

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Date: 2026.10.31 11:19:09 IST

Article 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 **General Obligations of the Concessionaire**

5.1.1 Subject to and in accordance with 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, mechanical completion commissioning, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in Applicable Permits, Applicable Laws and this Agreement or arising hereunder.

5.1.2 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 thereunder for the procurement and use of such infrastructure facilities and utilities.

5.1.3 During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Clause 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the development, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.

5.1.4 The Concessionaire shall comply with all Applicable Laws 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.

5.1.5 The Concessionaire shall and shall procure that its Contractors, if any, shall discharge its obligations in accordance with the provisions of this Agreement and as a reasonable and prudent person.

5.1.6 The Concessionaire shall pay the Concession Fee to the Authority in accordance with Article 27.

5.1.7 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:

(a) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;

(b) perform and fulfil its obligations under the Financing Agreements;

(c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its

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Date: 2026.10.31 11:19:09 IST

obligations under this Agreement and shall comply with all the Applicable Laws including any industrial and labour laws notified by the central government and the relevant state government;

(d) not do or omit to do any act, deed or thing which may in any manner violate any provision of this Agreement;

(e) develop the Project in accordance with the terms of this Agreement, the Applicable Laws, Applicable Permits and Good Industry Practice;

(f) obtain the approval relating to the use of the waterfront to access and construct the single point mooring;

(g) assist the Authority and comply with all directions of the Authority in an Oil Shortage Event in relation to the Project and the Project Assets and shall assist the Authority to drawdown on the oil filled in the Commercial Cum Strategic Petroleum Reserve as specified by the Authority to the Concessionaire of an Oil Shortage Event in accordance with Article 22 of this Agreement;

(h) operate and maintain the Project for the Operation Period as per the Specifications and Standards set out in Schedule C;

(i) meet the performance standards set out in this Agreement and the Specifications and Standards at all times during the Operation Period;

(j) ensure safety of personnel, plant and equipment at all times, in terms of drawdown capability, cavern integrity, in a safe, effective, efficient, timely, and environmentally compliant manner;

(k) manage geotechnical controls, monitor and analyse the Commercial Cum Strategic Petroleum Reserve to ensure drawdown capability for the Project;

(l) 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 and/or Applicable Laws and Applicable Permits;

(m) procure that all equipment and facilities comprising the Project are developed, operated and maintained in accordance with the Specifications and Standards, O&M Requirements, EHS Requirements and Good Industry Practice;

(n) ensure the safety of the Project and shall employ appropriate safety measures in accordance with the provisions of this Agreement;

(o) provide at the Project Site a suitable office space for the use of the Authority and the Independent Expert;

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Date: 2026.10.31 11:19:09 IST

(p) provide at least 3 (three) 4X4 vehicles with sun roof for use by the dignitaries visiting the Project Site and/or the Authority Representative visiting the Project Site during the Concession Period;

(q) endeavour to employ and utilize any financial market instrument in accordance with Good Industry Practice to minimise and mitigate risks on account of fluctuations in crude oil prices in order to maximize the Revenue from the Project;

(r) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;

(s) transfer the Project and the Project Assets to the Authority upon Termination in accordance with the provisions of this Agreement;

(t) undertake the Development Works in accordance with the international guidelines as and the Specifications and Standards provided in Schedule C; and

(u) be responsible and indemnify the Authority for any accident due to negligence or otherwise in the performance of the project.

(v) the Concessionaire can design its own configuration and can increase the number of caverns. However, the total capacity shall remain fixed as 4 (four)MMT. The cost of increase in the number of caverns and associated facilities will not be considered as Change of Scope and no additional Grant will be payable for the same.

5.2 **Obligations relating to Project Agreements**

5.2.1 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 Agreements or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 Before finalisation, the Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, within 15 (fifteen) days to the Concessionaire. The Concessionaire shall appropriately consider all such comments/ observations. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition,

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Date: 2026.10.31 11:19:09 IST

replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 120 (one hundred and twenty) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(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 the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the Contractor and execution of the Project Agreement shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard being final, conclusive and binding on the Concessionaire and undertake that it shall not give effect to any such selection or contract without prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 **Obligations relating to Change in Ownership**

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:

(a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or

(b) acquisition of any control directly or indirectly of the board of directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

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Date: 2026.10.31 11:19:09 IST

shall constitute a "**Change in Ownership**" requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of equity or control of the board of directors of the Concessionaire without such prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

(i) the expression acquirer, control and person acting in concert shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Concessionaire;

(ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of the shares of the Concessionaire; and

(iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies, whether situated in India or abroad, the Equity of the Concessionaire, not less than half of the directors on the board of directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire, shall constitute acquisition of control, directly or indirectly, of the board of directors of the Concessionaire.

5.4 **Obligations relating to management of the Concessionaire**

The Concessionaire shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action which affects the Project 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;

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Date: 2026.10.31 11:19:09 IST

(f) to consent to a director or his or her relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;

(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.

5.5 **Obligations relating to employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Concessionaire shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Concessionaire or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Concessionaire for performance of its obligations under this Agreement and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.6 **Obligations relating to the single point mooring and onshore and offshore pipeline**

(a) The Concessionaire shall undertake survey and route assessment for the onshore and offshore pipeline connectivity to the Commercial Cum Strategic Petroleum Reserve and submit a copy of the survey and route assessment to the Authority for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, within 15 (fifteen) days to the Concessionaire. The Concessionaire shall appropriately incorporate the comments if any provided by the Authority in its route assessment. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.

(b) The Concessionaire shall procure the Right of Way to the land for the development, operation and maintenance of the single point mooring and Right of User in Land for the onshore and offshore pipeline connectivity in perpetuity whether required from any Government

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Date: 2026.10.31 11:19:09 IST

Instrumentality or any third party at its sole cost and expense. The Concessionaire shall ensure that the Right of Way for such land and the Right of User in Land pertaining to the pipeline is available for the use for the Concession Period and shall be transferred to the Authority upon Termination in accordance with the terms of this Agreement.

5.7. **Obligations relating to employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it and by its Contractors in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and state-of-the-art training for their respective functions.

5.8 **Obligations relating to medical aid**

For providing aid and assistance in medical emergencies relating to the Project, the Concessionaire shall set up and operate a medical aid post (the "**Medical Aid Post**") equipped to render first aid and to assist in accessing emergency medical aid from hospitals in vicinity.

5.9 **Sole purpose of the Concessionaire**

The Concessionaire shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement.

5.10 **Adherence to Standards**

5.10.1 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 rules and regulations and the Oil Industry Safety Directorate Standards for Unlined Underground Rock Cavern Storage for Petroleum & Liquefied Petroleum Gas ("**OISD 230**").

5.10.2 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 environment health and safety. Such performance standards shall take into consideration the principles set out in:

(a) OISD 230 and other OISD standards;

(b) National Environment Health and Safety regulations (http://www.moef.nic.in/ and others);

(c) National Building Code of India published by Bureau of Indian Standards (http://www.bis.org.in/) and other statutory Bureau of Indian Standards applicable to projects of similar nature;

(d) Life and Fire Safety Standards; and

(e) Specifications and Standards set out in Schedule C.

5.11 **Obligations relating to Taxes**

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Date: 2026.10.31 11:19:09 IST

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 goods and services tax levied on or in respect of any services provided by the Concessionaire to the Authority for and in respect of the Project shall be paid by the Authority upon receipt of particulars thereof.

5.12 **Obligations relating to information**

5.12.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority 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 the Authority, no later than 7 (seven) days from the receipt of the notice from the Authority, in the manner and form required by the Authority.

5.12.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

5.13 **Maintenance of Secrecy**

The Concessionaire shall take steps to safeguard all confidential information relating to the construction, operation and maintenance of the Project from any third party and in accordance with, the Applicable Laws including but not limited to, the Official Secrets Act, 1923 and shall cause its personnel, Contractors, representatives, agents, employees to comply with the provisions of the Applicable Laws including but not limited to, the Official Secrets Act, 1923. The Concessionaire agrees and acknowledges that the confidential information is sensitive and of national importance and specifically undertakes that the information relating to the Project and the Project Site made privy, recorded by or acquired by the Concessionaire shall not be disclosed to any third party without the consent of the Authority and in due accordance with Clause 43.16 of this Agreement.

5.14 **Obligations relating to branding of the Project**

The Concessionaire may, in its discretion, name or brand the Commercial Cum Strategic Petroleum Reserve or any part thereof in accordance with the Applicable Laws and Applicable Permits.

5.15 **Intellectual Property Permits**

The Concessionaire shall ensure that if any designated devices, materials or any process are covered by Intellectual Property, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Intellectual Property owner or person empowered to assign the Intellectual Property. A copy of the agreement, upon execution, shall be promptly filed with the Authority.

5.16 **Obligations relating to noise control**

The Concessionaire shall take all such measures as may be necessary in accordance with

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Date: 2026.10.31 11:19:09 IST

Applicable Laws, terms of Applicable Permits and Good Industry Practice to control and mitigate the noise arising from the Project and its impact on the neighbourhood and environment.

5.17 **Obligations relating to other charges**

The Concessionaire shall make timely payments solely on its own account for all utility services in respect of the Project, including water, sewage, electricity, telecommunication, internet and cable charges, annual/renewal fees towards NOC's/Applicable Permits etc.

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Date: 2026.10.31 11:19:09 IST

Article 6
OBLIGATIONS OF THE AUTHORITY

6.1 General Obligations of the Authority

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

6.1.2 Subject to and in accordance with the provisions of this Agreement, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

(a) 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 (other than the Applicable Permits mentioned in Clause 4.1.2), required from any Government Instrumentality for implementation and operation of the Project, subject to the Concessionaire submitting its applications complete in all respect along with the requisite application fees in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;

(b) 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 favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(c) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining approvals relating to the use of the waterfront to access the single point mooring;

(d) transfer the Project Site on licence basis in accordance with Article 10, free from Encumbrance to the Concessionaire and ensure that no barriers are erected or placed on or about the Project Site by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of EHS Requirements, Emergency, national security, or law and order;

(e) upon written request from the Concessionaire, execute the Substitution Agreement; and

(f) upon written request from the Concessionaire, subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire at the Concessionaire's cost and expense and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements. No such assistance or lack thereof by the Authority shall absolve the Concessionaire of its obligations under this Agreement or amount to Force Majeure under this Agreement.

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Date: 2026.10.31 11:19:09 IST

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall, except for the Grant under Article 26 of this Agreement[5], not be required to provide any financial support or financial assistance to the Concessionaire.

6.2 **Obligations relating to refinancing**

Without prejudice to any rights or remedies of the Authority under this Agreement or otherwise, upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government Instrumentality, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due 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 the Authority, which consent shall not be unreasonably withheld. For 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 by no later than 1 (one) year prior to the expiry of the Concession Period.

[5] In case there is no Grant pursuant to the bidding, the carve out for Article 26 may be deleted.

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Date: 2026.10.31 11:19:09 IST

Article 7
REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 **Representations, warranties and undertakings of the Concessionaire**

The Concessionaire represents, warrants and undertakes to the Authority that:

7.1.1 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;

7.1.2 it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

7.1.3 it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

7.1.4 it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

7.1.5 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;

7.1.6 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;

7.1.7 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;

7.1.8 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;

7.1.9 there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, 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;

7.1.10 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;

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Date: 2026.10.31 11:19:09 IST

7.1.11 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;

7.1.12 it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Selected Bidder or Consortium Members, together with {its or their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purpose of qualification and short-listing in response to the Request for Proposal shall, during 2 (two) years commencing from Project COD, hold less than 26% (twenty six per cent) of such Equity which shall also be no less than 5% (five per cent) of the Total Project Cost;

7.1.13 the {Selected Bidder/Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

7.1.14 the {Selected Bidder/Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

7.1.15 all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;

7.1.16 no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, 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;

7.1.17 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 Authority in connection therewith;

7.1.18 all information provided by the Selected Bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

7.1.19 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;

7.1.20 that it shall at no time during the Concession Period or subsequent to the termination of the Concession Period in accordance with this Agreement, disclose, transfer, send or reproduce

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through any means the confidential information and shall act in compliance with, this Agreement and Applicable Laws, including but not limited to the Official Secrets Act, 1923;

7.1.21 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

7.1.22 all undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 **Representations, warranties and covenants of the Authority**

The Authority represents, warrants and covenants to the Concessionaire that:

7.2.1 it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

7.2.2 it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;

7.2.3 it has the financial standing and capacity to perform its obligations under this Agreement;

7.2.4 this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

7.2.5 it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement; and

7.2.6 it has good, legal and valid right and title to the Project Site and has the power and authority to handover the Project Site to the Concessionaire for the development of the Project in accordance with the provisions of this Agreement.

7.3 **Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of 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.

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Date: 2026.10.31 11:19:09 IST

Article 8
DISCLAIMER

8.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability 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 Authority in this regard.

8.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1 above and hereby acknowledges and agrees that the Authority 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.

8.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 8.1 above shall not vitiate this Agreement or render it voidable.

8.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

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Part III
DEVELOPMENT AND OPERATION

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Article 9
PERFORMANCE SECURITY

9.1 **Performance Security**

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 30 (thirty) days from the Execution Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 201,00,00,000 (Rupees Two Hundred and One Crores) substantially in the format set forth in Schedule F (the "**Performance Security**"). The Concessionaire shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Article 9. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Concessionaire within the above specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 **Appropriation of Performance Security**

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 34. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in in accordance with Article 34.

9.3 **Release of Performance Security**

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Date: 2026.10.31 11:19:09 IST

The Performance Security shall remain in force and effect for a period of 1 (one) year from the Appointed Date (the "**Performance Security Period**"), but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 40% (forty per cent) of the Total Project Cost, including Grant, which sum so expended shall be determined by the Authority in its sole discretion based on the documents provided and information shared by the Concessionaire under and in accordance with the provisions of this Agreement; provided, however, that the Performance Security shall not be released if the Concessionaire is at any time in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which in Authority's sole discretion establish satisfaction of the requirements specified in this Clause 9.3 and subject to the creation of Deemed Performance Security in accordance with Clause 9.4, the Authority shall release the Performance Security forthwith.

9.4 **Deemed Performance Security**

The Parties expressly agree that at least 15 (fifteen) days prior to release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for the same amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire remaining Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 28, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

9.5 **Appropriation of Deemed Performance Security**

Upon any amounts becoming due and payable by the Concessionaire to the Authority under and in accordance with the terms of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 **References to Performance Security**

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

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Article 10
ACCESS TO THE PROJECT SITE

10.1 **The Project Site**

The site of the Project shall comprise the land as described in Schedule A, and in respect of which the Authority shall provide license rights and all way leaves, easements, unrestricted access and other rights of way howsoever described, necessary for construction, operation and maintenance of the Commercial Cum Strategic Petroleum Reserve to the Concessionaire under and in accordance with this Agreement (the "**Project Site**").

10.2 **Access to the Project Site**

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

10.2.2 The Project Site shall be handed-over to the Concessionaire and provided on an 'as is where is' basis, free of any Encumbrances, to develop, operate and maintain the Project, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Project Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3. The license, access, Right of Way and all other rights to the Project Site granted under this Agreement by the Authority to the Concessionaire shall always be subject to existing rights of way.

10.2.4 It is expressly agreed that the Concessionaire's rights to the Project Site shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Concessionaire or its Contractors, the rights of the Concessionaire in respect of the Project Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5. The Concessionaire hereby irrevocably appoints the Authority (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 authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6. It is expressly agreed that trees on the Project Site are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

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10.3 **Procurement of the Project Site**

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time but in any event no later than 10 (ten) days prior to the Appointed Date, inspect the Project Site and prepare a memorandum containing an inventory of the Project Site including the vacant land, structures, road works, trees and any other immovable property on or attached to the Project Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Project Site to which vacant access and Right of Way has not been granted to the Concessionaire.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Project Site and the Appendix, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

10.3.3 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Project Site required and necessary for the Project. For avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Project.

10.3.4 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Project Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.

10.3.5 Upon receiving the possession of the Project Site the Concessionaire shall complete the Development Works in accordance with the Project Completion Schedule set forth in Schedule G.

10.3.6 The Authority shall procure any additional land that may be required for the Project or for work specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement, and upon procurement thereof, such land shall form part of the Project Site; provided that no land to be acquired by the Authority hereunder shall be deemed to be included in the Appendix referred to in this Clause 10.3. For avoidance of doubt, the Parties agree that any land required for the Project, in addition to the land included in Schedule A, shall be acquired at the sole discretion of the Authority and the Concessionaire shall have no right to claim in the event the Authority declines any such acquisition in whole or in part.

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

The Project Site shall be made available by the Authority to the Concessionaire free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Site 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 Project Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and

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Date: 2026.10.31 11:19:09 IST

undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Site.

10.5 **Protection of Project Site from encroachments**

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

10.6 **Special or temporary Right of Way**

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

10.7 **Access to the Authority, Independent Expert**

The Right of Way and right to the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, its representatives or authorised personnel, the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 **Geological and archaeological finds**

It is expressly agreed that geological or archaeological rights do not form part of the rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any right or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such right, interest and property on or under the Project Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For avoidance of doubt, it is agreed that:

(a) any reasonable expense incurred by the Concessionaire hereunder shall be reimbursed by the Authority; and

(b) if required, the Authority shall, at its sole discretion, grant reasonable extension of the Project Completion Schedule for any delay caused as a direct consequence of any discovery.

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10.9 **Permitted Use**

The Concessionaire shall use or cause to be used any or all part of the Project Site for operating, managing and maintaining the Project in accordance with this Agreement, Applicable Laws and Applicable Permits. Any use of the Project Site in violation thereof shall constitute a Concessionaire Default under this Agreement.

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Date: 2026.10.31 11:19:09 IST

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 Project Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the relevant Government Instrumentality. Further, the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any Right of Way necessary for such diversion.

11.2 **Shifting of obstructing utilities**

The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Authority, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Project Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Project and/ or the Project Assets. 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 may be.

11.3 **Felling of Trees**

The Authority 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 the Authority, 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 the Authority.

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Date: 2026.10.31 11:19:09 IST

Article 12
DEVELOPMENT OF PROJECT

12.1 **Obligations relating to Development Works**

Prior to the commencement of Development Works, the Concessionaire shall, along with the Drawings:

(a) submit to the Authority and the Independent Expert its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G;

(b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with the provisions of this Agreement.

12.2 **Drawings**

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

(a) the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule as set forth in Schedule G, the copies of all Drawings to the Independent Expert for review. Such Drawings shall be prepared for Project, taking into account the capacities and the Commercial Cum Strategic Petroleum Reserve envisaged under the Development Obligations and in accordance with Schedule D;

(b) by submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project, the Specifications and Standards, Applicable Laws and Good Industry Practice;

(c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the scope of Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the specified period and may begin or continue Development Works at its own discretion and risk;

(d) if the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of Project and the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Expert for review within 7 (seven) days. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

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Date: 2026.10.31 11:19:09 IST

(e) no review or observation of the Independent Expert and/or its failure to review or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner;

(f) without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Project and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments thereunder; and

(g) within 90 (ninety) days of the Project COD, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Project, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of the Project. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule D.

12.3 **Construction and Development of Project**

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake development of the Project on the Project Site as specified in Schedule B, and in conformity with the Specifications and Standards set forth in Schedule C (the "**Development Obligations**").

12.3.2 The Concessionaire shall develop and construct the Project in accordance with the Project Completion Schedule set forth in Schedule G. In the event that the Concessionaire fails to achieve any Project Milestone within 30 (thirty) days from the date set forth for such Project Milestone in Schedule G, unless such failure has occurred due to Force Majeure or for reasons solely and directly attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved up to a maximum of 20% (twenty per cent) of the amount of Performance Security; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G has been amended as above; provided further that in the event Project COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, without any interest thereon. For avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, or otherwise including the right of Termination thereof.

12.3.3 In the event that the Development Works pertaining to the Development Obligation is not completed within 200 (two hundred) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

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Date: 2026.10.31 11:19:09 IST

12.4 **Tests upon Completion**

12.4.1 No later than 30 (thirty) days prior to the likely completion of the Development Works, the Concessionaire shall notify the Independent Expert of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates, with not less than 10 (ten) days' notice to the Independent Expert.

12.4.2 All Tests shall be conducted in accordance with Schedule H at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Project with the Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of Project or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority, copies of all Test data including detailed Test results. For avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of Project with the Specifications and Standards.

12.5 **Safety certification prior to Project COD**

The Concessionaire shall, not later than 15 (fifteen) days prior to the SCOD, notify the Authority and the Independent Expert of the compliance of the Project with the EHS Requirements and invite them to observe any or all Tests that may be specified by the Independent Expert in accordance with Applicable Laws, Applicable Permits and Good Industry Practice to determine that the Project is safe for entering into commercial service. The costs of such Tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any Test requiring repetition thereof, the cost of such second or subsequent Test shall be borne entirely by the Concessionaire.

12.6 **Safe for Operation**

Upon successful completion of the Tests as specified in Schedule H in accordance with Clause 12.4, safety certification of the Development Works in accordance with Clause 12.5 and connection of the Commercial Cum Strategic Petroleum Reserve to the single point mooring and the onshore and offshore pipelines, the Independent Expert shall issue a certificate to the Concessionaire certifying the completion of the Development Works and the readiness of the Project to receive crude oil for storage ("**Safe for Operation Certificate**") in the form and manner as detailed in Schedule T.

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Date: 2026.10.31 11:19:09 IST

Article 13
MONITORING OF DEVELOPMENT WORKS

13.1 **Monthly progress reports**

During the Construction Period, the Concessionaire shall, within 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert a monthly report on progress of the Development Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Expert. The Authority may by giving a notice at least 10 (ten) days in advance, require the Concessionaire and the Independent Expert to participate in periodic review meetings to review the progress of the Development Works. Upon receipt of such notice, the Concessionaire shall ensure its participation for such meeting. If the Concessionaire is unable to attend the meeting for any reason whatsoever, it shall inform the Authority of its inability to attend and shall reschedule the meeting for a date mutually agreeable to all parties.

13.2 **Inspection**

During the construction of Development Works, the Independent Expert shall inspect the Project, at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and 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 Inspection Report. Notwithstanding the foregoing, such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 **Tests**

13.3.1 For determining that the Development Works conform to the Agreement and Specifications and Standards, the Independent Expert 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 the Independent Expert from time to time in accordance with Good Industry Practice for quality assurance. The size of sample for such Tests shall, to the extent possible not exceed 10% (ten per cent) of the quantity and/or number of Tests that the owner or developer of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the Tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such Tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided however, that the Independent Expert may, instead of carrying out the Tests specified hereunder, at its option decide to witness, or participate in, any of the Tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide necessary assistance to, the Independent Expert for discharging its functions hereunder. For avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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Date: 2026.10.31 11:19:09 IST

13.3.2 In the event that results of any Tests conducted under this Clause 13.3 establish any defects or deficiencies in the Development Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this regard. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out Tests to determine that such remedial measures have brought the Development Works into compliance with Specifications and Standards, and the procedure under this Clause 13.3 shall be repeated until such Development Works conform to the Specifications and Standards. For avoidance of doubt, it is agreed that the Tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the Tests carried out by the Concessionaire for its own quality assurance in accordance with Applicable Laws, Applicable Permits and Good Industry Practice. It is also agreed that a copy of the results of such Tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 **Delays during construction**

Without prejudice to the provisions of Clause 12.3.2, if the rate of progress of Development Works is such that the Development Obligation is not likely to be completed within the time period stipulated, the Concessionaire shall inform the Independent Expert and the Authority at fortnightly intervals, in reasonable detail about the steps it proposes to take to expedite the progress of the Development Works and the period within which it shall achieve the completion of the Project on or before the SCOD.

13.5. **Suspension of unsafe Development Works**

13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Development Works if, in the reasonable opinion of the Authority, such work threatens the safety of the staff members, workers and pedestrians. Provided, however, that in case of an Emergency, the Authority may *suo moto* issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Development Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Development Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in

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Date: 2026.10.31 11:19:09 IST

accordance with the recommendations of the Independent Expert. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date. For avoidance of doubt, it is clarified that any impact on the Total Project Cost, due to such extension of Scheduled Completion Date shall be to the account of the Concessionaire.

13.6 **Video Recording**

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording through aerial survey and videography by Unmanned Aerial Vehicle ("**UAV**") drone at an appropriate height for the purpose of capturing details of existing ground conditions and processing as per Applicable Law, which will be compiled into a 3 (three) hour digital video disc/pen drive or any substitute thereof, covering the status and progress of Development Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

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Date: 2026.10.31 11:19:09 IST

Article 14
COMPLETION CERTIFICATE

14.1 **Provisional Certificate**

If the Safe for Operation Certificate has been issued to the Concessionaire, even though certain works or things forming part of the Project which do not affect the use and safety thereof, or any part of the Project is outstanding and is to be completed (the "**Punch List**"), the Independent Expert may, at the request of the Concessionaire, issue a provisional completion certificate, specifying the details of the Punch List which the Concessionaire shall be required to complete before issuance of a Completion Certificate substantially in the form set forth in Schedule I (the "**Provisional Certificate**"). Upon issuance of such Provisional Certificate the Concessionaire shall be entitled to commence the Revenue Generating Activities in accordance with the provisions of this Agreement.

Upon issuance of the Provisional Certificate, the Concessionaire shall remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a clean, tidy and orderly condition, and in accordance with the provisions of this Agreement.

14.2 **Completion Certificate**

14.2.1 List of all Punch List items appended to the Provisional Certificate, if any, shall be completed by the Concessionaire within 180 (one hundred and eighty) days of the date of issue of such Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security; and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Expert. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Expert in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.2.1. When the Concessionaire considers that it has achieved completion of the Punch List, it shall request the Independent Expert for issuance of the Completion Certificate.

14.2.2 Within 10 (ten) days after receiving the request from the Concessionaire under Clause 14.2.1 and upon being satisfied by the documents provided by the Concessionaire, the Independent Expert shall inspect the Project for Punch List items and either:

(a) issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule J (the "**Completion Certificate**"), if the Punch List items as provided under the Provisional Certificate have been completed; or

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Date: 2026.10.31 11:19:09 IST

(b) issue a written notice to Concessionaire listing the Punch List items remaining to be completed along with the timelines to complete them.

14.2.3 In the event the Concessionaire fails to complete the Punch List items within the timeline mentioned in this Article, then the Authority without prejudice to any of its rights under this Agreement including Termination thereof, may waive off completion of such Punch List items. The Authority's decision in this regard shall be at its discretion and shall be final and binding.

14.3 **Withholding of Provisional or Completion Certificate**

14.3.1 If the Independent Expert determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Expert and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Expert to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.3.2 Notwithstanding anything to the contrary contained in Clause 14.3.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.1, and such direction shall be complied forthwith.

14.4 **Deemed Completion Certificate**

In the event that the Independent Expert fails to issue the Completion Certificate to the Authority and the Concessionaire within the time specified in Clause 14.2 or issue a notice in accordance with Clause 14.2.2. (b), at the end of such period, such Completion Certificate shall be deemed to have been issued to the Authority and the Concessionaire in accordance with the provisions of this Clause 14.4 (the "**Deemed Completion Certificate**").

14.5 **Rescheduling of Tests**

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to certify the completion of the facilities required for undertaking Revenue Generation Activities and issue the Provisional Completion Certificate or issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire at its own cost and expense, shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. The provisions of this Clause 14.5 shall apply *mutatis mutandis* to such re-scheduled Tests.

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Date: 2026.10.31 11:19:09 IST

Article 15
ENTRY INTO COMMERCIAL SERVICE

15.1 **Commercial Operation Date**

The Development Obligations shall be deemed to be complete when the Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued under the provisions of Article 14 (the "**Project COD**").

15.2 **Delay in achieving Project COD**

The Authority shall be entitled to levy Damages calculated at the rate of 0.1% (zero point one per cent) of the Performance Security per day of delay up to a maximum of 20% (twenty percent) of the Performance Security, if the Project COD does not occur on or before the SCOD, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure.

Upon reaching the maximum cap of the Damages as provided in this Clause 15.2 the Authority shall be entitled to terminate the Agreement in accordance with Article 34.

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Date: 2026.10.31 11:19:09 IST

Article 16
CHANGE OF SCOPE

16.1 **Change of Scope**

16.1.1 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved O&M Requirements, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 3 (three) months of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.2 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 **Procedure for Change of Scope**

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documents in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period;

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Project, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable; and

(c) its likely impact on the Gross Revenue and profitability of the Project.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance, thereupon of the Independent Expert, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

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Date: 2026.10.31 11:19:09 IST

16.2.4 The provisions of this Agreement, insofar as they relate to Development Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 **Payment for Change of Scope**

After issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire of a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Expert. The Concessionaire shall, after commencement of work, present to the Authority bills for payment, as per the milestones agreed between the Parties at that point in time, in respect of the works in progress or completed works, as the case may be, supported by such Documents as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Expert, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 41.

16.4 **Restrictions on certain works**

Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the Project COD beyond the SCOD; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining completion of the Project and issuing the Completion Certificate or Deemed Completion Certificate.

Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

16.5 **Power of the Authority to undertake works**

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Authority[6], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access assistance

[6] The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Development Works and Tests, shall apply mutatis mutandis to the works carried out under this Article 16.5.

16.6. **Reduction in Scope of the Project**

16.6.1 If the Concessionaire shall have failed to complete any Development Works on account of Force Majeure or for reasons attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 38.2. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a Dispute, the Dispute Resolution Procedure shall apply.

16.6.2. For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Government hereunder, the Concessionaire shall pay forthwith the sum specified therein.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

Article 17
OPERATION AND MAINTENANCE

17.1 **O&M obligations of the Concessionaire**

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project in accordance with this Agreement either by itself, and/or through an O&M Contractor in accordance with the provisions of this Agreement to conform to the Specifications and Standards. The obligations of the Concessionaire regarding the operation and maintenance shall include the following and as more specifically detailed in Schedule K ("**O&M Requirements**"):

(a) undertaking operation and maintenance of the Project, coordinated and economical manner, in compliance with the Specification and Standards;

(b) undertaking operation and maintenance of the Project in accordance with the Specification and Standards, to ensure that the Concessionaire is able to optimally use the Project and the Project Assets during the Operation Period;

(c) carrying out periodic preventive maintenance of the Project;

(d) undertaking routine maintenance including prompt repairs of all elements and components of the Project so as to ensure compliance with the O&M Requirements and the Specification and Standards;

(e) undertaking major maintenance, replacement of components and parts, repairs to structures, equipment, subsystems for part of the Project;

(f) providing round the clock security at the Project Site and preventing with the assistance of the concerned law enforcement agencies, any encroachments on or authorised entry on the Project Site;

(g) protection of environment and provision of equipment and materials in accordance with the provisions of this Agreement;

(h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation and maintenance of the Project in accordance with the provisions of this Agreement; and

(i) complying with the EHS Requirements at all times during the Operation Period.

17.1.2 The Concessionaire shall remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits, all stretches of approach roads, or other structures situated on the Project Site.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

17.2 **Maintenance Requirements**

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

17.3 **Maintenance Manual**

17.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Expert, evolve a repair, operation and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, EHS Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before Project COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Expert, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and EHS Requirement. Such Maintenance Programme shall include:

(a) preventive maintenance schedule;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Project;

(e) intervals at which the Concessionaire shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related measures;

(g) intervals for major maintenance works and the scope thereof; and

(h) frequency of carrying out intermediate and periodic overhaul of electrical, mechanical and other systems.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Expert shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and EHS Requirements.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.5 A**uthority's right to take remedial measures**

In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Project or any part thereof, in conformity with the O&M Requirements and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or notice in this behalf from the Authority or the Independent Expert, as the case may be, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 17.5 shall be without prejudice to its rights and remedies under Article 19.

17.6 **Overriding powers of the Authority**

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

17.6.2 In the event the Concessionaire, upon notice under Clause 17.6.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 17 along with the Damages specified therein.

17.6.3 In the event of a national emergency, civil commotion or any other act specified in Article 31, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of any doubt, it is agreed that the consequences of such action shall be dealt with the provisions of Clause 33.2. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.6.3 and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

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17.7 **Restoration of loss or damage to the Project**

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

17.8 **Modifications to the Project**

The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Specifications and Standards, O&M Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions which the Independent Expert may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For avoidance of doubt if the modification has a Material Adverse Effect on the safety thereof or the safety of the Staff and other persons, the same shall be subjected to tests and certification specified in Clause 13.3. For avoidance of doubt all modifications hereunder shall comply with the EHS Requirements, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice.

17.9 **Excuse from performance of obligations**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to the Authority, or the Commercial Cum Strategic Petroleum Reserve is not available for the use of the Authority on account of any of the following for the duration thereof:

(a) a Force Majeure Event;

(b) the Authority taking control of the Project in an Oil Shortage Event; and

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project.

Provided, that any such event and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Expert without any delay.

17.10 **De-commissioning due to Emergency**

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

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

17.11 **Unscheduled Maintenance**

17.11.1 Any maintenance or repair of the Project, or any part thereof, not being scheduled maintenance, and arising during the Concession Period out of any reason including failure, unsatisfactory performance, defects, deficiencies, accident, vandalism, natural calamity, fire, riots, arson or negligence, shall be undertaken by the Concessionaire as unscheduled maintenance (the "**Unscheduled Maintenance**"). The Parties expressly agree that any and all Unscheduled Maintenance shall be undertaken promptly to procure efficient, safe and reliable operation of the Project, or any part thereof.

17.11.2 Any and all Unscheduled Maintenance, shall form part of O&M obligations and shall be undertaken by the Concessionaire at its own cost and expense.

17.12 **Breakdowns and accidents**

17.12.1 The Concessionaire shall ensure safe conditions at the Project Site for its employees, Contractors, representatives, the Authority and its representatives, Independent Expert and any authorized third party including any representatives of the Government Instrumentality. In the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures in conformity with the provisions of this Agreement. In the event of occurrence of any damage, breakdowns and/or accidents, the Concessionaire shall undertake removal of obstruction and debris without delay.

17.12.2 The Concessionaire's responsibility for rescue operations in the Project shall include safe evacuation of all persons at the Project Site as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger the Project.

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Date: 2026.10.31 11:19:09 IST

Article 18
ENVIRONMENT HEALTH AND SAFETY REQUIREMENTS

18.1 **EHS Requirements**

The Concessionaire shall comply with the provisions of this Agreement for securing the safety of the Project and safety of all persons present at the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and an environment, health and safety programme for providing a safe environment on or about Project and shall comply with the environment, health and safety requirements set forth in Schedule L (the "**EHS Requirements**").

18.2 **Expenditure on EHS Requirements**

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to the EHS Requirements shall be borne by the Concessionaire.

18.3. **Environment Damage**

18.3.1. The Concessionaire shall at all times during the Concession Period be responsible for any environmental damages and liabilities arising on account of the transport, storage and drawdown of the crude oil from the Commercial Cum Strategic Petroleum Reserve. The Concessionaire shall obtain adequate insurance cover for the transport, storage and drawdown of the crude oil during the Concession Period in accordance with Article 29 including obtaining statutory insurances such as public liability insurance, in accordance with the provisions of this Agreement.

18.3.2. The Concessionaire, in accordance with Good Industry Practice, shall undertake all preventive measures to ensure that the effect of environment damage on account of any oil spillage or leakages, is minimised. If any such breakdown or accident results in environment damage then the Concessionaire shall immediately take all remedial measures to ensure the extent of the damage is minimised and the environment is restored in accordance with the directions of the Government Instrumentality, Applicable Laws, Applicable Permits and the provisions of this Agreement.

18.4 **Damages for breach of EHS Requirements**

In the event the Concessionaire does not conform to the EHS Requirements and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this behalf from the Authority or the Independent Expert or any Government Instrumentality, as the case may be, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 18.4 shall be without prejudice to its rights and remedies under Article 39.

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Article 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 **Annual Status Reports**

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of every Accounting Year, furnish to the Authority and the Independent Expert an annual report, in a mutually agreed format, stating in reasonable detail the condition of the Project, including its compliance or otherwise with the O&M Requirements and the EHS Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 **Inspection**

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

19.3 **Tests**

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

19.4 **Remedial measures**

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Expert and the Authority within 15 (fifteen) days of receiving the O&M 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 of the repair works once every week until such works are completed in conformity with the provisions of this Agreement.

19.4.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the O&M Requirements and the procedure set forth in this Clause 19.4.2 shall be repeated until the Project conforms to the O&M Requirements and the EHS Requirements.

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Article 20
SAFETY AND SECURITY

20.1 **Security obligations of the Concessionaire**

20.1.1 The Concessionaire shall provide and maintain adequate security or other suitable protection around the Project and the Project Site in order to maintain safe and orderly conduct of its business and the security thereof.

20.1.2 The Concessionaire shall install and operate a closed circuit television system to monitor the Project and such other parts of the Project as may be necessary and expedient for safe operations of the Project in accordance with Good Industry Practice and the Specifications and Standards.

20.1.3 The Concessionaire shall engage and depute trained personnel for maintaining the security and safety of the persons deployed at the Project Site in accordance with Good Industry Practice.

20.1.4 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from willful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Project, without unduly disrupting the operations of the Project or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Government Instrumentality in discharge of their obligations for and in respect to the security of the Project.

20.1.5 The Concessionaire shall abide by and implement any instructions of the Authority and the Independent Expert for enhancing the security within and around the Project. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Independent Expert.

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Article 21
REVENUE GENERATING ACTIVITES

21.1 **Use of Commercial Cum Strategic Petroleum Reserve**

21.1.1 Upon issuance of Provisional Certificate in accordance with Clause 14.1, the Concessionaire shall be entitled to use the Commercial Cum Strategic Petroleum Reserve for commercial purposes including but not limited to leasing of Commercial Cum Strategic Petroleum Reserve for storage of crude oil, trading in crude oil, storage facility for crude oil, commodity trading, or any other commercial activity in accordance with the provisions of this Agreement and particularly in accordance with Schedule R. The Concessionaire shall be entitled to enter into commercial contracts with third parties for the commercialisation of the Commercial Cum Strategic Petroleum Reserve on such commercial terms and for such fee and revenue as it may deem fit.

21.1.2 The Concessionaire shall ensure that any use of the Commercial Cum Strategic Petroleum Reserve shall not affect the Project, including any loss or damage to the Project or any part thereof, or any part of the Project Site. In the event any loss or damage is caused to the Project or the Project Site, the Concessionaire shall within 7 (seven) days of the notification of such damage by the Independent Expert, rectify and/or repair such affected part of the Project and/or the Project Site. In the event the Concessionaire fails to commence the repair and/or the rectification works within 7 (seven) days of receipt of a notice in this behalf from the Authority or the Independent Expert, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 21.1 shall be without prejudice to its rights and remedies under Article 39.

21.1.3. Notwithstanding anything contrary provided in this Agreement, the Concessionaire agrees that any Encumbrance or security interest over all or any part of the Commercial Cum Strategic Petroleum Reserve shall be subject to the Authority's charge over the crude oil stored in the Commercial Cum Strategic Petroleum Reserve in the event of occurrence of Oil Shortage Event. The Concessionaire shall ensure that the Oil Trading Agreements shall have a provision which shall recognise the Authority's right to Drawdown Requirement and shall assist and enable the Concessionaire in fulfilling this Drawdown Requirement.

21.2 **Use of Ancillary Facilities**

21.2.1. The Concessionaire shall be entitled to develop the Ancillary Facilities at any time during the Concession Period, with prior approval of the Authority, which approval shall not be unreasonably withheld. The Concessionaire shall ensure that any development of the Ancillary Facility shall not cause any damage to the Project or any part thereof or any part of the Project Site. In the event any damage is caused to the Project or the Project Site, the Concessionaire shall within 7 (seven) days of the notification of such damage by the Independent Expert, rectify and/or repair such affected part of the Project and/or the Project Site. In the event the Concessionaire fails to commence the repair and/or the rectification works within 7 (seven) days of receipt of a notice in this behalf from the Authority or the Independent Expert, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the

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Date: 2026.10.31 11:19:09 IST

risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 21.2 shall be without prejudice to its rights and remedies under Article 39.

21.2.2. The Concessionaire shall be entitled to collect the Revenues generated from Ancillary Facilities in a form and manner as permitted under the Applicable Laws and Applicable Permits.

21.3 **Use of Rock/Debris**

The Concessionaire shall be entitled to levy and collect Revenues from the sale of the rock/debris generated from the excavation works undertaken at the Project Site during the Construction Period, in accordance with Applicable Laws, Applicable Permits and terms of this Agreement. The Concessionaire shall be liable to pay all taxes as applicable including royalty to Government Instrumentalities.

21.4 **Available Space**

The Concessionaire shall inform the Authority within 24 (twenty four) hours from the end of each quarter, the Available Space in the Commercial Cum Strategic Petroleum Reserve and inform the Authority if the Available Space has been booked to be filled under any existing contracts or orders with a third party and when the Available Space will be filled up under such existing third party contracts ("**Availability Report**").

If the Availability Report does not specify any existing orders to fill up the Available Space, then the Authority may issue a notice to the Concessionaire within 4 (four) days of the receipt of the Availability Report, requiring the Concessionaire to provide such Available Space to the Authority starting from 60 (sixty) days from the date of such notice, at the lowest rental being charged by it from a third party for similar duration for allowing the Authority to store petroleum for such period as may be prescribed in the notice. The Authority will be treated as the Most Preferable Customer by the concessionaire. If the Authority exercises such right then the Concessionaire shall be bound to provide the Available Space as required in the notice to the Authority. The Concessionaire shall not enter into any contracts or arrangements with a third party for the use of such Available Space as taken over by the Authority till such time as provided in the notice. If the Authority does not issue the notice as required under this clause within the time period as specified then the Concessionaire shall be free to enter into contracts with a third party for the Available Space.

In the event there is no Available Space and the Authority requires the stored crude oil for storage, then Authority may issue a notice to the Concessionaire stating the quantity of crude oil it requires within 4 (four) days of the Availability Report. If the Concessionaire agrees to sell such quantity of crude oil stored at the Commercial Cum Strategic Petroleum Reserve to the Authority or if the Parties mutually agree on any other quantity of crude oil to be sold, then the Authority may procure such quantity of crude oil at the prevailing market rate and store it at the Commercial Cum Strategic Petroleum Reserve and pay the lease rental at the lowest rental being charged by it from a third party for similar duration for the use of the space for storing such quantity of crude oil for such duration as may be notified by the Authority in the abovementioned notice. The Authority will be treated as the Most Preferable Customer by the Concessionaire.

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Article 22
OIL SHORTAGE EVENT

22.1 **Oil Shortage Notification**

22.1.1 In the event the Authority is notified by the Government of India of the occurrence of any Oil Shortage Event, the Authority shall issue a notice to the Concessionaire of the occurrence of the Oil Shortage Event ("**Oil Shortage Notification**"). The Oil Shortage Notification shall clearly indicate the drawdown requirement of the Authority ("**Drawdown Requirement**") which shall include:

(a) total quantity of crude oil required for drawdown;

(b) the time period within which the Drawdown Requirement is to be fulfilled by the Concessionaire; and

(c) the location where the Drawdown Requirement is to be supplied by the Concessionaire.

22.1.2. Upon receipt of the Oil Shortage Notification the Concessionaire shall forthwith cease all Revenue Generating Activities in relation to the Commercial Cum Strategic Petroleum Reserve, and shall not drawdown any crude oil from the Commercial Cum Strategic Petroleum Reserve for any other purpose other than to fulfil the Drawdown Requirement.

22.2. **Drawdown Requirement**

The Authority shall have the right to require the Concessionaire to supply the entire Commercial Cum Strategic Petroleum Reserve or part thereof, on as is where is basis; provided that the Drawdown Requirement shall not exceed the total utilised capacity of the Commercial Cum Strategic Petroleum Reserve at any time.

22.3. **Payment for the Drawdown**

The Authority shall pay to the Concessionaire an amount equivalent to the quantity of crude oil which the Authority has notified for drawdown from the Commercial Cum Strategic Petroleum Reserve and such amount shall be calculated on the basis of the free on board price of crude oil identified in storage and as published by Platts Crude Oil Marketwire on the day immediately preceding such drawdown and the exchange rate for such payment shall be calculated in accordance with the rates prescribed by the Reserve Bank of India on the day immediately preceding such drawdown. In case the Platts Crude Oil Marketwire index ceases to exist, any other similar index will be used on mutual agreement between Authority and the Concessionaire.

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Article 23
KEY PERFORMANCE INDICATORS

23.1 **Key Performance Indicators**

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project such that it achieves or exceeds the performance indicators specified in this Article 23 and **Schedule U** (the "**Key Performance Indicators**").

23.2 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Clause 23.1 and Schedule U. Upon failure of the Concessionaire to conform to any Key Performance Indicator specified in this Article, the Authority may by notice warn the Concessionaire and require it to rectify its performance forthwith. In the event 3 (three) such notices are issued in any one month, the Authority may in its sole discretion levy Damages calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each such default for which the notices have been issued up to a maximum of 10% (ten percent) of the Performance Security; provided, however, that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire. For the avoidance of doubt, it is agreed that in the event a notice hereunder is issued by the Authority to the Concessionaire for default in conforming to any Key Performance Indicator specified in Article 23 a subsequent notice shall not be issued for default relating to the same Key Performance Indicator until a period of 7 (seven) days has elapsed from the date of such notice.

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Date: 2026.10.31 11:19:09 IST

Article 24
INDEPENDENT EXPERT

24.1 **Independent Expert**

The Authority shall appoint substantially in accordance with the selection criteria set forth in Schedule Q, a third-party agency to be the independent consultant under this Agreement for the Concession Period within such timelines as mentioned under Schedule Q (the "**Independent Expert**"). Provided that the Authority shall have the right to appoint any of its agencies or departments to monitor the Project until the Independent Expert is appointed in accordance with this Clause 24.1. The provisions of this Agreement with respect to the Independent Expert shall apply *mutatis mutandis* to such agency or department until the Independent Expert is appointed in accordance with the provisions of Schedule Q and this Clause 24.1 and such provisions shall be repeated after expiry of each appointment.

24.2 **Duties and functions**

24.2.1 The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule M.

24.2.2 The Independent Expert shall submit regular periodic reports at least once every month to the Authority in respect of its duties and functions set forth in Schedule M.

24.2.3 A true copy of all communications sent by the Authority to the Independent Expert and by the Independent Expert to the Authority shall be sent forthwith by the Independent Expert to the Concessionaire.

24.2.4 A true copy of all communications sent by the Independent Expert to Concessionaire and by the Concessionaire to the Independent Expert shall be sent forthwith by the Independent Expert to the Authority.

24.3 **Authorised signatories**

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

24.4 **Remuneration**

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority and subject to the limits set forth in Schedule M, one-half of such remuneration, cost and expense shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

24.5 **Termination**

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Date: 2026.10.31 11:19:09 IST

24.5.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after the appointment of another Independent Expert in accordance with Clause 24.1 above.

24.5.2 If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and the Independent Expert for an amicable resolution of the Dispute and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure in Article 41. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 24.1 above.

24.6 **Dispute resolution**

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure in Article 41.

24.7 **Interim arrangement**

In the event that the Authority does not appoint an Independent Expert, or the Independent Expert so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Expert in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Expert, and such functions shall be discharged as and when an Independent Expert is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 24.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

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Part IV
FINANCIAL COVENANTS

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Article 25
FINANCIAL CLOSE

25.1 **Financial Close**

25.1.1 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority and provide to the Authority 3 (three) copies of the Financial Package and Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financial Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to the Authority forthwith.

25.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with the Authority that it shall achieve Financial Close within 180 (one hundred and eighty) days from the Execution Date. If the Concessionaire shall fail to achieve Financial Close within the said 180 (one hundred and eighty) days period, the Concessionaire shall be entitled to a further period of 60 (sixty) days, subject to an advance weekly payment by the Concessionaire to the Authority of 0.7% (zero point seven percent) of the Performance Security per week or part thereof as Damages for any delay beyond the said 180 (one hundred and eighty) day period. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, if the Concessionaire fails to pay in advance the Damages to the Authority under and in accordance with this Sub-Article.

25.1.3 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close does not occur within 240 (two hundred and forty) days including the extended period as set forth above, all rights, privileges, claims and entitlements, if any, 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. It is clarified that in such an event, notwithstanding anything contained herein or otherwise agreed between the Parties, the Authority shall not be liable to the Concessionaire in any manner whatsoever.

25.1.4 Upon Termination of this Agreement under Clauses 25.1.2 and 25.1.3, the Authority shall be entitled to encash the Performance Security or the Bid Security, as the case may be, and appropriate the proceeds thereof as Damages for failure to achieve Financial Close in accordance with this Article 25.

25.2 **Termination due to failure to achieve Financial Close**

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.2 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 Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause

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Date: 2026.10.31 11:19:09 IST

4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.5. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

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Article 26
GRANT

26.1 **Grant**

26.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. [●] (Rupees [●]), in accordance with the provisions of this Article 26 (the "**Grant**").

26.1.2 The Grant shall be disbursed to the Concessionaire by way of construction support in accordance with the provisions of Clause 26.2.

26.2 **Support during Development Obligations**

26.2.1 Subject to the conditions specified in this Clause 26.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the construction costs as part of the Total Project Cost.

26.2.2 The Grant shall be equal to the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than 300% (three hundred per cent) of the equity contribution made towards the Total Project Cost and shall be restricted to a sum not exceeding 60% (sixty per cent) of the Total Project Cost. For avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 26.2.2 shall include the Grant.

26.2.3. The Grant shall be due and payable to the Concessionaire after it has expended the equity contribution made towards meeting the Total Project Cost, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Grant as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars. Provided that, for the purpose of disbursal of Grant, Total Project Cost shall mean the capital cost incurred and shall be limited to the lowest of: (a) as estimated by the Authority; (b) as sanctioned by the Senior Lenders under the Financing Package; and (c) as actually expended by the Concessionaire.

26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of the Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

26.3 **Premium**[7]

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, commencing from the Project COD, a Premium in the form of an additional Concession Fee, as set forth in Clause 27.2 and in the manner set forth therein.

7 In the event the Concessionaire does not seek any Grant from the Authority and offers to pay a Premium instead, the provisions of Clauses 26.1, 26.2 relating to Grant shall be substituted by the provisions of Clause 26.3 relating to Premium, which Clause shall be renumbered. The title of this Article shall also be substituted by the word "Premium".

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Date: 2026.10.31 11:19:09 IST

Article 27
CONCESSION FEE

27.1 **Concession Fee**

In consideration of the grant of the Concession, the Concessionaire shall during the Concession Period, pay to the Authority by way of concession fee Rs. 1 (Rupees one) per annum in the manner laid down in Clause 27.2 ("**Concession Fee**").

27.2 **Additional Concession Fee**[8]

27.2.1 Without prejudice to the provisions of Clause 27.1 and subject to the provisions of Clause 27.2.2, the Concessionaire agrees to pay to the Authority for the year commencing from the day falling after 365 (three hundred and sixty five) days of occurrence of the Project COD, a premium (the "**Premium**") in the form of an additional Concession Fee:

(a) for the 1st (First) Accounting Year commencing after the Project COD, the Premium shall, subject to the provisions of Clause 27.2.1, be a sum of (___)[9];

(b) for each subsequent Accounting Year following the Accounting Year specified in Sub-Article (a) above, the aforesaid Premium shall be revised hereunder and the Concession Fee shall, subject to the provisions of Clause 27.2.2 be determined by increasing the Premium for the previous Accounting Year by 5% (five per cent) thereof. For avoidance of any doubt, and by way of illustration, in the event the Premium during the 1st (first) Accounting Year is Rs. 1 cr. (Rupees one crore), the Premium applicable for the 2nd (second) Accounting Year shall be increased by 5% (five per cent) thereof for determining the Premium payable in the 2nd (second) Accounting Year i.e. Rs. 1.05 cr. (Rupees one crore and five lakh), and the Premium payable for the 3rd (third) Accounting Year shall be determined by increasing the aforesaid Premium for the 2nd (second) Accounting Year by 5% (five per cent) thereof;

(c) for the period, if any, between the Project COD and the 1st (first) Accounting Year referred to in Sub-Article (a) above, the Concession Fee shall be a sum proportionate to the Premium specified in Sub-Article (a) above. For avoidance of any doubt and by way of example, if the period between Project COD and the 1st (first) Accounting Year is 73 (seventy three) days, the Concession Fee for such period shall be 20% (twenty per cent) of the Premium specified in Sub-Article (a) above and as modified in accordance with provisions of Clause 27.2.2; and

(d) during the last Accounting Year of the Concession Period, the Premium shall not be due and payable for the period after Termination and only amount due on a proportionate basis shall be payable for the period prior to Termination.

27.2.2 The amount of Premium arrived at under and in accordance with Clause 27.2.1 shall be modified to reflect the variation in Price Index occurring between January 1 immediately preceding the date of Bid and January 1 immediately preceding the date on which the Premium for the relevant year

8 To be inserted in case the Selected Bidder is offering a Premium.

9 The amount of Premium payable for the Project shall be determined by open competitive bidding and the amount to be inserted shall be the Premium for the first Accounting Year.

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Date: 2026.10.31 11:19:09 IST

shall have fallen due.

27.2.3 Notwithstanding anything to the contrary contained in Clause 27.2.1, the Premium payable by the Concessionaire under this Clause 27.2 shall at all times be subject to a ceiling of 50% (fifty per cent) of the Gross Revenue in the respective year.

27.3. **Payment of Concession Fee**

The Concession Fee payable under this Agreement shall be due and payable within 15 (fifteen) days of the commencement of the Accounting Year. Provided that the Concession Fee for the First Accounting Year shall be paid within 15 (fifteen) days of the occurrence of the Appointed Date.

27.4 **Delayed Payments**

All amounts due and payable by the Concessionaire under the provisions of this Agreement shall be paid on or before the time period stipulated in Clause 27.3. In the event of delay beyond such period the Concessionaire shall pay interest for the period of delay, calculated at the rate specified in Clause 43.4.

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Date: 2026.10.31 11:19:09 IST

Article 28
ESCROW ACCOUNT

28.1 **Escrow Account**

28.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

28.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule N.

28.2 **Deposits into Escrow Account**

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

(a) all monies received in relation to the Project from any source, including under the Financial Package and the Authority;

(b) all funds received by the Concessionaire from its share-holders, in any manner or form;

(c) all Revenues from the third party usage of the Project;

(d) any other Revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and

(e) all proceeds received pursuant to any insurance claims.

Provided that the Senior Lenders may make direct disbursements to the Contractors and suppliers in accordance with the express provisions contained in this behalf in the Financing Agreements.

28.3 **Withdrawals during Concession Period**

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

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Date: 2026.10.31 11:19:09 IST

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it, if any;

(e) Concession Fee due and payable to the Authority;

(f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(g) monthly proportionate provision of Debt Service due in an Accounting Year;

(h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

28.4 **Withdrawals upon Termination**

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;

(b) Outstanding Concession Fee;

(c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;

(d) 90% (ninety per cent) of Debt Due less Insurance Cover, excluding Subordinated Debt;

(e) retention and payments relating to the liability for defects and deficiencies set forth in Article 36;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

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Date: 2026.10.31 11:19:09 IST

Provided that no appropriations shall be made under Sub-Article (i) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 35.

28.4.2. The provisions of this Article and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.4.1 have been discharged.

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Date: 2026.10.31 11:19:09 IST

Article 29
INSURANCE

29.1 **Insurance during Concession Period**

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

29.2 **Insurance Cover**

29.2.1 Without prejudice to the provisions contained in Clause 29.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

(b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;

(c) statutory insurances such as Public Liability Insurance and any other insurance required under the Applicable Permits and Applicable Laws;

(d) the Concessionaire's general liability arising out of the Concession;

(e) liability to third parties for goods or property damage;

(f) workmen's compensation insurance; and

(g) any other insurance that may be necessary to protect the Concessionaire, employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (d) above.

29.3 **Notice to the Authority**

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure in Article 41 shall apply.

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Date: 2026.10.31 11:19:09 IST

29.4 **Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

29.5 **Remedy for failure to insure**

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

29.6 **Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

29.7 **Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

29.8 **Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and balance remaining, if any, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement in the Project and the Project Assets, in accordance with the provisions contained in this behalf in the Financing Agreements.

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Date: 2026.10.31 11:19:09 IST

29.9 **Compliance with conditions of insurance policies**

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

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Date: 2026.10.31 11:19:09 IST

Article 30
ACCOUNTS AND AUDIT

30.1 **Audited accounts**

30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the Revenues from sale of oil, and all incomes derived or collected by it from or on account of the Project and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

30.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange

30.1.3 On or before the 31st (thirty-first) day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

30.2 **Appointment of Auditors**

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

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

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

30.3 **Certification of claims by Statutory Auditors**

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Date: 2026.10.31 11:19:09 IST

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

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Date: 2026.10.31 11:19:09 IST

Part V
FORCE MAJEURE AND TERMINATION

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Date: 2026.10.31 11:19:09 IST

Article 31
FORCE MAJEURE

31.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall, save and except as expressly provided otherwise, mean occurrence in India, of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 31.2, 31.3 and 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event: (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

31.2 Non-Political Event

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

(a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 31.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any delay or failure of an overseas Contractor to deliver any critical equipment required for the Project and not available in India if such delay or failure is caused outside India by any event specified in Sub-Article (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or

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Date: 2026.10.31 11:19:09 IST

(g) any event or circumstances of a nature analogous to any of the foregoing.

31.3 **Indirect Political Event**

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents operation of the Project by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(e) failure of the Authority to permit the Concessionaire to continue the Development Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(g) any Indirect Political Event that causes a Non-Political Event; or

(h) any event or circumstances of any nature analogous to any of the foregoing.

31.4 **Political Event**

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 38 and its effect, in financial terms, exceeds the sum specified in Clause 38.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no-objection certificate,

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no-objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

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

31.5 **Duty to report Force Majeure Event**

31.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 31 with evidence in support thereof;

(b) the estimated duration and effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

31.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on performance of its obligations under this Agreement.

31.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required under Clause 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 **Effect of Force Majeure Event on the Concession**

31.6.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of the Conditions Precedent, and in Clause 25.1 for achieving the Financial Close, shall be extended by a period equal in length to the duration of the Force Majeure Event.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

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

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

(b) after Project COD, whereupon the Concessionaire is unable to fulfill the O&M Requirements despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the O&M Requirements, then the Concession Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

31.7 **Allocation of costs arising out of Force Majeure**

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

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

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

31.7.3 For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues derived or collected by it from or on account of the Project or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

31.7.4 Save and except as expressly provided in this Article, 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.

31.8 **Termination Notice for Force Majeure Event**

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

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

31.9 **Termination Payment for Force Majeure Event**

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

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

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

31.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 34.4.2 as if it were an Authority Default.

31.10 **Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure in accordance with Article 41; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

31.11 **Excuse from performance of obligations**

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

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

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Date: 2026.10.31 11:19:09 IST

(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.

31.12 **Relief for Unforeseen Events**

31.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and Revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 31.12.

31.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

31.12.3 The conciliation tribunal referred to in Clause 31.12.2 shall conduct its proceedings in accordance with the provisions of Article 41 as if it is an arbitration proceeding under that Article, save and except as provided in Clause 31.12.

31.12.4 The conciliation tribunal referred to in this Clause 31.12 shall conduct preliminary proceedings to satisfy itself that:

(a) an Unforeseen Event has occurred;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 31.12.

31.12.5 Upon completion of the conciliation proceedings referred to in this Clause 31.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:

(a) based on a fair and transparent justification;

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

(b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event; and

(c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and

(d) quantified and restricted in terms of relief or remedy.

31.12.6 Within 15 (fifteen) days of receiving the order referred to in Clause 31.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the "**MoU**") setting forth the agreement reached hereunder, and the terms of such MoU shall have the force and effect as if they form part of the Agreement.

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Date: 2026.10.31 11:19:09 IST

Article 32
COMPENSATION FOR BREACH OF AGREEMENT

32.1 **Compensation for default by the Concessionaire**

Subject to the provisions of Clause 32.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 32.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

32.2 **Compensation for default by the Authority**

Subject to the provisions of Clause 32.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Revenues and all incomes derived or collected by it from or on account of the Project, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

32.3 **Extension of Concession Period**

Subject to the provisions of Clause 32.4, in the event that a material breach or default of this Agreement set forth in Clause 32.2 causes delay in achieving Project COD the Authority shall, in addition to payment of compensation under Clause 32.2, extend the Concession Period, such extension being equal in duration to the period by which Project COD was delayed.

32.4 **Compensation to be in addition**

Compensation payable under this Article 32 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

32.5 **Mitigation of costs and damage**

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

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Date: 2026.10.31 11:19:09 IST

Article 33
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

33.1 **Suspension upon Concessionaire Default**

Upon occurrence of Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Revenues from the sale of oil from the Commercial Cum Strategic Petroleum Reserve and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lender's Representative, the Authority shall extend the aforesaid 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

33.2 **Authority to act on behalf of Concessionaire**

33.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 28.3.

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

33.3 **Revocation of Suspension**

33.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Concessionaire under this Agreement. For avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

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Date: 2026.10.31 11:19:09 IST

33.4 **Substitution of Concessionaire**

At anytime during the period of Suspension, the Lenders' Representative, on behalf of the Senior Lenders, shall be entitled to substitute the Concessionaire under an and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of the Senior Lenders.

33.5 **Termination**

33.5.1 At any time during the period of Suspension under this Article 33, the Concessionaire may by notice request the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake the substitution in accordance with the provisions of this Agreement and within the period specified in Clause 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 34 as if it is a Concessionaire Default under Clause 34.1.

33.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 33.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a termination Notice had been issued by the Authority upon occurrence of Concessionaire Default.

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Date: 2026.10.31 11:19:09 IST

Article 34
TERMINATION

34.1 **Termination for Concessionaire Default**

34.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of the Agreement (the "**Concessionaire Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

(a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;

(c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule G and continues to be in default for 130 (one hundred and thirty) days;

(d) the Concessionaire abandons or manifests intension to abandon the development or operation of the Project without the prior written consent of the Authority;

(e) The maximum cap of damages is reached in accordance with Clause 15.2;

(f) the Concessionaire is in breach of the O&M Requirements or the EHS Requirements, as the case may be;

(g) the Concessionaire has failed to make any payment to the Authority including the Concession Fee within the period specified in this Agreement;

(h) upon occurrence of a Financial Default, the Lender's Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(j) the Concessionaire creates any Encumbrance in breach of this Agreement;

(k) the Concessionaire repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;

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Date: 2026.10.31 11:19:09 IST

(l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

(m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

(n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;

(p) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

(iii) each of the Project Agreements remain in full force and effect.

(q) occurrence of any Insolvency Event;

(r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(t) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

(u) the Concessionaire issues Termination Notice in violation of the provisions of this Agreement;

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Date: 2026.10.31 11:19:09 IST

(v) the Concessionaire commits a default in complying with any other provisions of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority; or

(w) the Concessionaire has failed to complete the Punch List items within the prescribed timeline.

34.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 34.1.3.

34.1.3 The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 34.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire: Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

34.2 **Termination for Authority Default**

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

(a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) the Authority has failed to make any payment due to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the adjustment in the Concession Fee payable by it to the Authority;

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

(c) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Project; or

(d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be abound by this Agreement.

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

34.3 **Termination for failure to comply with Oil Shortage Notification**

Notwithstanding anything contained to the contrary under this Agreement, if the Concessionaire fails to comply with the Drawdown Requirement, then the Authority shall have a right to terminate the Agreement and take over the Project along with the crude oil stored in the Commercial Cum Strategic Petroleum Reserve. The Authority shall not be required to make any Termination Payment if the Termination occurs under the provision of this Clause 34.3.

34.4 **Termination Payment**

34.4.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of Debt Due less Insurance Cover. Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the Project COD, save and except as provided in Clause 34.3.

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

(a) 100% Debt Due; and

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

34.4.3 Upon Termination on account of the Concessionaire Default at any time prior to the Project COD, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 34.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, the Parties agree that if the

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Date: 2026.10.31 11:19:09 IST

total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost.

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

34.4.5 Termination Payment shall become due and payable to the Concessionaire within 90 (ninety) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 5% (five per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 180 (one hundred and eighty) days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

34.4.6 The Concessionaire expressly agrees that Termination Payment under this Article 34 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.

34.5 **Certain limitations on Termination Payment**

34.5.1 Termination Payment, 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 Total 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 Project COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on Project COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that, notwithstanding anything contained in this Agreement, for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 50% (fifty per cent) of the Total Project Cost.

34.5.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 34.5.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of the Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

34.6 **Extension of Concession Period**

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than 5 (five) years, but no later than 2 (two) years prior to the completion of the Concession Period, by a notice issued to the Authority request an extension of the Concession

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Date: 2026.10.31 11:19:09 IST

Period. Upon expiry of the extended Concession Period hereunder, the Project shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Project to the Authority hereunder. Provided that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.2 and this Clause 34.6, shall apply *mutatis mutandis* to the extended Concession Period.

34.7 **Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

(a) take possession and control of the Project forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Project;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 35.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

34.8 **Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.4.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

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Date: 2026.10.31 11:19:09 IST

Article 35
DIVESTMENT OF RIGHTS AND INTEREST

35.1 **Divestment Requirements**

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

(a) notify to the Authority forthwith the location and particulars of all Project Assets;

(b) if there is any crude oil stored in the Commercial Cum Storage Petroleum Reserve, which is not stored under any Oil Trading Agreement, the Concessionaire may offer such crude oil to the Authority for sale at the prevalent market price as explained under Clause 22.3. If the Authority does not purchase such crude oil or if the Concessionaire does not wish to sell such crude oil then it may drawdown such crude oil from the Commercial Cum Strategic Petroleum Reserve within a period of 120 (one hundred and twenty) days from the date of such termination. For avoidance of doubt, this provision shall not apply if the Termination occurs under Clause 34.3;

(c) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(d) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the O&M Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe operating condition as vetted by the Independent Expert;

(e) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the Selected Bidder/Consortium Members, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;

(f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the

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Date: 2026.10.31 11:19:09 IST

Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

35.2 **Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the O&M Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the O&M Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 35.

35.3 **Cooperation and assistance on transfer of Project**

35.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of the Project.

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

35.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any Encumbrance all or any part of Project but which does not form part of the assets specified in Clause 35.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 41 shall apply.

35.4 **Vesting Certificate**

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

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Date: 2026.10.31 11:19:09 IST

the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

35.5 **Divestment costs**

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

35.5.2 In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure in Article 41 shall apply.

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Date: 2026.10.31 11:19:09 IST

Article 36
DEFECTS LIABILITY AFTER TERMINATION

36.1 **Liability for Defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the O&M Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 36.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 36 shall not apply if Termination occurs prior to Project COD.

36.2 **Inspection by Independent Expert**

36.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to the average of monthly Gross Revenue during the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 36.1.

36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Independent Expert shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that the sum larger than the amount stipulated in Clause 36.2.1 should be retained in Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.

36.2.3 The Concessionaire may, for the performance of its obligations under this Article 36, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 36.2.1 or Clause 36.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "**Performance Guarantee**"), to be modified, *mutatis-mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 36. Upon furnishing of the Performance Guarantee under this Clause 36.2.3, the retention of funds in Escrow Account in terms of Clauses 36.2.1 or 36.2.2, as the case may be, shall be dispensed with.

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Date: 2026.10.31 11:19:09 IST

Part VI
OTHER PROVISIONS

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Date: 2026.10.31 11:19:09 IST

Article 37
ASSIGNMENT AND CHARGES

37.1 **Restrictions on assignment and charges**

37.1.1 Subject to Clauses 37.2 and 37.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

37.1.2 Subject to the provisions of Clause 37.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

37.2 **Permitted assignment and charges**

37.2.1 The restraints set forth in Clause 37.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project or liens or encumbrances required by any Applicable Law;

(b) mortgages, pledges or hypothecation of goods or assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement; and

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements.

37.2.2 The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the Project or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written consent of the Authority.

37.3 **Substitution Agreement**

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

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Date: 2026.10.31 11:19:09 IST

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

37.4 **Assignment by the Authority**

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

37.4.2 Any assignment under this Article 37 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

37.5 **Mortgage of Project Assets**

37.5.1 Notwithstanding anything to the contrary contained in this Agreement upon request made in this behalf by the Lender's Representative the Authority and the Concessionaire shall jointly execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide *inter alia* for the following:

(a) as security for Debt Due, all Project Assets (the "**Mortgaged Assets**") shall stand mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed;

(b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of 180 (one hundred and eighty) days from the Transfer Date;

(c) The charge created over the Mortgaged Assets shall stand released and extinguished upon the Authority making the Termination Payment in accordance with the terms of the Agreement;

(d) In the event that Termination Payment is not made before expiry of 180 (one hundred and eighty) days from the Transfer Date the Senior Lenders shall have the right and entitlement to use or dispose of the Mortgaged Assets for recovery of Termination Payment and any recovery in excess of the Termination Payment shall be due and payable by the Senior Lenders to the Authority;

(e) Upon taking over of the Mortgaged Assets by the Senior Lenders in accordance with the Mortgaged Deed, the rights and title of the Senior Lenders and Concessionaire for and in respect of recovery of Termination Payment shall be deemed to be extinguished and the

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Date: 2026.10.31 11:19:09 IST

Termination Payment shall be deemed to have been made in full by the Authority under and in accordance with the provisions of the Agreement;

(f) The Mortgaged Deed shall expire and cease to have any fore or effect upon the earlier of (i) repayment of Debt Due by the Concessionaire and (ii) the 20th (twentieth) anniversary of Project COD.

37.5.2 Pursuant to the provisions of Clause 37.5.1, the Lender's Representative shall prepare a draft Mortgage Deed substantially in conformity with this Clause 37.5.2 and furnish copies to the Authority and the Concessionaire for their review and comments. The Lender's Representative shall consider such comments and send a revised draft to the Authority and the Concessionaire for negotiations in good faith. In the event such negotiations do not conclude in the form of an agreed Mortgage Deed to be executed in 60 (sixty) days of furnishing the first draft hereunder, the Dispute Resolution Procedure in Article 41 shall apply.

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Date: 2026.10.31 11:19:09 IST

Article 38
CHANGE IN LAW

38.1 **Increase in costs**

38.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 1,00,00,000 (Rupees one crore) in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

38.1.2 Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 41. For avoidance of doubt, it is agreed that this Clause 38.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

38.2 **Reduction in costs**

38.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 1,00,00,000 (Rupees one crore) in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

38.2.2 Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 41. For the avoidance of doubt, it is agreed that this Clause 38.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

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Date: 2026.10.31 11:19:09 IST

38.3 **Protection of NPV**

Pursuant to the provisions of Clauses 38.1 and 38.2 for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, Revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

38.4 **Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 38 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

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Date: 2026.10.31 11:19:09 IST

Article 39
LIABILITY AND INDEMNITY

39.1 **General indemnity**

39.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

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

39.2 **Indemnity by the Concessionaire**

39.2.1 Without limiting the generality of Clause 39.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

(b) payment of Taxes required to be made by the Concessionaire in respect of the income or other Taxes of the Contractors, suppliers and representatives;

(c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors;

(d) its omissions or acts of fraud, gross negligence and wilful misconduct;

(e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

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Date: 2026.10.31 11:19:09 IST

(f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

39.2.2 Without limiting the generality of the provisions of this Article 39, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

39.3 **Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 39 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

39.4 **Defense of claims**

39.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without

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Date: 2026.10.31 11:19:09 IST

the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

39.4.2 If the Indemnifying Party has exercised its rights under Clause 39.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

39.4.3 If the Indemnifying Party exercises its rights under Clause 39.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that Clauses 39.4.1, 39.4.2 or 39.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

39.5 **No consequential claims**

Notwithstanding anything to the contrary contained in this Article 39, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

39.6 **Limitation of Liability**

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Date: 2026.10.31 11:19:09 IST

39.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except where amounts exceeding the Total Project Cost are specifically prescribed in this Agreement as Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

(a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;

(b) breach of any Applicable Laws or any Applicable Permits;

(c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;

(d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or

(e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

39.7 **Survival on Termination**

The provisions of this Article 39 shall survive Termination.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

Article 40
RIGHTS TO THE SITE

40.1 **Rights to the Project Site**

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

40.2 **Access rights of the Authority and others**

40.2.1 The Concessionaire shall allow free access to the Project Site at all times to the Authority Representatives, Senior Lenders, the Independent Expert, and to the persons duly authorised by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

40.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11 allow free access to the Project Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

40.3 **Property taxes**

All property taxes with respect to the Project Site shall be payable by the Authority as owner of the Project Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Project Site including taxes relating to the buildings on constructed on the Project Site shall not be reimbursed or payable by the Authority. The Parties agree that stamp duties, if any, due and payable on the grant of license comprising the Agreement shall be paid by the Concessionaire which shall be reimbursed by the Authority within 15 (fifteen) days of receiving the demand thereof.

40.4 **Restriction on sub-letting**

The Concessionaire shall not sub-lease, sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for development, operation and maintenance of all or any part of the Project.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

Article 41
DISPUTE RESOLUTION

41.1 **Dispute resolution**

41.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 41.2.

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

41.2 **Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert, as the case may be, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, as the case may be, either Party may require such Dispute to be referred to Principal Secretary to the Authority and the Chairman of the board of directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 41.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 41.3.

41.3 **Arbitration**

41.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 41.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 41.3.2. 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 Act. The venue of such arbitration shall be New Delhi, and the language of arbitration proceedings shall be English.

41.3.2 There shall be a board of three arbitrators, of whom each Party shall 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.

41.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 41 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

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

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

41.4 **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 the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 41.3, 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.

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Date: 2026.10.31 11:19:09 IST

Article 42
DISCLOSURE

42.1 **Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Agreement, free of charge, during normal business hours on all working days at the Concessionaire's registered office and the Project. The Concessionaire shall prominently display at the Project, public notices stating the availability of the specified documents for such inspection and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

42.2 **Disclosure of Documents relating to safety**

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

42.3 **Withholding disclosure of Protected Documents**

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

Explanation:

The expression Protected Documents shall mean such of the specified documents or documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

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Date: 2026.10.31 11:19:09 IST

Article 43
MISCELLANEOUS

43.1 **Governing law and jurisdiction**

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

43.2 **Waiver of immunity**

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or Award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

43.3 **Depreciation and interest**

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

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

43.4 **Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond a period of 90 (ninety) days from the due date set forth therein or the date of receiving a demand for payment, as the case may be, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and

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Date: 2026.10.31 11:19:09 IST

recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof. It is hereby clarified that no interest shall be payable for any delayed payments made within a period of 90 (ninety) days from the due date or the date of receiving a demand for such payment, as the case may be.

43.5 **Waiver**

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

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

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

43.6 **Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority 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 Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-Article (a) above.

43.7 **Exclusion of implied warranties**

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

43.8 **Survival**

Termination shall:

(a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

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Date: 2026.10.31 11:19:09 IST

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

43.9 **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, shall be deemed to form part of this Agreement and treated as such.

43.10 **Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth in Article 41 or otherwise.

43.11 **No partnership**

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

43.12 **Third parties**

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

43.13 **Successors and assigns**

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

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Date: 2026.10.31 11:19:09 IST

43.14 **Notices**

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

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

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

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

Name: Mr. Atul Gupta
Designation: Deputy CEO
Address: ISPRL HO, 3rd Floor, OIDB Bhawan, Plot No.2, Sector 73, Noida, Gautam Buddha Nagar, Uttar Pradesh 201301
Email: deputy-ceo@isprlindia.com

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

43.15 **Language**

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

43.16 **Confidentiality**

43.16.1 Each Party shall keep the confidential information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.

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Date: 2026.10.31 11:19:09 IST

43.16.2 Clause 43.16.1 shall not apply in the following circumstances:

(a) any disclosure required by Applicable Laws or in respect of information already in the public domain;

(b) any disclosure required by any applicable stock exchange listing rule; and

(c) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

43.16.3 Either Party shall have the right to disclose confidential information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.

43.16.4 In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.

43.16.5 Each Party shall utilise the same degree of care to preserve and protect the other Party's confidential information from disclosure that they use to protect their own confidential information, which shall not be less than reasonable care.

43.16.6 Confidential information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect confidential information shall survive 3 (three) years from Termination.

43.17 **Stamp Duty**

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Authority.

43.18 **Counterparts**

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

43.19 This Agreement shall be read in conjunction with the LOA and the RFP including the addenda.

Provided that the priority set forth in Clause 1.4.1 of this Agreement shall follow for the purpose of interpretation of this Agreement.

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Date: 2026.10.31 11:19:09 IST

Article 44
DEFINITIONS

44.1 **Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

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

"**Additional Auditors**" shall have the meaning set forth in Clause 30.2.3;

"**Adjusted Equity**" shall mean 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 Price Index, and for any Reference Date occurring:

(a) on or before Project 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 Price Index occurring between the first day of the month of Effective Date and the Reference Date;

(b) from Project COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Project 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 Project COD to the extent of variation in Price Index occurring between Project COD and the Reference Date; and

(c) any time after the 4th (fourth) anniversary of Project COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by [0.15% (zero point one five per cent)][10] thereof at the commencement of each month following the 4th (fourth) anniversary of Project COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between Project COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of Price Index shall continue to be made;

"**Affected Party**" shall have the meaning set forth in Clause 31.1;

"**Agreement**" shall mean this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

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[10] This number has been arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 60 year Concession Period shall be 100/654.54 = 0.15277 rounded off to two decimal points i.e. 0.15.

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Date: 2026.10.31 11:19:09 IST

"**Ancillary Facilities**" shall mean the ancillary facilities constructed by the Concessionaire in accordance with Clause 2.2;

"**Appendix**" shall have the meaning set forth in Clause 10.3.1;

"**Applicable Laws**" shall mean all laws, brought into force and effect by GOI or the Government of Odisha including rules, regulations, notifications, directives, policies and office memorandums, made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of the Agreement;

"**Applicable Permits**" shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws including the Applicable Permits provided in Schedule E in connection with the development, construction, operation and maintenance of the Project during the subsistence of this Agreement and upon Termination, the transfer of the Project to the Authority;

"**Appointed Date**" shall mean the date on which the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Concession Period;

"**Arbitration Act**" shall mean the Arbitration and Conciliation Act, 1996 and shall include amendments, modifications to or any re-enactment thereof, as in force from time to time;

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

"**Authority**" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

"**Authority Default**" shall have the meaning set forth in Clause 34.2;

"**Authority Indemnified Persons**" shall have the meaning set forth in Clause 39.1.1;

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

"**Availability Report**" shall have the meaning set forth in Clause 21.4;

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Date: 2026.10.31 11:19:09 IST

"**Available Space**" shall mean the space in the Commercial Cum Storage Petroleum Reserve which is free and available to be used and which is not likely to be filled up or tied up for use for storing crude oil for the next 90 (ninety) days;

"**Award**" shall have the meaning set forth in Clause 41.3;

"**Bank**" shall mean a bank incorporated in India and having a minimum net worth of Rs 1,000 crore (Rupees one thousand crore) or any other bank acceptable to the Senior Lenders, but does not include a bank in which the Senior Lender has an interest;

"**Bank Rate**" shall mean the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

"**Bid**" shall mean the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

"**Bid Date**" shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

"**Bid Security**" shall mean the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

"**Change in Law**" shall mean the occurrence of any of the following after the Bid Date:

(a) the enactment of any new Indian law as applicable to the Project;

(b) the repeal, modification or re-enactment of any existing Applicable Law;

(c) the commencement of any Indian law which has not entered into effect until the Bid Date;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"**Change in Ownership**" shall mean a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total equity to decline below (i) 51% (fifty one per cent) at any time prior during the Construction Period and until the expiry of the 2nd (second) anniversary of the Project COD; (ii) the shareholding of each of the technical member and the financial member of the Consortium declines below 26% (twenty six per cent) until the expiry of the 2nd (second) anniversary of the Project COD; and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its

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Date: 2026.10.31 11:19:09 IST

application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any Consortium Member} to the total equity, if it occurs prior to the 2nd (second) anniversary of Project COD, shall constitute Change in Ownership;

"**Change of Scope**" shall mean any change in the Scope of the Project including any additional works and services which are not included in the Scope of the Project as contemplated by this Agreement, in accordance with the terms of Clause 16;

"**Change of Scope Notice**" shall have the meaning set forth in Clause 16.2;

"**Change of Scope Order**" shall have the meaning set forth in Clause 16.2;

"**Commercial Cum Strategic Petroleum Reserve**" shall mean the underground cavern oil storage facility of a capacity of 4.0 (four) MMT to be constructed at Chandikhol, Odisha in accordance with the terms of this Agreement;

"**Companies Act**" shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

"**Completion Certificate**" shall have the meaning set forth in Clause 14.2;

"**Concession**" shall have the meaning set forth in Clause 3.1;

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

"**Concessionaire Default**" shall have the meaning set forth in Clause 34.1;

"**Concession Fee**" shall have the meaning set forth in Clause 27.1;

"**Concession Period**" shall have the meaning set forth in Clause 3.2;

"**Conditions Precedent**" shall have the meaning set forth in Clause 4.1;

"**Consortium**" shall have the meaning as set forth in Recital (C);

{"**Consortium Member** or **Member**" shall mean a company specified in Recital (C) as a member of the Consortium;}

"**Construction Experience**" shall have the meaning assigned to it under the RFP;

"**Construction Period**" shall mean the period beginning from the Appointed Date and ending on Project COD and subject to the provisions of this Agreement, which shall be a period of 6 (six) years from the Appointed Date;

"**Contractor**" shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contracts, the O&M Contracts, or any other material agreement for the construction, operation and/or maintenance of the Project or matters

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Date: 2026.10.31 11:19:09 IST

incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

"**Covenant**" shall have the meaning set forth in Clause 5.2.4;

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

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Expert hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert after the receipt of the relevant information to accord their approval;

"**Damages**" shall have the meaning set forth in Clause 1.2.1 (y);

"**DBFOT**" shall have the meaning set forth in Recital (A);

"**Debt Due**" shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "**Principal**") but excluding any part of the Principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub- Article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date; (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender; and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be

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Date: 2026.10.31 11:19:09 IST

Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on or after the Project COD, shall in no case exceed 50% (fifty per cent) of the Total Project Cost;

"**Deemed Completion Certificate**" shall have the meaning set forth in Clause 14.4;

"**Deemed Performance Security**" shall have the meaning as set forth in Clause 9.4;

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

"**Development Obligations**" shall have the meaning set forth in Clause 12.3;

"**Development Works**" shall mean all construction works and things necessary to complete the Development Obligation in accordance with the provisions of this Agreement;

"**Dispute**" shall have the meaning set forth in Clause 41.1;

"**Dispute Resolution Procedure**" shall mean the procedure for resolution of Disputes set forth in Article 41;

"**Divestment Requirements**" shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 35;

"**Document**" or "**Documentation**" shall mean documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"**Drawdown Requirement**" shall have the meaning set forth in Clause 22.1.1;

"**Drawings**" shall mean all of the drawings, calculations and documents pertaining to the Project as set forth in Schedule D, and shall include as built drawings of the Commercial Cum Strategic Petroleum Reserve;

"**EHS Requirements**" shall have the meaning set forth in Clause 18.1;

"**Emergency**" shall mean a condition or situation that is likely to endanger the security of the individuals on or about the Project Site, or which poses an immediate threat of material damage to any Project Assets;

"**Encumbrances**" shall mean, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1. For avoidance of doubt any public road or existing easementary rights will not amount to Encumbrances;

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

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

"**EPC Contractor**" shall mean the person with whom the Concessionaire has entered into an EPC Contract;

"**Equity**" shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest- free loans advanced by any shareholder of the Company for meeting such equity component;

"**Escrow Account**" shall have the mean the escrow account setup in accordance with Article 28;

"**Escrow Bank**" shall have the meaning set forth in Clause 28.1.1;

"**Execution Date**" shall mean the date on which this Agreement is executed by the Parties;

"**Financial Close**" shall mean the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"**Financial Default**" shall have the meaning set forth in Schedule P;

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

"**Financial Package**" shall mean 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;

"**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;

"**Financing Agreements**" shall mean the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 31.1;

"**Force Majeure Costs**" shall have the meaning ascribed to it in Clause 31.7;

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Date: 2026.10.31 11:19:09 IST

"**GOI**" shall mean the Government of India;

"**Good Industry Practice**" shall mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits, ensuring reliable, safe, economical and efficient construction, operation and maintenance of the Project;

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

"**Grant**" shall have the meaning set forth in Clause 26.1.1;

"**Gross Revenue**" for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Project and the Revenue Generating Activities but shall exclude the following:

(a) All statutory applicable indirect Taxes such as goods and services tax and the like by whatever name called now or in future, which the Concessionaire is bound to pay;

(b) Any Revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and

(c) Interest income from investment made;

For avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any Revenue Generating Activity and/or any other activity related to the Project, and any amount received by the Concessionaire from a third party to whom it has contracted any Revenue Generating Activity and/or any other activity related to the Project;

"**Indemnified Party**" shall mean the Party entitled to the benefit of an indemnity pursuant to Clause 39.3;

"**Indemnifying Party**" shall mean the Party obligated to indemnify the other Party pursuant to Clause 39.3;

"**Independent Expert**" shall have the meaning set forth in Clause 24.1;

"**Indirect Political Event**" shall have the meaning set forth in Clause 31.3;

"**Insolvency Event**" in respect of a Party shall mean:

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Date: 2026.10.31 11:19:09 IST

(a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the "**Code**"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of 90 (ninety) days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

"**Inspection Report**" shall have the meaning set forth in Clause 13.2;

"**Insurance Cover**" shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"**Key Performance Indicators**" shall have the meaning set forth in Clause 23.1;

"**Lead Member**" shall have the meaning as set forth in Recital (C);

"**Lenders' Representative**" shall mean the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"**LOA** or **Letter of Award**" shall mean the letter of award referred to in Recital (D);

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Date: 2026.10.31 11:19:09 IST

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

"**Maintenance Manual**" shall have the meaning set forth in Clause 17.3.1;

"**Maintenance Programme**" shall have the meaning set forth in Clause 17.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 17.2;

"**Medical Aid Post**" shall have the meaning set forth in Clause 5.8;

"**Mortgage Deed**" shall have the meaning as set forth in Clause 37.5.1;

"**Most Preferable Customer**" shall mean that the Concessionaire shall provide the space for lease in the Commercial Cum Strategic Petroleum Reserve to the Authority on no less favorable terms, at the best price it gives to any third party, and shall prefer Authority over any other third party in providing such space;

"**MoU**" shall have the meaning as set forth in Clause 31.12.6;

"**National Oil Marketing Companies**" means the oil marketing companies owned and operated by the public sector undertakings;

"**Nominated Company**" shall mean a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

"**Non-Political Event**" shall have the meaning set forth in Clause 31.2;

"**NPV**" shall have the meaning set forth in Clause 38.3;

"**O&M Contract**" shall mean the operation and maintenance contract that may be entered into between the Concessionaire and an O&M Contractor for performance of the O&M obligations in accordance with this Agreement;

"**O&M Contractor**" shall mean a contractor with whom the Concessionaire has entered into an O&M Contract, if any;

"**O&M Expenses**" shall mean expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services; (c) premia for insurance; (d) all Taxes, duties, cess and fees due and payable for O&M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M; and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"**O&M Inspection Report**" shall have the meaning set forth in Clause 19.2;

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Date: 2026.10.31 11:19:09 IST

"**O&M Requirements**" shall have the meaning set forth in Clause 17.1;

"**Oil Shortage Event**" shall mean an event determined by the Authority to be a national energy supply shortage which:

(a) is, or is likely to cause a significant reduction in supply of oil in India;
(b) may cause major adverse impact on national safety or the national economy;
(c) may cause a significant price increase of oil which has the ability to cause a major adverse impact on the national economy; or
(d) an event that is determined to be an 'Oil Shortage Event' through a notification issued by the Authority or any other Government Instrumentality.

Such events could result on account of either: (i) an interruption in the supply of imported petroleum products; (ii) an interruption in the supply of domestic petroleum products; or (iii) on account of sabotage; (iv) on account of a Force Majeure event; or (v) any other such event.

"**Oil Shortage Notification**" shall have the meaning set forth in Clause 22.1.1;

"**OISD 230**" shall have the meaning set forth in Clause 5.10.1;

"**Oil Trading Agreement"** shall mean all agreements executed by the Concessionaire for Revenue Generating Activities in relation to the Commercial Cum Strategic Petroleum Reserve;

"**Operation Period**" shall mean the period commencing from Project COD and ending on the Transfer Date;

"**Panel of Chartered Accountants**" shall have the meaning as set forth in Clause 30.2.1;

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

"**Performance Guarantee**" shall have the meaning set forth in Clause 36.2.3;

"**Performance Security**" shall have the meaning set forth in Clause 9.1;

"**Performance Security Period**" shall have the meaning set forth in Clause 9.3;

"**Political Event**" shall have the meaning set forth in Clause 31.4;

"**Premium**" shall have the meaning set forth in Clause 27.2.1;

"**Preservation Costs**" shall have the meaning set forth in Clause 13.5.3;

"**Price Index**" shall comprise:

(a) 70% (seventy per cent) of WPI; and

(b) 30% (thirty per cent) of CPI (IW),

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Date: 2026.10.31 11:19:09 IST

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

"**Project**" shall have the meaning set forth in Recital A;

"**Project Agreements**" shall mean this Agreement, the Financing Agreements, EPC Contract, O&M Contract, the Oil Trading Agreement, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs. 25,00,00,000 (Rupees twenty five crore) for each such agreement;

"**Project Assets**" shall mean all physical and other assets relating to and forming part of the Project and the Project Site including:

(a) rights over the Project Site;

(b) rights over the land for the single point mooring and onshore and offshore pipeline;

(c) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;

(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 authorisations relating to or in respect of the Project;

"**Project COD**" shall have the meaning set forth in Clause 15.1 and shall be the date on which the Development Obligations are completed;

"Project Completion Schedule" shall mean the progressive Project Milestones set forth in Schedule G for completion of the Project on or before the Scheduled Completion Date;

"**Project Milestones**" shall mean the project milestones set forth in Schedule G;

"**Project Site**" shall have the meaning set forth in Clause 10.1;

"**Protected Documents**" shall have the meaning set forth in Clause 42.3;

"**Provisional Certificate**" shall have the meaning set forth in Clause 14.1;

"**Punch List**" shall have the meaning set forth in Clause 14.1;

"**Recitals**" shall mean a recitals under this Agreement;

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Date: 2026.10.31 11:19:09 IST

"**Reference Exchange Rate**" shall mean, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"**Request for Proposal**" or "**RFP**" shall have the meaning set forth in Recital (C);

"**Revenue"** shall mean all amounts charged and recovered by the Concessionaire on account of operation and of the Project on mutually agreed terms and shall include charges for use of Revenue Generating Activities and shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Revenue Generating Activities;

"**Revenue Generating Activities**" shall mean all activities which the Concessionaire is entitled to undertake and as set forth in Article 21 for the generation of Revenue from the Project;

"**Right of Way**" shall mean constructive possession 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;

"**Right of User in Land** " shall mean the right to use the land for the laying of the pipelines in accordance with the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 as amended from time to time;

"**Rs.**" or "**Rupees**" or "**Indian Rupees**" shall mean the lawful currency of the Republic of India;

"**Safe for Operation Certificate**" shall have the meaning set forth in Clause 12.6;

"**Schedule**" shall mean a schedule under this Agreement;

"Scheduled Completion Date" or "**SCOD**" shall mean the scheduled date(s) for achieving Project COD, as set forth in Schedule G;

"**Scope of the Project**" shall have the meaning set forth in Article 2.1;

"**Selected Bidder**" shall mean the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

"**Senior Lenders**" shall mean the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

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Date: 2026.10.31 11:19:09 IST

"**Specifications and Standards**" shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule C, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

"**Statutory Auditors**" shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 30.2;

"Subordinated Debt" shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in sub-Article (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;

"**Substitution Agreement**" shall have the meaning set forth in Clause 37.3;

"**Suspension**" shall have the meaning set forth in Clause 33.1;

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

"**Termination**" shall mean the expiry or termination of this Agreement and the Concession hereunder;

"**Termination Notice**" shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" shall mean the amount payable by the Authority to the Concessionaire, under and in accordance with this Agreement, upon Termination;

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Date: 2026.10.31 11:19:09 IST

"**Tests**" shall mean the tests set forth in Schedule H to determine the completion of Project in accordance with the provisions of this Agreement and the crude oil is in accordance with the provisions of this Agreement;

"**Total Project Cost**" shall mean the capital cost incurred on construction and financing of the Project and shall be limited to the lowest of:

(a) the capital cost of the Project, less Grant as set forth in the Financial Package;

(b) the actual capital cost of the Project upon completion of the Development Works less Grant; and

(c) a sum of Rs. 85,71,00,00,000 (Rupees Eight Thousand Five Hundred and Seventy One Crores);

provided that in the event Price Index increases, on an average, by more than 5% (five per cent) per annum for the period between the Bid Date and Project COD, the amount hereinbefore specified shall be increased such that the effect of increase in Price Index, in excess of such 5% (five per cent), is reflected in the Total Project Cost;

provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

"**Transfer Date**" shall mean the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"**Unforeseen Events**" shall have the meaning as set forth in Clause 31.12.1;

"**Unscheduled Maintenance**" shall have the meaning as set forth in Clause 17.11.1;

"**Vesting Certificate**" shall have the meaning set forth in Clause 35.4; and

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

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Date: 2026.10.31 11:19:09 IST

SIGNATORIES

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

SIGNED, SEALED AND DELIVERED
For and on behalf of the Authority by:

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 [●].

I, [●*insert name of authorised signatory*●], hereunto affixed the common seal in the presence of [●*insert name of authorised director*●], director, who has signed these presents in token thereof.

_____
(Signature)

_____
(Signature)

_____
(Name)

_____
(Name)

_____
(Designation)

_____
(Designation)

_____
(Address)

_____
(Address)

In the presence of:
1.

2.

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Date: 2026.10.31 11:19:09 IST

SCHEDULES

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Date: 2026.10.31 11:19:09 IST

Schedule A
SITE OF THE PROJECT

1. The Project Site

Project Site shall include the land as described in Annex-I of this Schedule A.

An inventory of the Project Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Project Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

Additional land required for ancillary buildings, extension/ addition of the Project or for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Project Site and vest in the Authority.

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Date: 2026.10.31 11:19:09 IST

Annex-I
(Schedule A)

Description of Site

The selected site for the storage is located near Chandikhol in the Jajpur District of Odisha. About 400 acres of land has been acquired for creating the planned facilities. The site is approx. 80km NNE of Bhubaneswar, the state capital and is approachable by NH-5 and NH-200 network as well as by the broad gauge rail of East Coast Railways from Bhubaneswar. The project site is located on the left side of Chandikhol-Daitary road. The nearest railway station is Chandikhol, located nearly 20 km from the project site. The marine coast is located nearly 60km in the southeast from the area.

The site is located about 100 kms from the existing COT of Paradip Refinery of M/s IOCL and thus with a proposed new pipeline, the storage facility will have access to the three offshore oil terminals (SPM) located off Paradip for trans-shipments. The existing crude oil pipeline of M/s IOCL can form the further connectivity for usage of other refineries viz. Paradip, Haldia and Barauni and the other refineries of north eastern of India.

Project site is located with approximate. coordinates as under :

Latitude (N) 20°46’36.5238”
Longitude (E) 86°2’55.8374”.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE B
DEVELOPMENT OF THE PROJECT

Development of the Project shall include development of the Commercial Cum Strategic Petroleum Reserve.

Development of the Project shall include construction of the Project as described in this Schedule B. Development of the Project shall conform with the provisions of Annex-I (Description of Project) of this Schedule B.

The Project shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule C.

Scope of Work

While undertaking the development of the Project, the scope of work shall include, but not limited to the following:

The Chandikhol crude oil storage facilities are envisaged to be designed with a "D" shaped cross section and the total capacity of proposed rock caverns facility is 4.0 MMT in Eight units, with four units having net capacity of 0.3 MMT and four units having net capacity of 0.7 MMT. The Concessionaire can design its own configuration and can increase or decrease the number of caverns. However, the total capacity shall remain fixed as 4.0 MMT. The Concessionaire shall transfer the Project upon expiry of the Agreement or the early termination of the Agreement, as the case maybe.

1. Design and Build

- Access tunnels (from the surface with access portal to allow the heavy equipment for excavation of the rock caverns and execution of underground civil and installation works);
- Inlet and outlet shaft works and piping works (incl. vertical piping);
- Water curtain tunnels, water curtain pressurization system;
- Underground storage cavern excavation and other associated works through adoption of drill & blast method, excavation geological mapping, rock support system for cavern stability, geotechnical monitoring, pre- and post-grouting, storage containment system including water curtain boreholes, concrete plugs etc.;
- Underground mechanical works like in cavern pipe manifolds, casings, submersible pumps, and associated instrumentations etc.;
- Concrete works such as plugs in the access tunnels, separation walls in connection tunnels between caverns, mass filling in shafts etc.;
- Lighting, ventilation and dewatering system;
- Rock debris transport and safe disposal for handling;

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Date: 2026.10.31 11:19:09 IST

- Above ground facilities including surface installations like connectivity to the existing facilities and additional new pipelines, metering skids, booster pumps, cavern shaft tops, effluent treatment plant, firefighting systems, station, PLC and DCS control system, SCADA monitoring system, Tank Farm Management System, storm water reservoir, diesel oil tanks, LPG mounted storage and pumping, boiler and PSA skids for nitrogen for cavern inertisation etc.

- Single point mooring, onshore and offshore pipeline connectivity to the Commercial Cum Strategic Petroleum Reserve.

- The Concessionaire shall prepare the design and procure the Right of Way/Right of User in Land for the single point mooring and the onshore and offshore pipeline.

2. Operation and Maintenance

- Operation and maintenance of the Project along with the single point mooring, onshore and offline pipeline, as per the terms of the Concession Agreement and international standards.

- Manage geotechnical controls, monitor and analyse Commercial Cum Strategic Petroleum Reserves to ensure drawdown capability.

- The Concessionaire shall meet minimum performance standards throughout the Operation Period and ensure safety of personnel, plant and equipment at all times, in terms of drawdown capability, cavern integrity, in a safe, effective, efficient, timely, and environmentally compliant manner.

3. Any other scope of work mentioned in the RFP which has not been detailed herein.

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Date: 2026.10.31 11:19:09 IST

Annex-I
(Schedule B)

Description of the Project

1. Type of Project

The proposed underground storage facility is based on the principle of employing ground water pressure for storing the product within an unlined rock cavern. This technology is very well established in many countries. Based on a site campaign involving geological, geo-physical, geo-technical and geo-hydrological investigations, it is established that rock formations in conjunction with ground water conditions are competent for construction of caverns and suitable to store the hydrocarbons. When compared to above ground steel tanks for storage of large volume of crude oil and petroleum product, the rock cavern storage option is significantly more economical. This storage alternative is also one of the most safe and secure option. Where suitable geology and hydro-geological regime is available, underground unlined rock caverns are the preferred option.

2. Size of Project

The Chandikhol crude oil storage facilities are envisaged to be designed with a "D" shaped cross section and the total capacity of proposed rock caverns facility is 4.0 MMT in Eight units, with four units having net capacity of 0.3 MMT and four units having net capacity of 0.7 MMT. The concessionaire can design its own configuration and can increase or decrease the number of caverns. However the total capacity shall remain fixed as 4.0 MMT. The Concessionaire can retain the design flexibility and could choose greater number of caverns at his discretion. The cost of increase in the number of caverns and associated facilities will not be considered as change of scope and no additional grant will be payable for the same. It shall not be factored in the base cost of the project.

During operation, each unit will have its own product loading and unloading history. Therefore, the operating pressure in the units could be different in time and this variation is not necessarily synchronous. Further during operation, the vapour pressure in the various cavern units shall be balanced using connections between the cavern units. All units are separated by about 100m of rock or with a water filled access tunnel in between. Further to ensure hydraulic confinement by continuous flow of water and ensure that water flow is always directed towards the caverns, a horizontal water curtain system is provided. The horizontal water curtain will extend at least 20 meters over and beyond all extensions of storage galleries. The average distance from the tunnel portal to the dumping areas is assumed to be 2 (two) kms. The above ground process facilities will be located on top of the underground facilities.

3. Facilities

Following are the facilities at crude oil storage terminal:

a) Eight U shaped cavern units
b) Water curtain for maintaining ground water levels
c) Two vertical shafts per cavern units from the surface to the cavern for all piping &instrumentation of the cavern as well as pump maintenance
d) Temporary access tunnel to caverns and water curtain galleries

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Date: 2026.10.31 11:19:09 IST

e) Thirty two submersible crude oil pumps for evacuation of the oil from the caverns and circulation each of 1600m³/hr
f) Sixteen submersible seepage water pumps each of 50m³/hr
g) Boiler and heat exchange system for heating the product
h) Vapour control system and flare stack.
i) Water treatment plant for seepage water from the caverns
j) Fire protection system
k) Power distribution and cabling
l) Back-up power supply
m) Nitrogen inertisation of the cavern during filling and evacuation
n) Instrumentation and control
o) All piping and valves within the facility
p) Above ground facilities civil works including control rooms, equipment foundations, piping and cabling trenches and provision for sanitation
q) Main line pumps (3+1) and booster pumps (3+1) each of capacity 3300m³/hr
r) Bulk materials like piping, electrical and instrumentation, civil works and buildings
s) Raw / drinking water system, fire Protection system, WWTP (Effluent Treatment plant) and Insulation and Painting
t) New captive SPM, 18 Km offshore 48" OD pipeline and approx. 100 km onshore 42" OD pipeline
u) Temporary facilities necessary for construction process such as 100% back up power supply, fully equipped workshop, sedimentation and water treatment facilities, access roads etc.

For the performance of storage facilities, loading and unloading operations and inventory arrangement the following above ground installations are to be planned:

(a) Cavern shaft tops
(b) Heat exchangers
(c) Metering skids
(d) Booster pumps
(e) Boiler
(f) Pipe way above ground
(g) Buried pipelines and electrical cables
(h) API oil separators
(i) Effluent treatment plant
(j) Fire water tank
(k) Fire water pump house
(l) Fire station
(m) Control room
(n) Standby power generator
(o) Outdoor switch yard
(p) Substation building
(q) Compressed air system
(r) Nitrogen plant
(s) Maintenance workshop
(t) Diesel oil tanks and pumping system
(u) LPG mounded storage and pumping
(v) Storm water reservoir
(w) Raw water tanks and pumps

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Date: 2026.10.31 11:19:09 IST

(x) Drinking water sump and pumps
(y) Flare

The above mentioned facilities should be designed to meet the statutory requirements and best engineering practices adopted in oil and gas industries. The raw water for the proposed project is assumed to be available locally. The storm water shall be planned to be collected in a pond to utilize the water and reduce the requirement of river water/local sourcing.

Storage Pressure

The storage is designed to operate at following vapor pressure conditions:

- Operating Pressure Relief Valve : 1.5 Kg/cm²g
- Maximum Operating Vapor Pressure : 1.3 Kg/cm²g
- Minimum Operating Vapor Pressure : 0.1 Kg/cm²g

A pressure above atmospheric pressure is always maintained in the cavern, to eliminate leakages of air into the cavern and any leakages of vapor out of the cavern can also be detected above ground. The cavern shall resist under pressure and is also designed for, an accidental load case, an internal transient explosion of 1MPa.

Crude Receiving System

Crude oil for storage will be received through 1,40,000 to 3,20,000 DWT ship tankers at a proposed new SPM to be installed near Paradip The ship tanker pumps will transfer the crude oil to the cavern site through a new subsea-pipeline from SPM through booster station near LFP and onshore pipeline, thereafter upto cavern. The required battery limit pressure at the cavern facility before metering is 6.5 kg/cm2 (g). The maximum flow rate for cavern filling will be10,000 m³/h.

Crude Oil Pumps

The product will be pumped out from the cavern at a maximum flow rate of 10,000 m³/hr. With help of submersible pumps, crude oil is pumped to grade level(+30 mmsl). The submersible pumps shall be capable of handling melted waxes and crude oil sludge during de-waxing operation. Following are the pump details:

- Type of Pumps : Vertical Submersible Crude oil
- No. of Pumps : 4(3W+1S) per unit ×8 units = 32
- Capacity : 1600 m³/hr (each pump)
- Differential Head (m) : 165

For maximum crude oil transfer to SPM, two units are considered in operation simultaneously. After flow measurement, the crude oil is sent to the mainline pumps before being discharged at a maximum flow rate of 10000 m³/h into the pipeline.

Following are the pump details for transfer.

- Type of Pumps : Horizontal Centrifugal (Mainline pumps at Cavern)

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Date: 2026.10.31 11:19:09 IST

- No. of Pumps : 4 (3W+1S)
- Capacity : 3300 m^3/hr (each)
- Differential Head (m) : 210

Flow Metering Station

Their shall be installed four flow meters in parallel (3W+1S) to measure the maximum 10000 m^3/h flow rate into and out of the caverns (each meter capable of measuring 3300 m^3/hr). They will be equipped with strainers with air eliminators, as well as an integrated on-line automatic sampling skid allowing product samples to be taken for off-line laboratory analysis. A master meter in the form of turbine flow meter shall be considered for verifying the ultrasonic flow meters. The capacity of the turbine meter will be 3300 m^3/hr.

Casing Pipes

All pumps, level and temperature transducers and steam lines for the caverns shall be installed in casing pipes. The casing shall be designed to withstand an explosion, inside the cavern up to a pressure level of 1 MPa (explosion in the vapor phase). During normal operation, the pressure inside the casing pipes shall be equalized to the cavern vapor pressure by pipe connections at the cavern shaft top.

Nitrogen & Nitrogen system

Nitrogen is required for the crude oil underground storage to perform the following activities:

- Removal of O2 from the cavern prior to taking crude oil to the cavern. O2 content should be brought down below 5%
- Maintaining cavern pressure while pumping out crude oil from the cavern. Pressure to be maintained at 0.3 kg/cm^2g (min) during pump out
- Any maintenance activities in the pump shaft
- Quicker dispersion of hydrocarbons and other gases released through vent.

The nitrogen requirement during commissioning shall be met by using IG generators. During normal operation, maximum nitrogen requirement will be at the time of crude oil pump out @ 10,000 m^3/hr (maximum transfer from two units). The quantity of N2 necessary to meet this requirement is computed as 12,000 Nm^3/hr.

As the vapor pressure of the stored crude oil is below atmospheric pressure, it is necessary to inert the vapor phase with nitrogen. Moreover, nitrogen is also required when the cavern pressure drops with crude oil withdrawal. In order to meet a huge requirement of 12,000 Nm^3/hr during withdrawal, two PSA inert gas generator skids each of capacity 6,000 Nm^3/hr shall be put up. The quantity and quality of air needed for inert gas generation shall be met by dedicated compressors, dryers etc.

Construction Aspects

a. **Access Tunnels**

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Date: 2026.10.31 11:19:09 IST

For construction purposes, two independent access tunnels shall be planned from the surface with access portal to allow for use of heavy equipment for excavation of the rock caverns and execution of underground civil and installation works. The accesses shall be designed with the objectives of time schedule as well as safety during the excavation phase. Determining factors in the dimensioning of the access tunnel are the ventilation requirements of the caverns as well as the chosen method and equipment for mucking. The access tunnel must allow space for the ventilation ducts and for free passage of the intense two-way heavy construction traffic. In order to facilitate the mucking operations, the invert of the access tunnels shall be planned to be paved and properly dewatered.

b. **Caverns**

The caverns shall be planned to be excavated in multi stages involving heading and two or three benches. This will be dependent on the type of drill jumbos to be deployed. The excavation of the heading and benches will be undertaken by either through full face excavation or in a combination of pilot and side slashing. Conventional Drill and Blast technique will be used with horizontal drilling of blast holes for ensuring smooth control blast, reduced blast induced damage to the cavern wall and safe working condition.

c. **Water Curtain System**

Determining factors in the dimensioning of the water curtain gallery are the equipment to be used for excavation and mucking as well as the choice of method and equipment for water curtain borehole drilling. Pre-probing and grouting may be required during excavation. However, grouting in water curtain tunnels will be minimised and only be employed when;

- In-leaking water endangers work safety, slows excavation progress or creates unacceptable draw down of ground water table
- Excessively leaking boreholes indicate that the water consumption during operation of the water curtain system become unacceptable.

The water curtain tunnels will as far as possible be used for hydro geological mapping and testing to identify structures which could require to be treated by pre-grouting during excavation of the underlying cavern galleries. The water curtain boreholes shall be charged through temporary arrangements for pressurization of boreholes so as to ensure saturation of rock-mass ahead of the cavern construction. No cavern excavation shall be allowed without at least 50 m of advance saturation of the rock mass. Upon completion of the cavern excavation, the temporary arrangements of pressurization shall be dismantled and the water curtain gallery will be filled in with water up-to a defined level.

d. **Drill and Blast**

The drill pattern is decided based on the requirements regarding smooth and control blasting, local geological features and optimization of the pull or advance of excavation. Drill patterns and charge concentrations must be continuously modified throughout the construction period, to suit the local geological conditions. Contour and helper holes must be lightly charged to avoid excessive damage outside the excavation line. Due to the fact that these holes are lightly charged the distance to the nearest free surface is relatively small. The quality of detonators is crucial and the cost and time implications of a misfire are serious. For this reason a detonator supplier

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Date: 2026.10.31 11:19:09 IST

would have to be able to ensure the consistency of his product to the satisfaction of the contractor.

e. **Scaling and Mucking**

No person should enter into any section of recently blasted rock excavation until it has been scaled. Experienced rock workers must carry out scaling. Decisions often need to be taken on the spot as to whether the rockmass needs to be taken down or whether it can be safely secured using rock bolts and shotcrete. Mucking equipment must be sized in accordance with the tunnels to be mucked as well as the time constraints. In the case of the oil storage caverns, the space available allows for the use of large wheel loaders or face shovels. The access tunnel on the other hand is more restricted. The loaders may use a side tipping action or may haul the muck to a loading niche, which is blasted specifically for loading. In longer tunnels turning bays may be required for the trucks. The haul roads in the project including those in the tunnels and caverns is planned to be paved and maintained to reduce wear and tear on the trucks. The surface of the spoil dumps should be levelled and compacted for the same reason. Safety and quick turnaround must also be considered on spoil dumps. Adequate arrangements should be made to ensure that trucks are standing correctly when dumping and that they do not fall off the edge of the tip while reversing or dumping. The mucking operation could be critical for completion on time.

f. **Geological Mapping**

Geological mapping will be performed prior to application of rock support which will include shotcrete and pattern rock bolts. The geological mapping will be performed by adopting Q-system and the determined rock mass class will be the basis for rock support. Depending on the specific site conditions involving combination of critical joint sets leading to a possible wedge failure, should there be additional requirements, the engineering geologists will decide to install additional rock supports, as the need be.

g. **Rock Support**

Rock support will be decided based on the geological mapping and monitoring. The excavation face mapping will be performed and accordingly, rock support will be installed. The design forms the basis for the decision making process. The behaviour of the tunnel section is monitored at certain intervals and locations, and the design for different rock classes is modified and optimised as the excavation progresses. Thereby, through an On the go Design approach, the necessary design optimization will be attempted. A combination of fully cement grouted rock bolts and fibre reinforced shotcrete provide the permanent rock support.

The roof of all caverns and tunnels and sides of shafts shall be shotcreted. In addition in certain critical areas of the cavern wall shall also be shotcreted. The shotcrete provides protection against loose pieces of falling rock. It further acts in conjunction with the rock bolts and to provide structural stability. It is essential that trials are conducted in advance of production to determine, compressive strength, short term strength development, setting time and adhesion to the rock surface, etc. Shotcrete must achieve rapid setting so that it will remain on the rock surface and allow a suitable thickness to be sprayed in one sequence. The short-term strength gain is important, particularly in poorer rock conditions, to allow the excavation cycle to proceed.

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Date: 2026.10.31 11:19:09 IST

h. **Grouting**

Probe holes will be required in advance of blast drilling to detect weak zones / water bearing zones in the rock that would require grouting. Requirement for pre-grouting will be furnished during construction based on the geological mapping of the water curtain gallery, and the predictive geological model prepared from face mapping of underground excavation. Pre-grouting by cement based grout is the preferred method of achieving the required tightness of the cavern complex. The optimal length of drilling and the most suitable grout mix design will be decided on site through an iterative process. Quite often seepage is detected after a blast. In the event of excessive seepage exceeding the design critical value, post-grouting is planned to be performed.

i. **Shaft Excavation**

The pump shafts shall be planned to be excavated top down to save time and offer early possibilities to arrange extra ventilation and emergency exits from the caverns. Above the roof of the cavern a key is excavated in the shaft to anchor the concrete plug. The exact location of the key is determined during the construction phase taking local geological conditions into account. The product inlet shafts could be excavated top down or by raise boring method.

j. **Concrete Works**

The concrete works to be executed for the underground storage facilities will comprise of the following:

- Concrete plugs in the access tunnels and shafts
- Concrete separation walls in connection tunnels between caverns
- Concrete floor on the final cavern invert
- Concrete floor in the pump pit
- Concrete pad / bases for equipment installations
- Mass concrete filling in shafts
- Embedment of hot oil pipe on cavern floor
- Concrete on base of caverns

Detail design for concrete plugs, separation walls, cavern floor and pump pit shall be planned to be provided under the design of critical Items for the purpose of storage. Concrete barriers that shall be required to withstand a pressure differential shall be keyed into the rock. Barriers in large diameter tunnels and shafts contain a substantial depth of concrete. Provision must be made in the construction process to avoid large temperature gradients caused by the hydration of the cement.

After hydration of the concrete, the concrete barrier will be cooled (refrigerated) by cooling coils installed in the concrete to achieve thermal shrinkage of the structure. In this status the final contact grouting between rock and concrete will be executed. For this purpose, the contact zone will have to be heated by separate heating arrangements.

When casting concrete against the uneven rock surface, it is impossible to completely fill all voids, particularly in the roof of access tunnels. Provision is made in the barrier for grouting these voids after the concrete has set. Some of the concrete barriers in tunnels will be arranged

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Date: 2026.10.31 11:19:09 IST

with a temporary manhole to allow for access through the barriers during the construction period. The concrete barriers in shaft shall be cast in two sequences. The first casting sequence will have box-out pipes for all casings for crude oil pumps and instrumentations and shall carry the load from all such pipes, including weight of water for pressure tests of casings. The second casting sequence will embed all casings to ensure vapour tightness.

For the purpose of installation of submersible pumps and associated instrumentation casings and pipes shall be installed in the shafts. The shafts shall be backfilled with mass concrete above the concrete barriers, where in the casing pumps will be embedded. A support framework shall be provided on top of pump pit and for the casings. The cavern invert is covered by concrete slab to facilitate flow towards the pump pit. Provision for drainage will be made along the cavern side walls to ensure that the floor is not up-lifted by the water pressure underneath.

k. **Dewatering**

The dewatering system from caverns and tunnels should be planned in advance and installed as soon as is practical after the advance of the excavation face. Back-up power should be available for dewatering in the event of power cuts. Water running on the ramp is detrimental to the road surface increasing wear and tear on haulage trucks and should be taken care of.

l. **Ventilation**

Ventilation is required to remove fumes from diesel powered construction equipment, rock particles suspended in the air and gases resulting from the detonation of the explosives during construction in order to provide a safe working environment. This can be achieved solely by the continuous supply of fresh air to the working face.

m. **Muck Disposal**

A speedy and continuous mucking out operation will be critical. The concessionaire will be required to plan the logistics of the muck disposal and maintain the haulage road and disposal area in such a way that muck disposal can be performed at all times. The muck disposal shall be done with required safety precaution and maintaining suitable slopes for haulage. While the selected site offer muck disposal alternatives, re-working of the rock debris will be beneficial for the proposed excavation works. This will offer both space availability and revenue. The Muck Generated may be used in the Break-Water Projects and Highway/Road projects in Karnataka.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE C
SPECIFICATIONS AND STANDARDS

The concept of underground oil storage is well established internationally. Approval from the various Government Instrumentalities will be required, and the following procedures should be adopted by Concessionaire:

1. Approval of the design of the facility shall be as per Swedish Regulations for assessment of underground rock cavern storages. For specific installations requirements, existing Indian Regulations & guidelines OISD 230 issued by Oil Industry Safety Directorate shall be considered, wherever applicable.
2. Approval from the Chief Controller of Explosives in India is required for the in principle of storage of crude oil in caverns
3. The layout of the plant should comply with all the relevant directives of the Ministry of Environment and Forests & Oil Industry Safety Directorate. The requirement pertaining to Compensatory Afforestation, effluent disposal and pollution control shall be considered. A 50 m wide green belt all around the plant, shall be maintained.
4. The plant shall be laid out as per the requirements of API and relevant Indian standards, regarding Classified Area installations.
5. The fire protection system for the facility should be in accordance with the Indian codes of practice , Oil Industry Safety Directorate , TAC and NFPA.
6. The code of practice followed elsewhere in the world, for similar facilities shall form the basis for establishing the methods and principals for obtaining necessary approvals for the strategic storage programme in India.
7. Risk Analysis and Environmental Impact Assessment for the facility shall be conducted and approved as per Indian Regulations.
8. All mechanical, electrical and instrumentation designs shall comply with the relevant Indian and international standards like API /ASTM/ANSI/EN /DIN etc.

CODES OF PRACTICE

The underground storage cavern facility will be designed as per the following codes of practice:

- Layout : As per OISD 130, Oil Industry Safety Directorate Standard for layout for oil and gas installations
- Protection : As per OISD 116, Oil Industry Safety Directorate Standard for fire protection facilities for petroleum refineries and oil gas installations
- Guidelines for Storage of Petroleum : As per Petroleum Rules - Chief Controller of Explosive Act
- Civil Works : Indian Standards
- Process :
  - Safety and Security - Chief Controller of Explosive Act.
  - Pressure piping - Applicable parts of API / ANSI B. 3 1, Code for Pressure Piping.
  - Process Valves - API Standard (American Petroleum Institute). Steel pipe flanges and flanged fittings: ANSI B 16.5.
  - Submersible product pumps - European Standard or ANSI-standard.
  - Oil separator - API Publication 42 1.
  - Fire protection equipment - Applicable parts of NFPA (National Fire Protection Association).
  - Electrical installation and equipment - Applicable IS and IEC standards.
  - Instrumentation - Applicable IS and IEC publications.

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Date: 2026.10.31 11:19:09 IST

- Quality Systems - ISO 9001, ISO 14001

CODE AND STANDARDS

Special Requirements of the Indian Fire Authority shall be applied. OISD / NFPA / TAC standard shall be applied for the fire protection equipment particularly the following parts

OISD STANDARDS

• OISD Standard -117 (Fire Protection Facilities for Petroleum Depots, Terminals, Pipelines Installations and Lube oil installations)
• OISD Standard -118 (Layout for Oil and Gas Installation)
• OISD Standard -163 (Process Control Room Safety)
• OISD Standard -173 (Fire Prevention and Protection System for Electrical Installations)
• NFPA FIRE PREVENTION CODE
• NFPA 10: Portable Fire Extinguishers
• NFPA 12: Carbon Dioxide extinguishing systems
• NFPA 13 Sprinkler systems
• NFPA 14 Stand-by and Hose systems
• NFPA 15 Water Spray systems
• NFPA 17 Dry chemical extinguishing systems
• NFPA 20 Centrifugal Fire Pumps
• NFPA 22 Water tank for Private fire protection
• NFPA - 2001 Clean Agent Extinguishing System.

Tariff Advisory Committee (TAC) RULES

- Fire Protection Manual (Internal appliances, fire engines, trailer pumps, and hydrant systems) (By Tariff Advisory Committee).

Rules of TAC for
- Sprinkler System
- Water Spray System

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

SCHEDULE D
DRAWINGS

1. **Drawings**

In compliance with the obligations set forth in Article 12 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

Basic Design for Underground Rock Caverns

- Project Layout
- Cavern Layout Plan
- Sections of Crude Oil Storage
- Typical Cavern C/S, Concrete floor & Rock Support
- Access Tunnel: General Arrangement & Support Detail
- Water Curtain Layout & Details
- Shaft Plan, Section & Support Details
- Concrete Barrier & Separation Wall
- Shaft Barrier & Casing
- Geological Map
- Interpretative Map from NRSC
- Land Form & Land Use Map

Basic Design for Process Facilities

- Process Flow Diagram : U/G Rock Caverns
- Process Flow Diagram : U/G Rock Caverns

Pipeline Integration Scheme

- Integration Pipeline Route Map
- Schematic Arrangement for Integration Pipeline

Overall Plot Plan

- Overall Plot plan

2. **Additional Drawings**

If the Independent Expert 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 the Independent Expert as if such drawings formed part of this Schedule D.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE E
APPLICABLE PERMITS

PART – A

The Authority shall, as required under Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date:

A. Environmental clearance
B. Permits for land pertaining to the Project Site

PART – B

The Concessionaire shall obtain the following Applicable Permits:

A. Approval from State Pollution Control Board
B. Forest Clearance
C. Blasting permission
D. Excavation clearance
E. Approvals relating to the use of the waterfront to access the single point mooring.
F. Permissions required under Petroleum Act 1934 and Petroleum Rules for storage, import, transport, etc.,
G. Consent for the pipelines under the Petroleum and Natural Gas Regulatory Board Act, 2006
H. Consent for mooring of vessel under the Indian Ports Act, 1908
I. All other permits required under Applicable Laws from the relevant local authorities for construction and operation of the Project.
J. Coastal regulation zone ("**CRZ**") approval.
K. Acquisition of the Right of User in Land for laying of pipelines (onshore and offshore).
L. No objection certificate for laying of pipeline and construction of SPM.
M. Any other permissions required to fulfil obligations of Concessionaire.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE F
PERFORMANCE SECURITY

FORMAT OF BANK GUARANTEE

WHEREAS:

(A) ....., (the "**Concessionaire**") and the [_____][11] represented by the Secretary, Indian Strategic Petroleum Reserves Limited ("**Authority**") and having its principal offices at ……have entered into a Concession Agreement dated ..... (the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking the development, operation, maintenance and management of the Project at ..... in ..... subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. [●] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the period of _____ year from the Appointed Date.

(C) We, ... through our Branch at ..... (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of a CEO & MD or equivalent, 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 the Authority shall be the sole judge 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 the Authority 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.

[11] The name of the authority issuing the Concession to be inserted.

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Date: 2026.10.31 11:19:09 IST

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the 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 the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the 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 the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the 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 for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than [6 (six) months] from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect after expiry of a period of 1 (one) year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 40% (forty per cent) of the Total Project Cost, including Grant, which sum so expended shall be determined by the Authority in its sole discretion based on the documents provided and information shared by the Concessionaire under and in accordance with the provisions of this Agreement, provided however that the Performance Security shall not be released if the Concessionaire is in breach of the 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, the Authority shall release the Performance Security forthwith.

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Date: 2026.10.31 11:19:09 IST

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

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 authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of [____][12] from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this .....day of ..... 202.... at .....

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:
(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

[12] Number of years and months to be included.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE G
PROJECT COMPLETION SCHEDULE

The estimated time required to construct the envisaged project is 72 (seventy two) months. The standard working week has been assumed to consist of 2 (two) x 10 (ten) hour shifts per day, 6 (six) days per week, with 12 (twelve) public holidays (as notified) per year falling on workdays.

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule G for each of the Project Milestones and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. Project Milestone-I

2.1. Project Milestone-I shall occur on the date falling on the [365th] day from the Appointed Date (the "**Project Milestone-I**").

2.2. Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and expended not less than [4% (four per cent)] of the Total Project Cost set forth in the Financial Package.

3. Project Milestone-II

3.1. Project Milestone-II shall occur on the date falling on the [730th] day from the Appointed Date (the "**Project Milestone-II**").

3.2. Prior to the occurrence of Project Milestone-II, the Concessionaire shall have expended not less than [12% (twelve per cent)] of the Total Project Cost set forth in the Financial Package.

4. Project Milestone-III

4.1. Project Milestone-III shall occur on the date falling on the [1095th] day from the Appointed Date (the "**Project Milestone-III**").

4.2. Prior to the occurrence of Project Milestone-III, the Concessionaire shall have expended not less than 27% (twenty seven per cent)] of the Total Project Cost set forth in the Financial Package.

5. Project Milestone-IV

5.1. Project Milestone-IV shall occur on the date falling on the [1460th] day from the Appointed Date (the "**Project Milestone-IV**").

5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have expended not less than 47% (forty seven per cent)] of the Total Project Cost set forth in the Financial Package.

Digitally signed by AJIT KUMAR CHOUDHARY
Date: 2026.10.31 11:19:09 IST

6. Project Milestone-V

6.1. Project Milestone-IV shall occur on the date falling on the [1825th] day from the Appointed Date (the "**Project Milestone-V**").

6.2. Prior to the occurrence of Project Milestone-V, the Concessionaire shall have expended not less than [75% (seventy five per cent)] of the Total Project Cost, set forth in the Financial Package.]

7. Scheduled Completion Date

7.1. The Scheduled Completion Date shall occur on the [2190th] day from the Appointed Date.

7.2. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Project in accordance with this Agreement.

8. Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

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SCHEDULE H
TESTS

1. **Schedule for Tests**

1.1. The Concessionaire shall, no later than [30 (thirty)] days prior to the likely completion of the Project, notify the Independent Expert and the Authority of its intent to subject the Project to Tests, and no later than [7 (seven)] days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.

1.2. The Concessionaire shall notify the Independent Expert of its readiness to subject the Project to Tests at any time after [7 (seven)] days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 12 and this Schedule H.

2. **Tests**

2.1. In pursuance of the provisions of Clause 12.4.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2. Visual and Physical Test

The Independent Expert shall conduct a visual and physical check of the Project, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3. Trial run

The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Project is in conformity with the provisions of this Agreement.

2.4. Tests for equipment

The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project and described in Schedule B.

2.5. Environmental audit:

The Independent Expert shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.6. Safety review:

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The Independent Expert shall carry out a safety audit of the Project to determine its compliance with the provisions of Schedule K and this Agreement.

2.7. Specific Tests:

The Independent Expert shall conduct or cause to be conducted the following Tests:

- Cavern Acceptance test
- Geological mapping and assessment
- Geophysical Investigation (Seismic refraction & Electrical resistivity)
- Core drilling – six numbers (vertical and inclined)
- Laboratory testing of core and water samples
- In situ stress measurement
- Hydro-geological test (Water pressure tests and water level monitoring)

3. **Agency for Conducting Tests**

All Tests set forth in this Schedule H shall be conducted by the Independent Expert or such other agency or person as it may specify in consultation with the Authority.

4. **Inspection by the Independent Expert**

Upon successful completion of Tests, the Independent Expert shall submit an Inspection Report.

5. **Tests during Construction**

Without prejudice to the provisions of this Schedule H, tests during Construction Period shall be conducted in accordance with the provisions of Clause 13.3.1.

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SCHEDULE I
FORMAT FOR PROVISIONAL CERTIFICATE

To whom it may concern

In consideration of the requirements of conditions of Article 14 of the Agreement and the Concessionaire's application for a Provisional Certificate, the Independent Expert hereby grants the Provisional Certificate.

[This Provisional Certificate has been issued pending completion of the Punch List as described in Annex I to the Provisional Certificate].

This Provisional 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 and their intended use as certified by the Independent Expert through its letter dated [●].

Provisional Certificate does not relieve the Concessionaire of any requirements or obligations under the Agreement.

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

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of	For and on behalf of
Concessionaire by:	Independent Expert by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

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SCHEDULE J

FORMAT FOR COMPLETION CERTIFICATE

To whom it may concern

In consideration of the requirements of conditions of Article 14 of the Agreement and the Concessionaire's application for a Completion Certificate, the Independent Expert hereby grants the Completion Certificate.

[This Completion Certificate has been issued pending completion of the Punch List as described in Annex I to 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 and their intended use as certified by the Independent Expert through its letter dated [●].

Completion Certificate does not relieve the Concessionaire of any requirements or obligations under the Agreement.

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

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of	For and on behalf of
Concessionaire by:	Independent Expert by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

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SCHEDULE K
O&M REQUIREMENTS

1. **Operation and Maintenance Requirements**

1.1. The Concessionaire shall, at all times, operate and maintain the Project 24/7 in accordance with the provisions of the Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the Maintenance Requirements set forth in this Schedule K.

1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in clause 2 of this Schedule K and any failure in this behalf shall constitute a breach of the Agreement.

2. **Repair/rectification of defects and deficiencies**

2.1. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies in the Project set forth in Annex-I of this Schedule K.

2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. **Other defects and deficiencies**

3.1. In respect of any defect or deficiency not specified in Annex - I of this Schedule K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

3.2. In respect of any defect or deficiency not specified in Annex - I of this Schedule K, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

4. **Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Expert and conveyed to the Concessionaire and the Authority with reasons thereof.

5. **Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule K, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the

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Concessionaire shall promptly take all reasonable measures for eliminating or minimising 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 the Authority and the Independent Expert at any time during office hours.

7. **Divestment Requirements**

All defects and deficiencies specified in this Schedule K shall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements as built drawings, all operation and maintenance manuals, all critical maintenance records, encumbrance free Right of Way/Right of User in Land and all valid permits and existing Approvals on the Transfer Date.

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Annex-I
(Schedule K)

The nature of the oil storage facilities demands that the plant operates at peak operational levels at all times. In order to ensure that, the operator deputes competent personnel to operate and maintain the plant, the designated operation & maintenance team join the project during the final stages of construction, so that a seamless handover can be done.

The basic operation philosophy for the plant operation & maintenance shall be planned on the basis of an operations & maintenance manual prepared on completion of the detailed engineering and on completion of commissioning. The operations & maintenance manual will be updated based on inputs taken from the operation philosophy and control logic of the refinery and the port authorities.

The key issues in operations & maintenance that need to be considered are:

(a) Adequate operations & maintenance manpower planning is carried out and experienced manpower as per plan are mobilized at least 6 months prior to start of check listing & pre-commissioning of the facility.

(b) Prior to taking over the plant, proper and exhaustive training is imparted to the operations staff, on and off site.

(c) Inventory of spares, as recommended by the Original Equipment Manufacturers is maintained at all times.

(d) Local availability of critical equipment and spares is explored.

(e) Manpower training on a regular and continuous basis is done.

(f) Equipment maintenance schedules are drawn up and strictly adhered to.

(g) All major and minor piece of equipment are tagged and logged.

(h) Checklists are drawn for all maintenance routines.

(i) Interlocks are NEVER bypassed.

(j) Control and emergency equipment are tested at regular intervals.

(k) Fire drills are carried out periodically.

(l) Critical safety related issues like earthling, flaring, over/under pressure, over temperature, etc are never neglected

(m) Any permanent changes carried out in the plant be immediately reflected in the drawings, stores order info log, control software, etc.

(n) Access to plant and control rooms is strictly restricted.

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(o) No major changes are made in the plant control and protection schemes, without concurrence of the State Electricity Board.

(p) Visual checks for corrosion, water logging, sparking / charring etc in above ground process installations, are made at regular intervals and remedial action taken immediately.

(q) Cables / terminations are checked for integrity at regular intervals.

(r) Periodic Inspection , Calibration and Checks of Equipment's are carried out as per OISD & Factory & Boiler Inspectorate requirements.

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SCHEDULE L
EHS REQUIIREMENTS

The Authority is committed to conduct business with strong environment conscience ensuring sustainable development, safe workplaces and enrichment of quality of life of employees & community. The Concessionaire shall develop a sound EHS policy and the policy shall ensure the following:

(a) Preserve ecological balance of the Commercial Cum Strategic Petroleum Reserve location.

(b) Maintain good standards for safety of the people, the processes and the assets.

(c) Follow all rules and regulations on safety, occupational health and environmental protection.

(d) Design & operate and maintain all facilities, processes and procedures for ensuring safety, health and environmental protection.

(e) Train & equip personnel for effective and prompt response to accidents and emergencies.

(f) Carry out periodic audits of EHS conduct by external agencies.

(g) Adopt and promote best practices in the industry for upgrading EHS performance.

REQUIREMENTS OF ENVIRONMENT HEALTH AND SAFETY (EHS) MANAGEMENT SYSTEM TO BE COMPLIED BY CONCESSIONAIRE

1. **EHS Policy & Objectives**
The Concessionaire should have a documented EHS policy & objectives to demonstrate commitment of their organization to ensure health, safety and environment aspects in their line of operations.

2. **Management System**
The EHS management system of the Concessionaire shall cover the EHS requirements including but not limited to what is specified under para 1 above.

3. **Deployment & qualifications of safety personnel**
Concessionaire as a minimum requirement shall designate/ deploy the following EHS personnel at site:

a) Safety Steward
One for every 250 workers or part thereof. He shall possess minimum one year of experience in construction work environment of similar nature.

b) Safety Supervisor
One for every 500 workers or part thereof. He shall possess minimum two years of work experience in construction work environment of similar nature.

c) Safety Officer
One for every 1000 workers or part thereof. He shall possess a recognized degree in any branch of engineering or technology or architecture and had a post qualification construction experience of minimum two years or possess a recognized diploma in any branch of engineering or technology and

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Date: 2026.10.31 11:19:09 IST

had a post qualification construction experience of minimum five years. In addition, he/she shall also possess a recognized degree or diploma in industrial safety and preferably have adequate knowledge of the language spoken by majority of the workers at the construction site. In case the statutory requirements i.e. Centre or State Acts and/ or Rules as applicable are more stringent than above, the same shall be followed.

The Concessionaire shall ensure physical presence of safety personnel at each work location where hot work permit is required. No work shall be started at site until above safety personnel are physically present at site. The Concessionaire shall submit a safety organogram clearly indicating the lines of responsibility and reporting system and elaborate the responsibilities of safety personnel in the EHS Manual/Programme. The Concessionaire shall furnish bio-data/ resume/ curriculum vitae of the safety personnel as above, at least 1 month before the mobilization, for Authority's approval.

4. **Implementation & Monitoring**

Concessionaire shall be fully responsible for planning, reporting, implementing and monitoring all EHS requirements and compliance of all laws & statutory requirements. The Concessionaire shall also ensure that the EHS requirements are clearly understood & faithfully implemented at all levels at site.

5. **Awareness**

The Concessionaire shall promote and develop consciousness about health, safety and environment among all personnel working for the Concessionaire. Regular awareness programmes and fabrication shop/work site meetings shall be arranged on EHS activities to cover hazards involved in various operations during construction.

6. **Fire prevention & First-Aid**

The Concessionaire shall arrange suitable first aid measures such as First Aid box, trained personnel to administer First Aid, stand-by ambulance or vehicle and install fire protection measures such as: adequate number of steel buckets with sand & water and adequate number of appropriate fire extinguishers at each portal and shaft entry, within 30 m of advancing face of each tunnel and at locations containing combustible materials to the satisfaction of Independent Expert. Medical / First-Aid station shall be set up and maintained functional by the Concessionaire. The Concessionaire shall develop and implement a fire prevention and protection plan which shall include at the minimum procedures for prevention & control of fires, equipment & personnel to be deployed and inspection & training procedures.

7. **Documentation**

The Concessionaire shall evolve a comprehensive, planned and documented system for implementation and monitoring of the EHS requirements. This shall be submitted to Independent Expert/ Authority for approval. The monitoring for implementation shall be done by regular inspections and compliance to the observations thereof. The Concessionaire shall get similar EHS requirements implemented at his sub-contractor(s) work site/office. However, compliance of EHS requirements shall be the responsibility of the Concessionaire. Any review/approval by Authority shall not absolve Concessionaire of his responsibility/liability in relation to all EHS requirements.

8. **Audit**

Concessionaire shall carry out internal EHS audits. The Concessionaire shall also cooperate during EHS audits by Authority. Non-Conformances on EHS requirements by the Concessionaire (including his sub-contractors) brought out during review/audit by his internal audit team as well as representatives of

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Date: 2026.10.31 11:19:09 IST

the Authority shall be resolved forthwith by Concessionaire. Compliance report shall be submitted to Independent Expert promptly.

9. **Meetings**

The Concessionaire shall ensure participation of his top most executive at site (viz. resident engineer/ site-in-charge) in safety committee/EHS committee meetings arranged by Independent Expert/ Authority. The compliance of any observations during the meeting shall be arranged urgently. He shall assist Independent Expert/ Authority to achieve the targets set by them on EHS during the project implementation.

10. **Intoxicating drinks & drugs and Smoking**

The Concessionaire shall ensure that his staff members & workers (permanent as well casual) shall not be in a state of intoxication during working hours and shall abide by any law relating to consumption & possession of intoxicating drinks or drugs in force. Awareness about local laws on this issue shall form part of the induction training. The Concessionaire shall ensure that all personnel working for him comply with no smoking requirements of the Authority as notified from time to time. Cigarettes, lighters, auto ignition tools or appliances shall not be allowed inside the plant complex. Smoking shall be allowed only inside the expressly authorized smoking areas marked by the Authority.

11. **Accident/ Incident investigation**

All accidents/incidents shall be reported immediately in the prescribed format (will be provided separately). Thereafter, a supplementary accident/incident investigation report on format shall be submitted. The accidents/ incidents shall be investigated by a team of Concessionaire's senior personnel for establishing root cause and recommending corrective & preventive actions. Findings shall be documented and suitable actions taken to avoid recurrences shall be communicated to Authority. The Authority shall also have the liberty to independently investigate such occurrences and the Concessionaire shall extend all necessary help and cooperation in this regard.

HOUSE KEEPING

Concessionaire shall ensure that a high degree of housekeeping is maintained and shall ensure *inter a*lia; the followings:

a. All surplus earth and debris are removed/disposed of from the working areas to designated location(s).
b. Unused/surplus cables, steel items and steel scrap lying scattered at different places within the working areas are removed to identified location(s).
c. All wooden scrap, empty wooden cable drums and other combustible packing materials, shall be removed from work place to identified location(s).
d. Roads shall be kept clear and materials like pipes, steel, sand, boulders, concrete, chips and bricks etc shall not be allowed on the roads to obstruct free movement of men & machineries.
e. Fabricated steel structural, pipes & piping materials shall be stacked properly for erection.
f. Water logging on roads shall not be allowed.
g. No parking of trucks/trolleys, cranes and trailers etc. shall be allowed on roads, which may obstruct the traffic movement.
h. Utmost care shall be taken to ensure over all cleanliness and proper upkeep of the working areas.

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Date: 2026.10.31 11:19:09 IST

i. Trucks carrying sand, earth and pulverized materials etc. shall be covered while moving within the plant area/ or these materials shall be transported with top surface wet.

j. The Concessionaire shall ensure that the atmosphere in plant area and on roads is free from particulate matter like dust, sand, etc. by keeping the top surface wet for ease in breathing.

k. At least two exits for any unit area shall be assured at all times.

l. Unnecessary accumulation of muck, spoil and/or debris shall not be allowed. Specific attention shall be paid at & around shaft stations, places of access, egress and safety alcoves.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE M
TERMS OF REFERENCE FOR THE INDEPENDENT EXPERT

1. Role and functions of the Independent Expert

The role and functions of the Independent Expert shall include the following:

(i) review of the Drawings and Documents as set forth in Paragraph 2;
(ii) review inspection and monitoring of Development Works as set forth in Paragraph 2;
(iii) review inspection and testing of the Project as set forth in Paragraph 2;
(iv) review inspection and monitoring of O&M as set forth in Paragraph 3;
(v) review inspection and monitoring of Divestment Requirements in accordance with the Agreement;
(vi) assisting the Parties in resolution of Disputes as set forth in Paragraph 4; and
(vii) undertaking all other duties and functions in accordance with the Agreement.

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

2. Construction Period

2.1. The Independent Expert shall undertake a review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within [15 (fifteen)] days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

2.2. The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within [7 (seven)] days of receiving such Drawings or Documents.

2.3. The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

2.4. The Independent Expert shall inspect the Development Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of succeeding month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality, safety and conformity of Development Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.

2.5. The Independent Expert may inspect the Project more than once in a month.

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2.6. For determining that the Development Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance.

2.7. The sample size of the tests, to be specified by the Independent Expert under Paragraph 2.6, shall comprise [10% (ten per cent)] of the quantity or number of tests prescribed for each category or type of tests in accordance with Good Industry Practice; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to [10% (ten per cent)] for certain categories or types of tests.

2.8. The timing of tests referred to in Paragraph 2.7, and the criteria for acceptance rejection of their results shall be determined by the Independent Expert in accordance with Good Industry Practice. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

2.9. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Development Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 2 shall apply to such tests.

2.10 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of development and identify potential delays, if any. If the Independent Expert shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within [15 (fifteen)] days the steps proposed to be taken to expedite progress, and the period within which [Project COD] shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.

2.11. If suspension of Development Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

2.12. Upon reference from the Authority, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

2.13 Upon satisfaction of all the relevant obligations, in accordance with the provisions of this Agreement, the Independent Expert shall issue Completion Certificate/ Provisional Certificate to the Concessionaire.

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1. Operation Period

3.1. In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 2 shall apply, mutatis mutandis.

3.2. The Independent Expert shall review the annual status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.

3.3. The Independent Expert shall inspect the Project, at least once every year, preferably after receipt of the yearly status report for the relevant year from the Concessionaire, but before the [30th (thirtieth) day] after the close of each year in any case, and make out an Inspection Report setting forth an overview of the safety of operations and their conformity with the Maintenance Requirements and EHS Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.

3.4. The Independent Expert may inspect the Project more than once a year.

3.5. The Independent Expert shall in its Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

3.6. In respect of any defect or deficiency referred to in Paragraph 3 of Schedule K, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

3.7. The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 13.2.

3.8. In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within [15 (fifteen)] days.

4. **Assistance in Dispute resolution**

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

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Date: 2026.10.31 11:19:09 IST

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

5. Other duties and functions

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

6. Miscellaneous

6.1. The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

6.2. A copy of all communications, comments, instructions, Documents sent by the Independent Expert to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.

6.3. The Independent Expert shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send one of the copies to the Authority along with its comments thereon.

6.4. Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all communications, comments, instructions, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE N
ESCROW AGREEMENT

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

AMONGST

Indian Strategic Petroleum Reserve Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....(hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

..... ,. (insert name and particulars of Lenders' Representative) and having its registered office at .... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

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

The [_____][13]represented by the ISPRL and having its principal offices at …….. (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

A. The Authority has entered into an agreement dated ..... with the Concessionaire (the "**Concession Agreement**") for developing, upgrading and maintaining the Project, in……, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

DEFINITIONS AND INTERPRETATION

1.1. **Definitions**

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Concession

[13] Name of the authority issuing the Concession agreement to be inserted

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Date: 2026.10.31 11:19:09 IST

Agreement. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Agreement**" shall mean this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"**Concession Agreement**" shall mean the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"**Escrow Account**" shall mean an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"**Escrow Default**" shall have the meaning ascribed thereto in clause 6.1;

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"**Payment Date**" shall mean, in relation to any payment specified in clause 4.1, the date(s) specified for such payment; and

"**Sub-Accounts**" shall mean the respective sub-accounts of the Escrow Account, into which the monies specified in clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s);

1.2. **Interpretation**

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

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Date: 2026.10.31 11:19:09 IST

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

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

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

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, 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 Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ..... (name of Branch) branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

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

2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, 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.

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Date: 2026.10.31 11:19:09 IST

2.4. **Escrow Bank's fee**

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

2.5. **Rights of the Parties**

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6. **Substitution of the Concessionaire**

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

3. **DEPOSITS INTO ESCROW ACCOUNT**

3.1. **Deposits by the Concessionaire**

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

(a) all monies received in relation to the Project from any source, including under the Financial Package and the Authority;
(b) all funds received by the Concessionaire from its share-holders, in any manner or form;
(c) all Revenues from the third party usage of the Project;
(d) any other Revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
(e) all proceeds received pursuant to any insurance claims.

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

3.2. **Deposits by the Authority**

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

(a) Any monies disbursed by the Authority to the Concessionaire;

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Date: 2026.10.31 11:19:09 IST

(b) all Revenues collected by the Authority, if any, in exercise of its rights under the Concession Agreement; and

(c) Termination Payments.

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

3.3. **Deposits by Senior Lenders**

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

3.4. **Interest on deposits**

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

4. **WITHDRAWALS FROM ESCROW ACCOUNT**

4.1. **Withdrawals during Concession Period**

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;

(b) all payments relating to development of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) Concession Fee due and payable to the Authority;

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Date: 2026.10.31 11:19:09 IST

(f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

(g) monthly proportionate provision of Debt Service due in an Accounting Year;

(h) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

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

4.2. **Withdrawals upon Termination**

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

(a) all Taxes due and payable by the Concessionaire for and in respect of the Project;
(b) Outstanding Concession Fee;
(c) all payments due and payable under this Agreement and/or Damages certified by the Authority as due and payable to it by the Concessionaire;
(d) [90% (ninety per cent)] of Debt Due less Insurance Cover, excluding Subordinated Debt;
(e) retention and payments relating to the liability for defects and deficiencies set forth in Concession Agreement;
(f) outstanding Debt Service including the balance of Debt Due;
(g) outstanding Subordinated Debt;
(h) incurred or accrued O&M Expenses;
(i) any other payments required to be made under this Agreement; and
(j) balance, if any, in accordance with the instructions of the Concessionaire.

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

4.3. **Application of insufficient funds**

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

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Date: 2026.10.31 11:19:09 IST

4.4. **Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5. **Withdrawals during Suspension**

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

5. **OBLIGATIONS OF THE ESCROW BANK**

5.1. **Segregation of funds**

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

5.2. **Notification of balances**

[7 (seven)] business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire 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 and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. **Communications and notices**

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

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
(c) shall, within [5 (five)] business days after receipt, deliver a copy to the Lenders' Representative 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

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Date: 2026.10.31 11:19:09 IST

(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.

5.4. **No set off**

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

5.5. **Regulatory approvals**

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

6. **ESCROW DEFAULT**

6.1. **Escrow Default**

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

(a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of [5 (five)] business days;

(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub- Account in which such transfer should have been made, within a Cure Period of [5 (five)] business days; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of [5 (five)] business days.

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

7. **TERMINATION OF ESCROW AGREEMENT**

7.1. **Duration of the Escrow Agreement**

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Date: 2026.10.31 11:19:09 IST

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

7.2. **Substitution of Escrow Bank**

The Concessionaire may, by not less than [45 (forty five)] days prior notice to the Escrow Bank, the Authority and the Lenders' 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.

7.3. **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 Agreements including the payments specified in clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. **SUPPLEMENTARY ESCROW AGREEMENT**

8.1. **Supplementary escrow agreement**

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 Sub-Accounts pursuant to clause 4. l .l and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. **INDEMNITY**

9.1. **General indemnity**

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Date: 2026.10.31 11:19:09 IST

9.1.1. The Concessionaire shall indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2. The Authority shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3. The Escrow Bank shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to 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.

9.2. **Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [15 (fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1. Dispute resolution

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be

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Date: 2026.10.31 11:19:09 IST

mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be New Delhi and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1. Governing law and jurisdiction

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

11.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(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).

11.3. Priority of agreements

In the event of a conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5. Waiver

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Date: 2026.10.31 11:19:09 IST

Waiver by any Party of a default by another Patty in the observance and performance of any provision of or obligations under this Agreement:

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

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 Patty to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6. **No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7. **Survival**

11.7.1. Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or
(c) caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [3 (three)] years following the date of such termination or expiry of this Agreement.

11.8. **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under clause 10.1 of this Agreement or otherwise.

11.9. **Successors and assigns**

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Date: 2026.10.31 11:19:09 IST

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

11.10. **Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing page hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11. **Language**

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

11.12. **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.

11.13. **Original Document**

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .... day of .... .. 20 .... .. hereunto affixed in the presence of ..... ,., Director, who has signed these presents in token thereof and ....,	SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative: (Signature) (Name) (Designation) (Address) (Fax No.)
Company Secretary / Authorised Officer	

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Date: 2026.10.31 11:19:09 IST

who has countersigned the same in token thereof:

(Signature)
(Name)
(Designation)
(Address)
(Fax N0.)
(e-mail address)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY by:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

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Date: 2026.10.31 11:19:09 IST

SCHEDULE O
VESTING CERTIFICATE

[The Indian Strategic Petroleum Reserve Limited represented by .... (the "**Authority**") refers to the Concession Agreement dated .... (the "**Agreement**") entered into between the Authority and .... (the "Concessionaire") for a Project, at ..... in ..... ……on (…….)basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in the Concession Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all rights, title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of Concessionaire by:	For and on behalf of Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

In the presence of:

l. 2.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE P
SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the .... day of .... 20….

AMONGST

[The Indian Strategic Petroleum Reserve Limited] represented by Secretary, ISPRL and having its principal offices ……. (hereinafter referred to as the "**Authority**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

.... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ...., (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

.... (insert name and particulars of Lenders' Representative) and having its registered office at ...., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

i. The Authority has entered into a Concession Agreement dated with the Concessionaire (the "**Concession Agreement**") for the Project at ..... in ……..on Design, Finance, Build, Operate and Transfer ("**DBFOT**") basis, and a copy of which is annexed hereto and marked as Annex-A to form pan of this Agreement.

ii. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

iii. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

iv. In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1. **Definitions**

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Date: 2026.10.31 11:19:09 IST

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**" shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"**Financial Default**" shall mean occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of [3 (three) months];

"**Lenders' Representative**" shall mean the person referred to as the Lenders' Representative in the foregoing Recitals;

"**Nominated Company**" shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in clause 3.2.1; and

"**Parties**" shall mean the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2. **Interpretation**

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. **ASSIGNMENT**

2.1. **Assignment of rights and title**

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

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3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

Pursuant to the rights, title and interest assigned under clause 2.l, 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.

The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within [180 (one hundred and eighty)] days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days.

3.3. Substitution upon occurrence of Concessionaire Default

3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant [15 (fifteen)] days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

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3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of [15 (fifteen)] days specified in clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of [180 (one hundred and eighty)] days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of [180 (one hundred and eighty)] days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. **Procedure for substitution**

3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
(b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within [15 (fifteen)] days or such extended time from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within [15 (fifteen)] days of its acceptance/deemed

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Date: 2026.10.31 11:19:09 IST

acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than [75% (seventy five per cent)] of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. **Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority so as to delay the completion of the Project of National importance and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4. **PROJECT AGREEMENTS**

4.1. **Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. **TERMINATION OF CONCESSION AGREEMENT**

5.1. **Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of the Concession Agreement.

5.2. **Termination when no Nominated Company is selected**

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Date: 2026.10.31 11:19:09 IST

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of [180 (one hundred and eighty)] days or any extension thereof as set forth in clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3. **Realisation of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Escrow Agreement.

6. **DURATION OF THE AGREEMENT**

6.1. **Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7. **INDEMNITY**

7.1. **General indemnity**

7.1.1. The Concessionaire shall indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2. The Authority shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire‘s obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3. The Lenders' Representative shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense,

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Date: 2026.10.31 11:19:09 IST

arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2. **Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within [15 (fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Patty and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. **DISPUTE RESOLUTION**

8.1. **Dispute resolution**

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the international Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. **MISCELLANEOUS PROVISIONS**

9.1. **Governing law and jurisdiction**

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

9.2. **Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

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Date: 2026.10.31 11:19:09 IST

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3. **Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4. **Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5. **Waiver**

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

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

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

9.6. **No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7. **Survival**

Termination of this Agreement:

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Date: 2026.10.31 11:19:09 IST

(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.

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 Patty giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. **Language**

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

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9.12. **Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13. **Original Document**

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .. day of 20 .... .. hereunto affixed in the presence of ...., Director, who has signed these presents in token thereof and . . . ., Company Secretary / Authorised Officer who has countersigned the same in token thereof:
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of THE AUTHORITY by

(Signature)
(Name)
(Designation)
(Address)
(Fax N0.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
SENIOR LENDERS by the Lenders' Representative
(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1. 2.

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SCHEDULE Q
SELECTION OF INDEPENDENT EXPERT

1. Selection of Independent Expert

1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, Government of India vide OM 24(23)/PF-II/2008 dated 21 May, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Expert. Provided, however, that no entity which is directly owned or controlled by the Authority shall be eligible for appointment as the Independent Expert.

1.2 In the event of termination of the appointment of an Independent Expert appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm of technical consultants forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 5 of this Schedule Q.

1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule Q.

2. Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with Schedule M.

3. Fee and Expenses

3.1 In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Concession Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses is optimised. The same shall be determined on the basis of price discovered by tendering process and payments to the Independent Expert shall be borne equally by the Authority and the Concessionaire. However, in case the fees of Independent Expert exceeds 10% (ten per cent) of the Performance Security, the same shall be approved by the ISPRL Board.

3.2 The nature and quantum of duties to be performed by the Independent Expert during the Concession Period shall be determined by the Authority in conformity with the provisions of the Agreement with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Concession Period, shall be borne equally by the Authority and the Concessionaire.

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4. Selection of Independent Expert

4.1 **Construction Period**

For the Construction Period, the Independent Expert shall be appointed, no later than 90 (ninety) days from the Execution Date, pursuant to the provisions of paragraph 1 of this Schedule Q. The appointment of the Independent Expert shall be for the entire Construction Period.

4.2 **Operation Period**

For the Operation Period, a third-party agency shall be appointed as the Independent Expert, no later than 30 (thirty) days from the completion of the Construction Period, pursuant to the provisions of paragraph 1 of this Schedule Q, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule Q.

5. Appointment of government entity as Independent Expert

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

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Date: 2026.10.31 11:19:09 IST

SCHEDULE R
COMMERCIAL CUM STRATEGIC PETROLEUM RESERVE

The Concessionaire is free to commercialize and earn revenue out of the entire capacity of the Project. Revenue generating activities may include but are not restricted to:

a) Leasing of Commercial Cum Strategic Petroleum Reserve to any third party
b) Trading of stored crude oil
c) SPM rental charges

All revenue generating activities should be in compliance with Applicable Laws and Applicable Permits.

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SCHEDULE S
PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 30.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "**Panel of Chartered Accountants**"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule S.

2. Invitation for empanelment

2.1. The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees Twenty five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

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4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule S.

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Date: 2026.10.31 11:19:09 IST

SCHEDULE T
FORMAT FOR SAFE FOR OPERATION CERTIFICATE

To whom it may concern

In consideration of the requirements of conditions of Clause 12.6 of the Agreement and the Concessionaire's application for a Safe for Operation Certificate, the Independent Expert hereby grants the Safe for Operation Certificate.

This Safe for Operation Certificate is issued on the understanding that the conditions of Clause 12.6 including testing of the Project in accordance with Schedule H, safety certification of the Project in accordance with Clause 12.5 and connection of the Commercial Cum Strategic Petroleum Reserve to the single point mooring and the onshore and offshore pipelines have been met.

The Safe for Operation Certificate does not relieve the Concessionaire of any requirements or obligations under the Agreement.

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

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of	For and on behalf of
Concessionaire by:	Independent Expert by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

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SCHEDULE U
KEY PERFORMANCE INDICATORS
(See Clause 23.1)

The following Key Performance Indicators are to be submitted by the concessionaire during the Construction Period and Operation Period

I. Construction Period

A. Estimate to project completion

The Concessionaire would be required to submit the estimate for project completion with details of the interim milestones targets for each phase. The complete planning package should be submitted to the owner along with completion / target dates for each phase as soon as it is finalized.

B. Submission of Interim Milestones completion

The Concessionaire would be required to submit a target versus actual completion data for monitoring of Interim milestones during project execution. The key milestones that need to be covered are:

a. Engineering Phase

(i) Submission of deliverable schedule for mutual acceptance
(ii) Schedule for completion of Statutory Permissions
(iii) Submission of Design Basis for review
(iv) Start of deliverables based on Mandatory Site Investigations
(v) Completion of Design Phase-1 (which cannot be concurrently executed during construction)
(vi) Release of Construction Drawings
(vii) Release of approved procedures
(viii) Completion of Design Phase-1I (which are concurrently executed during construction)
(ix) Completion of Detail Engineering
(x) Completion of as-built documentation

b. Procurement Phase

(i) Submission of deliverable schedule for mutual acceptance
(ii) Finalization of Purchase requisitions for Bulk items
(iii) Identification of Critical Equipment's
(iv) Ordering and Delivery status
(v) Completion of Bulk procurement
(vi) Completion of Procurements and delivery

c. Construction Phase

(i) Submission of deliverables schedule for mutual acceptance
(ii) Completion of Project infrastructure shall include site offices, godowns , stores, warehouse, work shop, explosive stores, medical and canteen facilities ,labour colony, access roads, construction water, construction power, etc

(iii) Underground works

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1. Commencement of Portal Works
2. Commencement of Shaft works
3. Commencement of Access Tunnel
4. Commencement of Water Curtain Tunnel
5. Commencement of Galleries of Cavern
6. Completion of Access Tunnel
7. Completion of Water Curtain Tunnel
8. Commencement of Piping & Other Mech works
9. Completion of Piping & Other Mech works
10. Completion of Galleries of Cavern
11. Completion of Shaft works including mass concreting works
12. Completion of Plugging works
13. Completion of Cavern Acceptance test

(iv) Above Ground works

1. Commencement of Structural works for Pipe racks
2. Commencement of Underground piping
3. Commencement of Above ground Piping
4. Commencement of Structural works for Technical structures
5. Commencement of foundation works for Plant (Control Room , Substation , Fire Station , ETP Building etc..) and Non-plant buildings (Admin Building , Warehouse , Workshop etc..)
6. Commencement of Erection and Installation works
7. Completion of Erection and Installation works
8. Commencement of Electrical and Instrumentation works
9. Completion of All Structural works including alignment and grouting.
10. Completion of Underground piping including hydrotesting and Flushing
11. Completion of Above ground piping including hydrotesting and Flushing
12. Completion of All Building works
13. Completion of Electrical and Instrumentation works including loop checking and commissioning of Panels.

d. <u>Pre-Commissioning & Commissioning</u>

(i) Completion of Flushing and system readiness
(ii) Completion of Interlock checking and logic diagrams
(iii) Completion of Cheeking of Safety equipment's and alarms
(iv) Completion of Motor Run / Dry Run wherever permissible
(v) Completion of Leak testing of Entire system using Plant air
(vi) Completion of Commissioning of ETP
(vii) Completion of Commissioning of entire facility
(viii) Completion of Performance Guarantee Test runs (PGTR)

C. **Financial Progress**

Based on the Project Schedule , a monthly financial progress schedule shall be submitted for review

D. **Backlog Analysis review**

Based on the Project Schedule, a monthly backlog analysis shall be submitted for review along with mitigation plan for catching up to the schedule requirements shall be accompanied.

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II. Operational Period

The concessionaire will be required to operate and maintain the plant by developing standard operating procedures which are in compliance with requirements of OISD and local statutory codes. The following Key performance areas that may be submitted to Authority for their references:

A. Monthly status of Crude Reserves of various grades stored in caverns
B. Processes and Procedures developed
C. Capacity Utilization
D. Hydrogeological data and borewell monitoring data report- Monthly
E. Waste Discharge Data -Monthly
F. Scheduled Downtime and Unscheduled downtime – Six monthly
G. Operation & Maintenance costs- Yearly
H. Safety system Fire detection and Suppression Data including mock drills and Lost time incident hours report- Monthly
I. Safety Audit Report – Yearly
J. Pipeline pigging operation reports
K. Corrosion Monitoring report – Yearly
L. Sub sea pipeline and SPM inspection reports

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