

Ref: Exim Bank/Infra-Supply/857

Date: July 31, 2024

**Request for Inputs / Feedback on the Model Procurement Document for Contractor for procurement of Goods**

1. This is in reference to the Model Procurement Document for Contractor for procurement of Goods for Inputs / Feedback from stakeholders, industry and members of the public for procurement of Goods for projects funded under Indian Development and Economic Assistance Scheme (IDEAS).
2. The procurement Document constitutes, the Request for Proposal (RFP) containing the provisions governing the eligibility and the Bidding Procedure for selection of Contractor for procurement of Goods and the Model Contract Agreement.
3. Inputs / Feedback on the draft document should only be sent as per the format at the Annexure by August 14, 2024, at the email address [locmis@eximbankindia.in](mailto:locmis@eximbankindia.in). For any clarification, Mr. Harish Kumar may be contacted on Phone No. +91-11- 24607700 during office hours (10:00 AM – 06:00 PM) on any working day.

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**Annexure**

**INPUTS ON MODEL PROCUREMENT DOCUMENT FOR CONTRACTOR FOR PROCUREMENT OF GOODS**

<b>Name of the Organization</b>	
<b>Name and Designation of the Contact Person</b>	
<b>Phone &amp; Email for Clarifications</b>	

Sr. No.	Section No. and Clause No.	Existing Provision	Proposed clause	Justification and reasons for the suggested change and references, if any.

# **MODEL PROCUREMENT DOCUMENT**

## **REQUEST FOR PROPOSAL AND CONDITIONS OF CONTRACT FOR PROCUREMENT OF GOODS**

For Lines of Credit Projects under the Indian Development and  
Economic Assistance Scheme (IDEAS)

### **Export-Import Bank of India**



**Version: V1.01**  
**Date: July 2024**

## Instructions for Project Authority / LOC Borrower

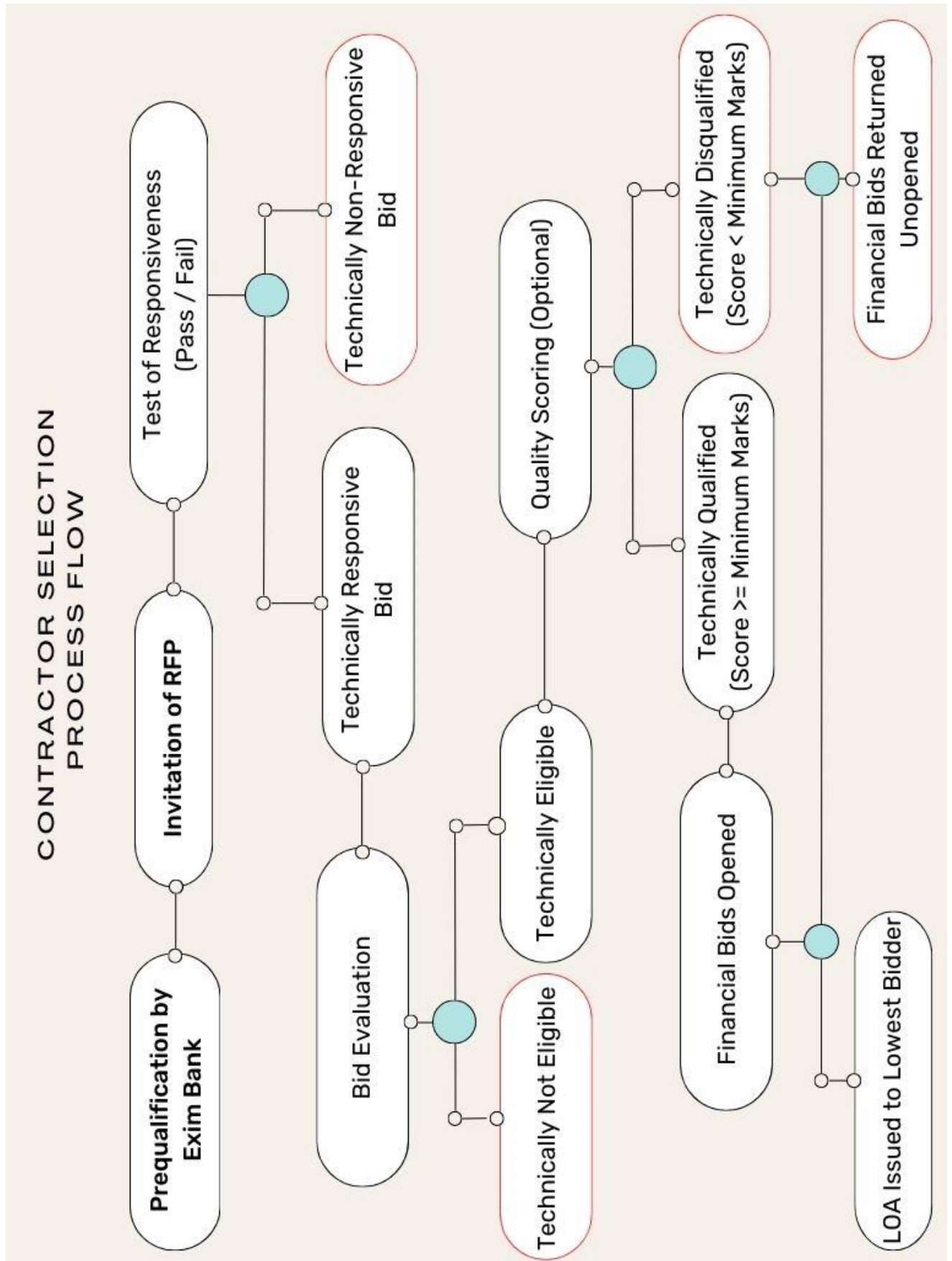
This Bidding Document comprising of Request for Proposal (“RFP”), Conditions of Contract, Annexures, Appendices, Schedules, Enclosures and all other documents mentioned in the Agreement shall be used for selection of Contractors for procurement of Goods for all the projects approved by the Government of India (GOI) and funded through the Export-Import Bank of India (“Exim Bank”) Line of Credit (“LOC”) under the Indian Development and Economic Assistance Scheme (“IDEAS”) Guidelines issued by GOI vide letter F.No.5/7/2019-IDEAS dated March 31, 2022.

- Unless otherwise specified, this Bidding Document shall be used for all the RFP to be floated on and from April 1, 2024.
- The Bidding Process shall be conducted in accordance with the Procurement Policy of Exim Bank.
- The selection of the Contractor for procurement of Goods shall be through Least Cost Selection (“LCS”) method only. In case of ‘Quality and Cost Based Selection’ (“QCBS”), the same shall be with explicit approval of the GOI, failing which the contract / Project may be disqualified for funding under the LOC. This RFP should be used only for the selection of the Supplier or Contractor for procurement of Goods through competitive bidding using LCS method, amongst the companies prequalified by Exim Bank and is not suited for selection through QCBS Mode of selection.
- This Bidding Document shall be available on Exim Bank’s website ([www.eximbankindia.in](http://www.eximbankindia.in)). The contents of the Bidding Document shall not be altered unless explicitly required to be updated at designated places. For the following parts of the Bidding Document, in case of difference between the document available on the Bank’s website and that of the Bidding Document launched by the Project Authority and subsequently requested to be included under the LOC, the versions of this Bidding Document available on Exim Bank’s website shall prevail and the approval for inclusion under the LOC shall be granted accordingly.
- It is mandatory for the Project Authority to obtain approval of Exim Bank for inclusion of the Agreement under the LOC before commencement of procurement of Goods under the Agreement.
- Before preparation of the Bidding Document, the Project Authority shall check Exim Bank’s website and use only the latest version of the Bidding Document as updated on Exim Bank’s website.
- The RFP, Agreement and Guarantees should be reviewed for compliance with the local laws and matters pertaining to validity and enforceability in the country of performance of obligations and the place of the governing law (“**Local Law Review**”). Any amendments required to be made pursuant to the Local Law Review should be made only once approved in writing by Exim Bank.

## Instructions for updating the RFP

This Bidding Document has been prepared to be used for the procurement of Goods to be financed by Exim Bank under Government of India (GOI) supported Lines of Credit (LOC). This RFP is consistent with the Indian Development and Economic Assistance Scheme (IDEAS) Guidelines dated March 31, 2022.

- Serially numbered footnotes are for guidance of the Authority and should be omitted prior to issue of the RFP. Footnotes marked in non-numerical characters shall be retained in the RFP.
- Text marked as “\*\*” is added only as place holder and should be updated before floating the RFP.
- Changes to “Instructions to Bidders” (ITB) must be made by way of changes in the “Appendix to Instructions to Bidders” (AITB). No change should be made in the content of ITB. Any amendments required to be made pursuant to the Local Law Review should be made only once approved in writing by Exim Bank.
- Changes to “General Conditions of Contract” (GCC) must be made by way of changes in “Special Conditions of Contract” (SCC). No change should be made in the content of GCC.
- The document is suitable for a Bidder applying as a single entity or any combination of them in the form of Joint Venture
- All ‘Notes to Draft’ should be deleted prior to floating of the RFP.



**Note to Draft: Before floating the RFP, information till this text should be deleted from the document.**

# REQUEST FOR PROPOSAL AND CONDITIONS OF CONTRACT

[Country\*\*]

[Name of Project Authority\*\*]

## PROCUREMENT OF GOODS FOR

[Name of the Project \*\*]

REFERENCE NO:

Funded by:

Export-Import Bank of India





## DISCLAIMER

The information contained in this Bidding Document or subsequently provided to Bidder(s), in documentary or digital form, by or on behalf of the Authority, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement by the Authority with the prospective Bidders. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Bids pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be accurate, complete or adequate. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The Authority has right to interpret the Bid based on common usage of terminologies and phrases in public procurement. The interpretation of the Authority shall be final and binding on the Bidders. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. However, the Bidder must seek appropriate legal advice while formulating the Bid and assess the various risks accordingly.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP or any assessment,

assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with participation in this Bid stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. The Authority may, at its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP. However, in such a case, appropriate addendum to the RFP shall be issued by the Authority.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Contractor, as the case may be, for the Project and the Authority reserves the right to accept any bid, and to reject all or any of the Bids.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses shall be borne by the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## Summary of Content

### **Part-I: Instructions to Bidders (ITB)**

This part provides relevant information to help Bidders prepare their Bids. Information is also provided on the submission, opening and evaluation of Bids and on the award of Contracts. This part also specifies the criteria to determine the procedure for selection of the Bidder. **The content of this Part should not be modified. In case modification is required, the same should be done by way of modification to AITB.**

### **Part-II: Appendix to Instructions to Bidders (AITB)**

This part includes provisions specific to each RFP and supplements Part-I, Instructions to Bidders.

### **Part-III: Bidding Forms and Appendices**

This Section includes the forms to be completed by the Bidders and submitted as part of the Bid.

### **Part-IV: Form of the Contract Agreement**

This Part contains the Form / Documents to be signed between the Selected Bidder and the Authority subsequent to award of the Project. The Form of Contract Agreement shall be used for signing the binding contract between the Authority and the Selected Bidder and Part-V; Part-VI and Part-VII shall be annexed to the Contract Agreement which shall form part of the binding contract between the parties thereto.

### **Part-V: General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied for the Conditions of Contract. **The content of this Part should not be modified. In case modification is required, the same should be done by way of modification to SCC.**

### **Part-VI: Special Conditions of Contract (SCC)**

The contents of this Section supplement the General Conditions and shall be prepared by the Authority. This part contains project specific provisions of the Conditions of Contract. Contents of the SCC shall prevail over the contents of the GCC.

### **Part-VII: Schedules and Appendices**

This Part contains the schedules and appendices forming part of the Agreement and shall be appended to the Contract Agreement.

## NOTICE INVITING BIDS [Name of the Project\*\*]

RFP. No. ....[\*\*]

Dated .....[\*\*]

RFP for Selection of Supplier for procurement of Goods for [Project Name\*\*]

1. [Name of the Borrower\*\*] has received a Line of Credit from the Export-Import Bank of India (Exim Bank) towards financing the cost of [Name of project\*\*] in [Country\*\*] and intends to apply part of the proceeds toward payments under the Agreement for the Project. [Name of the Authority\*\*] (the “**Authority**”) now invites sealed Bids from prequalified Bidders for selection of the Contractor. Key information is as under:

Ref. No.	Bid Security	Estimated Cost	Completion Period	Maintenance period
***	***	***	[**] Months	[**] Months

2. Bidding shall be restricted to the prequalified Bidders. The Prequalified Bidders may obtain complete set of Bidding Document from [details to be added\*\*\*].

3. Schedule of Dates are as under:

a) Invitation of RFP	:	[**]
b) Document available from	:	[**]
c) Bid Submission	:	[**]
d) Bid Opening	:	[**]
f) Opening of Technical Bids	:	[**]

4. All Bids must be accompanied by a Bid Security of [USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words)] in an acceptable form and manner as specified in this RFP.

5. The Bids shall be submitted in [physical/online\*\*] form in accordance with the provisions of this RFP. Bids through any other mode shall not be entertained.

6. Late Bids, partial Bids, Bids not received, and the Bids not opened at the Bid opening ceremony shall not be accepted for evaluation irrespective of the circumstances.

[insert Address of the Authority]

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**PART-I: INSTRUCTIONS TO BIDDERS****SECTION-1 INTRODUCTION**

**1.1 Background**      **1.1.1**      The Borrower (the “**Borrower**”) as specified in the **Appendix to Instructions to Bidders** (the “**AITB**”) has received a Line of Credit (the “**LOC**”) from Export-Import Bank of India (the “**Exim Bank**”). The Borrower, through the Authority as specified in the **AITB** intends to apply a portion of the LOC to eligible payments for undertaking procurement of Goods (the “**Project**”) as specified in the **AITB**.

The Authority intends to undertake selection of a Supplier for procurement of goods by way of a competitive Bidding Process amongst the prequalified bidders, in accordance with the procedure set out herein. The name, identification, and number of lots (contracts) or any combination of lots (Packages) of this Bidding Process, are as specified in the **AITB**.

Payment by Exim Bank under the LOC will be made only at the request of the Borrower and upon approval by the Bank, and will be subject, in all respects, to the terms and conditions of the LOC Agreement. No party other than the Borrower shall derive any rights from the LOC Agreement or have any claim to the proceeds of the LOC.

**1.1.2**      The Selected Bidder (the “**Contractor**” or “**Supplier**”) shall be responsible for supplying the Goods including the incidental Works/ Service as may be required to supply, install and commission the Goods under the contract and in accordance with the provisions of the Agreement which includes without limitation, the GCC and the SCC (the GCC and SCC shall together be referred to as the “**Conditions of Contract**”) to be entered into between the Contractor and the Authority in accordance with Contract Agreement provided by the Authority as part of the Bidding Document.

**1.1.3**      The Conditions of Contract sets forth the detailed terms and conditions for award of the Project to the Contractor, including the scope of supply of Goods and Obligations to be undertaken by the Contractor. The detailed scope of Supply of Goods has been laid out in Section-7 [Scope of the Project] of the Conditions of Contract (read with the relevant Schedules). If specified in the **AITB**, the Project Information Memorandum (the “**PIM**”) shall be enclosed at **Enclosure I**. Save and except for the information provided in Sub-Clause 9.1.3 of the GCC, the PIM is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination of the Project before

submitting their Bids at their own cost. Nothing contained in the PIM shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the PIM save and except for the accuracy of the information provided in Sub-clause 9.1.3 of this Contract. Accordingly, the Bidders are advised to carry out their independent surveys, investigations and other detailed examination of the Project before submitting their Bids at their own cost. Project Implementation Schedule has been **specified in the AITB**.

- 1.1.4 The indicative Project Cost Estimate is **as specified in the AITB**. The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.5 The AITB [Section-5] shall supplement the information provided under Section 1-4 [Instructions to Bidders (ITB)]. The clauses under ITB, wherever appearing in the AITB, shall be taken to be negated or additional provisions added to, or existing provisions to be altered with the AITB. Whenever there is a conflict, the provisions of AITB shall prevail.
- 1.1.6 The Authority shall receive Bids pursuant to this RFP which includes without limitation, the ITB and AITB (the ITB and AITB shall together be referred to as the **"RFP"** or the **"Request for Proposal"**), Bidding Document, and other documents provided by the Authority pursuant to this RFP and read along with any amendments and clarifications issued from time-to-time by the Authority. All Bids shall be prepared and submitted in accordance with such terms on or before the date for submission of Bids (the **"Bid Due Date"**) in accordance with Clause 2.17.

## 1.2 Brief description of Bidding Process

- 1.2.1 (a) The Bidding Document shall be obtained by the prequalified Bidders in accordance with the procedure **as specified in the AITB**.
- (b) The Authority has adopted a two-envelope system (referred to as the **"Bidding Process"**) for selection of the Bidder for award of the Project. Eligibility and qualification of the prequalified Bidder will be first examined based on the details submitted under the first part (Technical Bid) with respect to eligibility and technical qualifications criteria prescribed in this RFP (the **"Bidder"**, which expression shall, unless repugnant to the context, include the members of the Unincorporated Joint Venture).

The Financial Bid under the second part shall be opened of only those Bidders whose Technical Bids are

responsive to eligibility and are technically qualified in accordance with this RFP.

**1.2.2** The complete Bidding Document including the Conditions of Contract for the Project is enclosed for the Bidders. The aforesaid documents and any addenda issued subsequent to this RFP document, will be deemed to form part of the Bidding Document.

**1.2.3** The Bidders are called upon to submit their technical and financial offers (the “**Bids**”) in accordance with the Bidding Document. A pre-bid meeting of the interested Bidders shall be convened at the designated date and time in accordance with Clause 1.3 [Schedule of Bidding Process] and Clause 2.7 [Pre-Bid Meeting, Site Visit and Verification of Information].

**1.2.4** (a) The Bidding Document will be available free of any cost in the manner as specified under Sub-Clause 1.2.1. The Bidders shall pay to the Authority a sum **as specified in the AITB** as the Bid Processing Fee along with the Bid. For avoidance of doubt, the Bid Processing Fee will be non-refundable fee payable by the Bidder to the Authority.

(b) The Bidder shall be required to deposit, along with its Bid, a Bid Security for the amount and currency **as specified in the AITB**. The Bid security shall be accepted in form of Instruments **as specified in the AITB**. The Bid Security shall be valid for a period **as specified in the AITB** but not less than 45 days beyond Bid Validity or an extended period as may be stipulated in the Bidding Document. The Bid Security shall be refunded upon selection of the Contractor, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security as per the provision of this RFP and of the Letter of Award (the “**LOA**”). Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.

It is hereby clarified that in the event the Bid Due Date has been extended in the manner as provided in Clause 2.17 [Bid Due Date], a Bidder who intends to continue to participate in the Bidding Process, shall be required to extend the validity of the Bid and the Bid Security for such extended period.

**1.2.5** Bidders would be required to furnish all the information specified in this RFP. Bidders are, therefore, advised to visit the site and examine the Project in detail, including the PIM, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project including supply of Goods under the



Project.

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|---------------------------------|--|
| 1.2.6                           | Any reference to the standards in the Bidding Document shall include equivalent Indian standards. For avoidance of doubt, this applies to the specifications and standards of Works, Goods and Services set out in the Bidding Document.   |
| 1.2.7                           | Banks acceptable for submission of Bank Guarantees are <b>as specified in the AITB</b> . Original Guarantee document(s) shall be submitted by the Bidder along with the other physical documents in accordance with Sub-Clause 2.16.6.   |
| 1.2.8                           | Bids shall be evaluated for the Project on the basis of <b>“Least Cost Selection System (LCS)”</b> . The price quoted by the Bidders in their Financial Bid (the <b>“Bid Price”</b> ) shall constitute sole criteria for evaluation of Bids amongst the Technically Qualified Bidders in accordance with Sub-Clause 3.4.2 and the Project shall be awarded to the Bidder quoting the lowest evaluated Bid Price among those Bidders. |
| 1.2.9                           | In this RFP, the term <b>“Lowest Bidder”</b> shall mean the Bidder who is offering the lowest evaluated Bid Price amongst the Technically Qualified Bidders in accordance with Clause 3.7 [Evaluation of Financial Bids and Selected Bidder].  |
| 1.2.10                          | Any queries or request for additional information concerning this RFP shall be submitted in writing or by e-mail to the officer designated in Sub-Clause 2.11.1 [Correspondence with the Authority]. The envelopes/communications shall clearly bear the name of the Project as the title.   |
| 1.3 Schedule of Bidding Process | 1.3.1 The Authority shall endeavor to adhere to the Bidding Process <b>as specified in AITB</b> .  |
| 1.4 Reporting Currency          | 1.4.1 All financial information to be submitted by the Bidder in the Bid shall be in the currency <b>as specified in the AITB</b> (the <b>“Reporting Currency”</b> ). The Financial Bid shall be in currency in accordance with Sub-Clause 2.16.4 [Financial Bid].   |

For the purpose of conversion of currencies for reporting the financial information, the Bidders shall use the Reference Rates of Foreign Currency published by Financial Benchmark India Private Ltd. (FBIL) (<https://www.fbil.org.in/>). For the historical exchange rates, which are not made available by FBIL, the reference rate published by Reserve Bank of India (RBI) and [available on https://www.rbi.org.in/scripts/ReferenceRateArchive.as](https://www.rbi.org.in/scripts/ReferenceRateArchive.as)

[px](#) may be used. In case a particular currency rate is not published by Reserve Bank of India, then the selling rate of such currency shall be taken from the following website: <http://www.oanda.com>.

For submitting information under Sub-Clause 2.2.4 [Financial Capacity] or for reporting any other information where such conversion is required, the Bidder shall adhere to the following for conversion to the Reporting Currency:

- i. The equivalent amount in Reporting Currency shall be arrived at using the exchange rate as on 31<sup>st</sup> March of respective financial year, where the information for any of the past financial years is reported;
- ii. For data related to aspects like liquidity, annual residual contract value and contracts signed in the current financial year or any other information where the current status is reported, the exchange rate prevalent as on the working day preceding the date of Invitation of Bids under this RFP shall be used to arrive at the Bid currency equivalent.

## 1.5 Contents of the Bidding Document

### 1.5.1

The Bidding Document comprises of the disclaimer set forth at the beginning of this document, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.13 [Amendment of RFP].

#### **Part-I: Instructions to Bidders**

- Section-1. Introduction
- Section-2. Bidding Criteria and Requirements
- Section-3. Bid Evaluation
- Section-4. Miscellaneous

#### **Part-II: Appendix to Instruction to Bidder (AITB)**

- Section-5. Appendix to Instructions to Bidders (AITB)

#### **Part-III: Bidding Forms and RFP Appendices**

- Appendix I: Technical Bid [along with the Forms]
- Appendix II: Financial Bid
- Appendix III: Bank Guarantee for Bid Security
- Appendix IV: Power of Attorney for signing of Bid
- Appendix V: Power of Attorney for Lead Member of JV
- Appendix VI: Joint Bidding Agreement for Joint Venture
- Appendix VII: Form of Bank Guarantee
- Appendix VIII: Format of Letter of Award

#### **Part-IV: Form of Contract Agreement**

#### **Part-V: General Conditions of Contract (GCC)**

- Section-6: Definitions And Interpretation

Section-7: Scope of the Project  
Section-8: Obligations of the Contractor  
Section-9: Obligations of the Authority  
Section-10: Representations, Disclaimer and Warranties  
Section-11: Performance Security  
Section-12: Handing Over of Site and Utilities  
Management  
Section-13: Initiation Of Works, Design and Construction  
Section-14: Quality Assurance and Supervision  
Section-15: Completion Certificate  
Section-16: Change of Scope  
Section-17: Maintenance Obligations  
Section-18: Defects Liability  
Section-19: Authority's Engineer  
Section-20: Payments  
Section-21: Insurance  
Section-22: Force Majure and Termination  
Section-23: Suspension of Contractor's Rights  
Section-24: Termination  
Section-25: Assignment and Charges  
Section-26: Liability and Indemnity  
Section-27: Dispute Resolution  
Section-28: Miscellaneous

**Part-VI: Special Conditions of Contract (SCC)**

**Part-VII: Schedules and Conditions of Contract  
Appendices**

**Enclosures**

Enclosure I: Project Information Memorandum provided by the Authority, if provided for in the AITB.

Unless obtained in a manner as specified under Paragraph 1.2.1(a), the Authority is not responsible for the completeness of the Bidding Document, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Document in accordance with Clause 2.13 [Amendment of RFP]. In case of any contradiction, documents obtained directly from the Authority shall prevail.

For avoidance of doubt, the “**Notice Inviting Bids**” is not part of the Bidding Document.

## SECTION-2 BIDDING CRITERIA AND REQUIREMENTS

### A. GENERAL

- |                  |  |
|------------------|--|
| 2.1 Scope of Bid | <p>2.1.1 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Conditions of Contract shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement. Further, the statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Contractor set forth in the Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the work to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Document including this RFP are to be noted, interpreted, and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority. The definitions in the Conditions of Contract shall apply mutatis mutandis to the RFP.</p> <p>2.1.2 The Technical Bid shall be furnished in the format exactly as per <b>Appendix-I including Forms annexed to Appendix-I</b>. The Financial Bid shall be furnished in the format exactly as per <b>Appendix-II, including Forms annexed to Appendix-II</b>. Bid Price shall be indicated clearly in both figures and words, and in currency as specified in Sub-Clause 2.16.4 [Financial Bid] in the prescribed format of the Financial Bid and it will be signed by the Bidder's authorized signatory. In case of any difference between figures and words, the amount indicated in words shall be considered. In case the Bid Security is furnished in the form of Bank Guarantee, the same shall be furnished in the format as per <b>Appendix-III</b>.</p> <p>2.1.3 The Bidder shall submit a Power of Attorney as per the format at <b>Appendix-IV</b>, authorizing the signatory of the Bid to commit the Bidder.</p> <p>2.1.4 In case the Bidder is a Joint Venture, the members thereof shall furnish a Power of Attorney in favor of the Lead Member in the format at <b>Appendix-V</b> and Joint Bidding Agreement in the format at <b>Appendix-VI</b>.</p> <p>2.1.5 Any condition or qualification or any other stipulation contained in the Bid / RFP, other than those explicitly required in accordance with this RFP, shall render the Bid liable to rejection as a non-responsive Bid.</p> <p>2.1.6 The Bid and all communications in relation to or concerning the Bidding Document and the Bid shall be in language as</p> |
|------------------|--|

specified in Clause 2.14 [Language].

**2.1.7** Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Document and fulfilling the criterion as mentioned in Clause 2.2 [Eligibility and qualification of Bidders].

**2.1.8** All the stakeholders viz. Authority, Contractor, suppliers, sub-contractors, consultants etc. shall observe the highest standard of integrity and not indulge in prohibited practices or other misdemeanors, either directly or indirectly, at any stage during the Bidding Process or the execution of resultant contracts.

## **2.2 Eligibility and Qualification of Bidders**

**2.2.1** Only the prequalified Bidders notified by Exim Bank (the “**Bidders**”) **as specified in the AITB**, who are in compliance with the Applicable Guidelines as defined under the Conditions of Contract, as well as in compliance with the conditions stipulated in the Bidding Document, are eligible to participate in the Bidding Process. For determining the eligibility of Bidders, the following shall apply:

a. The Bidder shall be an entity that has been notified as prequalified for award of the Project by Exim Bank, and may be a single entity or any combination of them in the form of Joint Venture (the “**Unincorporated Joint Venture**” or “**JV**”). The Bidder shall continue to meet the prequalification criteria throughout the Bidding Process. Failure to meet this requirement shall make the Bid liable to be disqualified.

For avoidance of doubt, an entity shall be construed as a reference to any firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality).

b. No Bidder or its Associates applying individually or as a member of an Unincorporated Joint Venture, as the case may be, can be a member of another Bidder either in individual capacity or as a member of another JV for the same Bid.

c. In case of an Unincorporated JV, the following shall apply:

- i. The formation of a JV is permissible at prequalification stage only and the JV which is prequalified shall be sustained for the entire Bidding Process. JV among prequalified Contractors and non-prequalified Contractors or any other entity is not allowed subsequent to prequalification stage.
- ii. No change of JV members or change in percent (%) share in JV is allowed during the currency of

existence of obligations of the Contractor in the Project or the Bidding Process, with respect to the respective JV's application for prequalification, preceding this Bidding Process, as duly evaluated and prequalified by Exim Bank save and except as provided for under Clause 2.3 [Change in composition of the Joint Venture]. In any case, the Lead Member must continue to be the JV's Lead Member. Failure to meet this requirement would render the Bid invalid.

- iii. The lead member (the "**Lead Member**") of the JV shall be the one with the highest share in the JV which shall not be less than 26%. Eligibility condition as specified under Sub-Clause 2.2.10 shall apply to the JV and individually to all the members of the JV.
- iv. The Lead Member shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JV during the prequalification process, Bidding Process and, in the event the JV is awarded the Project, during its execution. All notices /correspondence with respect to the Project would be sent only to the Lead Member.
- v. Bids shall be submitted only in the name of the JV and not in the name of constituent member.
- vi. In the event of award of the Project to a JV, all the payments to the JV shall be made to the bank account of the JV and not to the account of constituent members.
- vii. The Joint Venture Agreement shall in all respect be governed by and interpreted in accordance with Indian Laws.
- viii. Wherever required, by the local laws of the Authority's Country as defined under the Conditions of Contract, the Authority may mandate that during a specified stage in the execution of the Project, the members of the Unincorporated Joint Venture shall incorporate the Joint Venture. However, in such a case, the members shall submit a board resolution or such equivalent documentation certified by an authorized officer of the respective Bidders to be authentic confirming unqualified support (both with regard to manpower and infrastructure as well as financial resources) to the Joint Venture so incorporated. The joint venture so incorporated shall continue to remain jointly and severally liable to the Project.
- ix. Any Bid from a JV shall indicate the part or section of the obligations in the Project to be performed by each member which shall not be substantially

- altered without prior written approval of the Authority.
- x. No member of the Joint Venture shall have the right to assign or transfer the interest right or liability in the Agreement without the prior written consent of the other members and that of the Authority.
  - xi. On award of the Project to a JV, all the guarantees like the Performance Guarantee, Advance Payment Guarantee etc. shall be accepted only in the name of the JV. For avoidance of doubt, submission of multiple guarantees individually by the JV members, aggregating to the value of the guarantee required to be submitted, shall not be permitted.
- d. A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder who at any point of time during the Bidding Process, or after award, is found to have a Conflict of Interest, shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- i. the Bidder, its member or any constituent thereof and any other Bidder, its member or any constituent thereof directly or indirectly have common Beneficial Owner, provided that this disqualification shall not apply to any ownership by a bank, insurance company, mutual funds, pension fund or a public financial institution referred to in section 2(72) of Companies Act 2013 enacted by the Government of India. The beneficial owner shall mean:
    - a. Where the Bidder is a company, the Beneficial Owner is the natural person(s), who, whether acting alone or together, or through one or more juridical persons, has/have a controlling ownership interest or who exercise control through other means.

For the purpose of this Sub-Clause, “**Beneficial Owner**” means control over ownership of/entitlement to more than 10% (ten percent) of the shares or capital or profits of the company and “**control**” shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements. For avoidance of doubt, “**Control**” shall have the meaning given to the term in Companies Act 2013 enacted by the Government of India

    - b. Where the Bidder is a partnership firm, the Beneficial Owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has/have control over ownership of/entitlement to more



than 10% (ten percent) of capital or profits of the partnership or who exercises control through other means. For the purpose of this Sub-Clause, “**control**” shall include the right to control the management or policy decision of such person, whether by operation of law or by contract or otherwise.

- ii. a constituent of such Bidder is also a constituent of another Bidder; or
  - iii. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same Sub-contractor in more than one Bid. For avoidance of doubt, this clause shall not result in disqualification if Alternate / Multiple Bids are permitted in accordance with Clause 2.4 [Multiple Bids and Alternative Bids]; or
  - iv. such Bidder receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member thereof. Provided that this provision shall not be applicable to a Bidder which is a Public Sector Undertaking; or
  - v. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - vi. such Bidder has a relationship with another Bidder, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other’s confidential information which is not otherwise available in public domain, about, or to influence, the Bid of either or each other; or
  - vii. such Bidder has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- e. A Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder other than as permitted under Sub-Clause 2.10.4.
- f. A Bidder shall be ineligible to be awarded the Project, if the Bidder/Bidders’ staff has a close business relationship or family relationship (defined as first blood relations, and their spouses, of the Bidder or the Bidder's spouse) or relationship through common third parties, with Persons who are / would be:
- i. Involved in decision making in the Project at the Authority; or



- ii. Directly or indirectly involved in the preparation of the Bidding Document or specifications of the Contract, and/or the Bid evaluation process of such Contract; or
- iii. Involved in the implementation or supervision of the Agreement

unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Authority throughout the Bidding Process and execution of the Agreement.

- g. A Bidder shall be ineligible to be awarded the Project if:
  - i) it is currently under default on any loan to any Bank / financial institution (FI) in India and its account has been classified as Non-Performing Asset (NPA) as per Central Repository of Information on Large Credits (CRILC) database in India;
  - ii) its promoters/directors (excluding nominee directors and independent directors) appear in Credit Information Bureau India Ltd. (CIBIL) Defaulter List, Reserve Bank of India (RBI) Negative List or RBI Wilful Defaulter List;
  - iii) A Bidder, its member or any constituent thereof has been admitted by the National Company Law Tribunal (NCLT) for initiating corporate insolvency resolution process under the Indian Bankruptcy Code (IBC);
  - iv) A Bidder shall be liable for disqualification in case of any records of poor performance during the last five years by a Bidder, as on the date of submission of the Bid, for projects in which it is acting as the 'Contractor', including but not limited to abandoning the work, rescission of the contract for reasons which are attributable to non-performance of the Bidder, inordinate delays in completion, consistent history of litigation resulting in awards against the Bidder or any of the constituents, or financial failure due to insolvency and/or bankruptcy, as evidenced by but not limited to imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Member. Additionally, the rescission of a contract as a part of a joint venture on account of reasons other than non-performance, such as the lead partner withdrawing would entail disqualification of the Bidder.
- h. The Bidder, the JV or members of the JV shall not be:
  - i) debarred by Exim Bank in accordance with Exim Bank's Debarment Policy;
  - ii) blacklisted, debarred or suspended from bidding by any multilateral development bank (MDB), such as

- World Bank, Asian Development Bank, African Development Bank;
- iii) blacklisted, debarred or suspended from bidding by any Ministry / Authority of GOI or of the Ministry / Authority of the Government in Authority's Country;
  - iv) convicted or an offense under (i) India's Prevention of Corruption Act, 1988, or (ii) the Bharatiya Nyaya Sanhita, 2023 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract, shall be ineligible to participate in the Bidding Process as applicable, during such period of time as the sanctioning authority shall have determined;
  - v) In regard to matters other than security and integrity of India / Authority's Country, convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on its ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community;
  - vi) In regard to matters relating to security and integrity of India / Authority's Country, facing any investigation or charge-sheeted by any agency of the Government of India / Authority's Country or convicted by a Court of Law.

In case any of disqualification / ineligibility conditions becoming true post the evaluation process (i.e. including during Bidding Process and/or contract implementation phase), the Bidder shall immediately inform the Authority and Exim Bank of such disqualification / ineligibility conditions becoming true and reasons thereof. This may lead to cancellation of the Bid / Agreement, if awarded, or at any later stage.

### 2.2.2 Bid Capacity

- a. The Bidder undertakes that the Bidder continues to meet the "**Bid Capacity**" requirements and all other eligibility requirements evaluated during the pre-qualification stage, as well as during execution of the Agreement, and that there is no material change in the capacity of the Bidder to execute the Agreement.
- b. The Bidder shall additionally meet the Bid Capacity requirements **as specified in the AITB**.

### 2.2.3 Technical Capacity

- a. The Bidder undertakes that the Bidder continues to meet the "**Technical Capacity**" and all other eligibility requirements evaluated during the Pre-qualification as well

as during the execution of the Agreement, and that there is no material change in the technical capabilities of the Bidder to execute the Agreement.

- b. The Bidder shall additionally meet the Technical Capacity requirements **as specified in the AITB.**

#### 2.2.4 Financial Capacity

- a. The Bidder undertakes that the Bidder continues to meet the “**Financial Capacity**” and all other eligibility requirements evaluated during the Pre-qualification as well as during the execution of the Agreement and that there is no material change in the financial capabilities of the Bidder to execute the Agreement.
- b. The Bidder shall submit copies of audited Financial Statements for the last 5 Accounting Years calculated from the year of invitation of Bids under this RFP. The financial statements shall:
  - i. Reflect the financial situation of the Bidder or in case of JV for each member, and not an affiliated entity (such as parent company or group member);
  - ii. Be independently audited and certified by the Statutory Auditors;
  - iii. Be complete, including all notes to the financial statements;
  - iv. Correspond to accounting periods already completed and audited;
  - v. Be certified by the Statutory Auditors duly signed and stamped. Notwithstanding the same, in case the Bidder is an entity where Statutory Auditor is not required to be appointed under Applicable Law, a certificate from an independent chartered accountant may be provided by such Bidder.

Provided that in case the annual accounts for the latest Accounting Year are not audited and therefore the Bidder cannot make it available, the Bidder shall provide provisional results for the latest Accounting Year. In such a case, the Bidder shall also provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided. Notwithstanding the same, in case the Bidder is an entity where Statutory Auditor is not required to be appointed under applicable law, a certificate from an independent chartered accountant may be provided by such Bidder.

- c. In the event that the latest Auditor’s Report contains any qualifications, exceptions, or adverse opinions, which in the opinion of the Authority leads to a conclusion that a material uncertainty exists about the entity’s ability to continue as a going concern, the Bidder is liable to be disqualified on the ground for not meeting the Financial Capacity. Any disqualification resulting from such

qualifications shall be at the sole discretion of the Authority and the decision thereof shall be final and binding.

d. The Bidder shall additionally meet the Financial Capacity requirements **as specified in the AITB**.

#### **2.2.5 Other Eligibility Conditions**

The Bidder shall additionally meet Other Eligibility Conditions, **if specified in the AITB**.

**2.2.6** In case of the Bidder being an Unincorporated Joint Venture, the additional requirements under Paragraph 2.2.2.b, 2.2.3.b, 2.2.4.d and Sub-Clause 2.2.5 are **as specified in the AITB**.

**2.2.7** The Bid information and eligibility conditions sought in accordance with Clause 2.2 [Eligibility and Qualifications of Bidders] shall be based on the information submitted by the Bidder as per **Appendix-I** (including the Forms annexed to **Appendix-I**) and in accordance with requirement of Forms specified in the AITB. The Forms must be completed without any alteration to the text / requirement, unless explicitly required to be altered. All blank spaces shall be filled in with the information requested. Without prejudice to the above, in case there is any change in the details / eligibility criteria based on which the Bidder was prequalified, the Bidder is required to resubmit the applicable form reflecting the updated details to establish continued eligibility with the Prequalification Criteria.

**2.2.8** The Bidder shall submit a copy of Power of Attorney as per the format at **Appendix-IV**, in favor of the person duly authorized to sign on behalf of the Bidder, through an appropriate board resolution or such equivalent documentation certified by an authorized officer of the Bidder to be authentic. Certified copy of such board resolution or such equivalent documentation shall be submitted along with the Bid. In case the Bidder is an Unincorporated JV, each member of the JV shall submit a copy of the Power of Attorney as per the format at **Appendix-IV** along with a certified copy of relevant board resolution or such equivalent documentation and the Lead Member shall also submit a copy of Power of Attorney as per format at **Appendix-V** along with a copy of relevant board resolution or such equivalent documentation certified the person authorized in **Appendix-IV**.

**2.2.9** In case the Bidder is an Unincorporated Joint Venture, it shall continue to comply with the requirements of the Bid and as mentioned below:

- a) The maximum number of members including the Lead Member shall not exceed 3 (three).
- b) The Lead Member shall itself undertake and execute at least the percentage of the contract by value in

accordance with GCC Sub-Clause 8.2.2, without sub-contracting.

- c) The Sub-contractors can be appointed by the JV/Bidder.
- d) The members of the Unincorporated Joint Venture shall have entered into a binding Joint Bidding Agreement substantially in the form specified at **Appendix-VI** (the “**Joint Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:
  - i. convey the commitment(s) of all the members that the overall Project management and coordination shall be carried out exclusively by the Lead Member.
  - ii. convey the commitment(s) of the Lead Member in accordance with this RFP, in case the Project is awarded to the Joint Venture;
  - iii. clearly outline the proposed roles and responsibilities, if any, of each member of the JV;
  - iv. include a statement to the effect that all members of the Joint Venture shall be liable jointly and severally for all obligations of the Contractor in relation to the Project until the completion of the Project is achieved in accordance with the Conditions of Contract.
  - v. Shall in all respect be governed by and interpreted in accordance with Indian Laws.
- e) there shall not be any amendment to the Joint Bidding Agreement after it is submitted during the Prequalification or as a part of Bid.

**2.2.10** (a) The Bidder shall be an Indian entity. A Bidder shall be deemed to be Indian if the Bidder is registered in India and/or incorporated/established under any law in force in India, as evidenced by its articles of incorporation and its registration documents, or any other equivalent document, as the case may be. Additional requirements, if any, shall be **as specified in the AITB**. The Bidder shall furnish such satisfactory evidence of eligibility as the Authority may reasonably request.

(b) The Bidder (including each member of JV, as applicable) shall adhere to the Applicable Guidelines in accordance with the Conditions of Contract, including the IDEAS Guidelines, *inter alia* including the requirement of meeting minimum percent (%) Indian Content as defined under the Conditions of Contract.

(c) The Bidder shall be eligible with respect to the provisions contained in Public Procurement Orders No. 1 & No. 2 dated

July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020, and Public Procurement Order No.4 dated February 23, 2023, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India including any clarifications / amendments or any other Procurement Guidelines as maybe issued by the Government of India. The Bidder shall furnish such satisfactory evidence of eligibility as the Authority may reasonably request.

(d) Any entity from:

(i) a country which shares a land border with India (except to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects) will be eligible to Bid or participate in the Bid as a member of JV, only if the entity is registered with the competent authority as prescribed by the Department of Promotion of Industry & Internal Trade (DPIIT), Government of India. An entity from a country which shares a land border with India means:

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

ii) The Bidders from countries or the Bidders whose beneficial owner is from the country which restrict the participation of Bidders from India shall not be eligible to bid.

For the purpose of this Clause 2.2.10(d), the interpretation shall be in accordance with the Public Procurement Order No.4 dated February 23, 2023, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India.

the eligibility conditions under this Clause 2.2.10(c) and Clause 2.2.10(d) shall apply mutatis mutandis to the Sub-contractors, sub-consultants or suppliers selected by the Selected Bidder.

(e)The materials, equipment and services to be supplied under the Agreement may have their origin in any country

subject to the restrictions specified in the Bidding Documents and provisions of this Contract. The restrictions on the Bidder including but not limited to the provisions of Clause 2.2.10(c) and 2.2.10(d) shall also apply to the materials, equipment and services to be supplied under the Contract. At the Authority's request, Bidders may be required to provide evidence of the origin of materials, equipment and services. The term "origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components. The requirements of submission of evidence of origin under this clause 2.2.10(e) shall apply mutatis mutandis to the Sub-contractors or sub-consultants (if any) selected by the Selected Bidder.

- 2.2.11** During the Bidding Process, the Bidder shall provide evidence of their continued eligibility in respect of the prequalification criteria. After award of the Contract, the Contractor shall provide evidence of their continued eligibility in respect of the prequalification criteria and with respect to the terms and conditions of this RFP, as the Authority shall reasonably request.

### **2.3 Change in Composition of the Joint Venture**

- 2.3.1** Change in the composition of an Unincorporated Joint Venture will not be permitted by the Authority at any stage. Any such JV, if selected shall sustain the composition for the entire execution of the Project. However, only under exceptional and unavoidable circumstances the Authority may, at its sole discretion, permit such change in accordance with the provisions of the Conditions of Contract. Provided that the Authority shall permit such change only with prior approval of Exim Bank. It is however clarified that, upon such permitted change in the composition of the Joint Venture, each Member and the Joint Venture shall continue to adhere to the technical and financial capacity requirements as per this RFP.

### **2.4 Multiple Bids and Alternative Bids**

- 2.4.1** No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Joint Venture shall not be entitled to submit another Bid either individually or as a member of any Joint Venture, as the case may be. **Unless specified in AITB**, Alternative Bids are not permitted and any such Alternative Bid if offered by the Bidder, shall be ignored and not be considered for evaluation. If Alternative Bids are invited, either of the following provisions **as specified in the AITB** shall apply and the method of evaluation shall be included in Section-3 [Bid Evaluation]:

(a) When alternative times for completion are explicitly invited, a statement to that effect will be specified in the AITB;

(b) When Bidders are invited to submit alternative technical solutions for specified parts of the works, such parts shall be specified in the AITB. Technical alternatives that comply with



the performance and technical criteria specified for the Works shall be considered by the Authority on their own merits. When technical alternatives are invited, the Bidders wishing to offer technical alternatives to the Authority's requirements as described in the Bidding Document must also provide:

(i) a price at which they are prepared to offer the project meeting the Authority's requirements; and

(ii) all information necessary for a complete evaluation of the alternatives by the Authority, including drawings, design calculations, technical specifications, work methodology and other relevant details.

Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Authority.

<b>2.5 Proprietary Data</b>	<b>2.5.1</b>	All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause shall also apply <i>mutatis mutandis</i> to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
<b>2.6 Cost of Bidding</b>	<b>2.6.1</b>	The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process. For avoidance of doubt it is hereby clarified that any surveys, investigations and other detailed examination of the Project before submitting of Bids by a Bidder shall be at its own cost and without any attribution of the same to the Authority.
<b>2.7 Pre-Bid Meeting, Site visit and Verification of Information</b>	<b>2.7.1</b>	(a) Bidders are advised to submit their respective Bids after visiting the Project Site and ascertaining for themselves the Site conditions, traffic, location, access, surroundings, climate, availability of power, water and other utilities for construction, access to Site, handling and storage of materials, weather data, Applicable Laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the Site and familiarize themselves with the Project within the stipulated time of submission of the Bid. The costs of such Site visit shall be at the Bidder's own expense.



(b) The Bidder and any of its personnel or agents will be granted permission by the Authority to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents shall release and indemnify the Authority and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of such Site visit.

(c) A pre-Bid meeting shall be convened, at the designated date, time and place **as specified in the AITB**. A maximum of two representatives of each prospective Bidder shall be allowed to participate upon production of authority letter from the Bidder. If so specified in the AITB, the pre-bid meeting shall be conducted online in addition to the physical meeting.

(d) At least 7 days prior to such pre-bid meeting, the Bidder shall submit in writing through the means as specified under Sub-Clause 2.11.1 to the Authority, the clarifications to be sought by them. The Authority reserves the right to deny providing clarifications and submission of such request for clarifications shall however not bind the Authority with the obligation to respond to same.

(e) During the course of pre-bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

(f) Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with Sub-Clause 1.2.1. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Authority exclusively through the issue of an Addendum pursuant to Clause 2.13 [Amendment of RFP] and not through the minutes of the pre-bid meeting.

(g) The Bidders are advised to attend the pre-bid meeting and conduct Site visit, however the same is not mandatory requirement for the Bidder.

## 2.8 Acknowledgem ent by Bidder

### 2.8.1

It shall be deemed that by submitting the Bid, the Bidder has:  
a) not been disqualified under any disqualification criteria stipulated in the RFP;

- b) met all applicable qualification requirements stipulated in the RFP;
- c) made a complete and careful examination of the Bidding Document including the Conditions of Contract, and Schedules annexed to the Conditions of Contract;
- d) received all relevant information requested from the Authority;
- e) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Document or furnished by or on behalf of the Authority relating to any of the matters referred to the RFP, other than the matters referred to in Clause 9.1.3 of the GCC. No claim shall be admissible at any stage on this account.
- f) satisfied itself about all matters, things and information including matters referred to in the RFP for submitting an informed Bid, execution of the Project in accordance with the Bidding Document and performance of all of its obligations thereunder;
- g) acknowledged and agreed that inadequacy, lack of completeness, incorrectness of information provided in the Bidding Document or ignorance of any of the matters referred to in the RFP shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Conditions of Contract by the Contractor;
- h) acknowledged that it does not have a Conflict of Interest; and
- i) agreed to be bound by the undertakings provided by it under and in terms hereof.

**2.8.2** The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP, including any error or mistake therein other than the matters referred to in Clause 9.1.3 of the GCC.

**2.9 Rejection of Bids** **2.9.1** Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any or all Bids and/or to annul the Bidding Process, at any time without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reason thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite fresh Bids hereunder.

**2.9.2** The Authority reserves the right to reject any Bid if any misrepresentation is made or uncovered.

**2.10 Verification and Disqualification** **2.10.1** The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP, including cross checking of the

completion certificates/testimonials with the Project Authorities issuing such certificates. The Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

- 2.10.2** The Authority reserves the right to reject any Bid and appropriate the Bid Security if at any time, a material misrepresentation is made or uncovered. Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Joint Venture, then the entire Joint Venture and each Member of the Joint Venture shall be disqualified/rejected.

The Authority reserves the right to reject the Bid if the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

- 2.10.3** In case it is found during the evaluation or at any time before signing of the Agreement or during its execution or after its execution and during the period of defects liability or maintenance period thereof, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the contractor either by issue of the LOA or entering into of the Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Bidder/Selected Bidder or the Contractor, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Contractor. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Document and / or the Agreement, or otherwise. If the Agreement is terminated after the signing of the Agreement, the same shall be treated as Contractor's Default.
- 2.10.4** A Bidder shall be liable for disqualification and forfeiture of Bid Security, if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project during the Bidding Process or subsequent to the (i) issue of

the LOA or (ii) execution of the Agreement. In the event any such adviser is engaged by the selected Bidder or Contractor, as the case may be, after issue of the LOA or execution of the Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Conditions of Contract and without prejudice to any other right or remedy or the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security for supply, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the selected Bidder or Contractor for the same. For the avoidance or doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP.

- 2.10.5** The Bidder shall be liable for disqualification if it is discovered that it has made misleading or false representations in the forms, statements, affidavits, and attachments submitted as a part of the Bid.
- 2.10.6** For the purpose of this Clause 2.10 [Verification and Disqualification], if the Bidder is a Joint Venture, then the conditions stipulated in this Clause 2.10 [Verification and Disqualification] shall be applicable to the Joint Venture as well as each of its Members. Accordingly, the entire Joint Venture and each Member of the Joint Venture shall be disqualified.

## B. DOCUMENTS

- |   |   |
|---|---|
| <b>2.11<br/>Correspondence<br/>with the<br/>Authority</b> | <b>2.11.1</b> Details of the Authority and the mode of communication for the purpose of communication, clarification and Bid submission and Bid opening are <b>as specified in the AITB</b> .   |
| <b>2.12<br/>Clarifications</b>                            | <b>2.12.1</b> Bidders requiring any clarification on the RFP may notify the Authority in accordance with Clause 2.11 [Correspondence with the Authority] and shall clearly bear the identification/title of the Project. The Bidders should send the queries before the date specified in the schedule of Bidding Process contained in Clause 1.3 [Schedule of Bidding Process]. The Authority shall endeavor to respond to the queries at the earliest. The Authority shall issue copies of its response to all Bidders who have acquired the Bidding Document in manner as specified under Paragraph 2.2.1(a), including a description of the inquiry but without identifying its source. Should the clarification result in changes to the essential elements of the Bidding Document, the Authority |

shall amend the Bidding Document following the procedure under Clause 2.13 [Amendment of RFP].

**2.12.2** The Authority shall endeavor to respond to the queries raised or clarifications sought by the Bidders and provide such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive RFP process. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.

**2.12.3** The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Document. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

**2.13 Amendment of RFP**

**2.13.1** At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda including extension of Bid Due Date.

**2.13.2** The addendum shall be issued in the same manner as specified under Paragraph 1.2.1(a). Any Addendum thus issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Authority.

**2.13.3** In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date by issuing an amendment in the RFP.

**C. PREPARATION AND SUBMISSION OF BID**

**2.14 Language**

**2.14.1** The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by a translator. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

**2.15 Preparation and Signing of**

**2.15.1** The Bidder shall adhere to the following requirements:

**Bid**

a) The Technical Bid and the Financial Bid shall be submitted in 2 separate envelopes. Each envelop shall contain one original and such number of photocopies **as specified in AITB**.

b) For Both Technical and Financial Bid, the Bidder shall also prepare one soft copy each of the original document, in separate flash drives, which will be placed along with the Original copy. In the event of any discrepancy between the original, copies and the flash drive, the original shall prevail.

**c) Technical Bid**

- i. The Bidder shall enclose the original and all copies of the Technical Bid including alternative Bids, if permitted in accordance with Clause 2.4 [Multiple Bids and Alternative Bids], in separate sealed envelopes, duly marking the envelopes as **“Technical Bid - Original”**, **“Technical Bid – Alternative”** and **“Technical Bid - Copy”**.
- ii. These envelopes containing the original, the copies and the flash drive shall then be enclosed in one single envelope marked **“Technical Bid”**.

**d) Financial Bid**

- i. The Bidder shall enclose the original and all copies of the Financial Bid, including alternative Bids, if permitted in accordance with Clause 2.4 [Multiple Bids and Alternative Bids], in separate sealed envelopes, duly marking the envelopes as **“Financial Bid - Original”**, **“Financial Bid - Alternative”** and **“Financial Bid - Copy”**.
- ii. These envelopes containing the original, the copies and the flash drive shall then be enclosed in one single envelope marked **“Financial Bid”**.

e) The sealed envelopes containing the Technical and Financial Bids shall be placed into one outer envelope and securely sealed in such a manner that opening and resealing cannot be achieved undetected. This inner and outer envelopes shall bear the following details:

- a) Bear the Name of the Project
- b) Bear the specific identification of this Tender as specified in Clause 1.1 [Background].
- c) Bear the name and address of the Bidder;
- d) Be addressed to the Authority in accordance with Clause 2.11 [Correspondence with Authority];
- e) Indicate Bid Due date on the right hand top corner of the envelope, as notified on the date of submission of the Bid;
- f) Bear a warning not to open before the time and date for Bid opening.
- g) If all envelopes are not sealed and marked as required above, the Authority will assume no

responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder. This sub-clause shall apply *mutatis mutandis* to Sub-Clause 2.16.6.

- h) Provided that in the event the Bid submission procedure is electronic as specified under Sub-Clause 2.19.2, Paragraphs 2.15.1 (a) to (e) pertaining to submission of hardcopy of the Bids shall not be applicable.
- i) Without prejudice to the above, the original and all copies of the Bid shall be typed or written in indelible blue ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. The name and position held by each person signing the authorization must be typed or printed below the signature. All the inter-lineation, over-writing, alterations, omissions, additions or any other amendments made to the Bid shall be signed or initialed by the person(s) signing the Bid.
- j) In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- k) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- l) **All the pages shall be machine numbered and a table of contents shall be included in the beginning of each volume of documents referring the page numbers of the indexed items;**
- m) Information supplied by the Bidder (or other constituent member if the Bidder is a Joint Venture) must apply to the Bidder / member named in the Bid.

In the event the procedure for Bid submission is electronic / online as specified under this Sub-Clause 2.19.2, additional requirements may be applicable **as specified in the AITB.**

- 2.15.2** The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received as per the manner specified under Sub-Clause 2.15.1 [Preparation and Signing of Bid] and Sub-Clause 2.19.2 in the required formats and complete in all respects and Bid Processing Fees, Bid Security, POA and Joint Bidding Agreement, etc. in accordance with Sub-Clause 2.16.6 are received in hard copies. Incomplete Bids shall be liable to rejection.

- 2.16 Documents comprising**      **2.16.1** (a) The Bidder shall submit all the details as required in this RFP for technical eligibility and technical qualification. The



**Technical and Financial Bid**

Bidder shall ensure that all the details are updated as on the date of submission of this Bid.

(b) All financial information in the Bid are required to be in currency in accordance with Clause 1.4 [Reporting Currency]. The Financial Bid shall be in the Bid currency in accordance with Clause 1.4 [Reporting Currency]].

**2.16.2** The Bidder shall apply for the RFP as specified in Sub-Clause 2.19.2 by submitting the documents mentioned below along with the supporting documents forming part of the Technical or Financial Bid. The composition of Technical and Financial Bid is as under.

**2.16.3 Technical Bid**

1. Letter comprising the Technical Bid as per format at **Appendix-I** including applicable **Forms** and supporting certificates and other information supporting the information in applicable Forms;
2. Evidence of payment of the Bid Processing Fee, if applicable, in accordance with Paragraph 1.2.4(a)
3. Bid Security in accordance with Paragraph 1.2.4(b) as per the format at **Appendix-III**;
4. Power of Attorney for signing the Bid as per the format at **Appendix-IV**;
5. If applicable, Power of Attorney by each member of JV as per the format at **Appendix-IV**;
6. if applicable, Power of Attorney for Lead Member of Joint Venture as per the format at **Appendix-V**;
7. if applicable, Joint Bidding Agreement for Joint Venture as per the format at **Appendix-VI**;
8. Copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed or any other equivalent document for entities other than body corporate/ partnership;
9. Copies of duly audited complete annual accounts of the Bidder and of each member (in case of Joint Venture) for preceding 5 years in accordance with Clause 2.2.4 [Financial Capacity]. Provided that in case the annual accounts for the latest Accounting Year are not audited and therefore the Bidder cannot make it available, the Bidder shall provide provisional results for the latest Accounting Year. In such a case, the Bidder shall also provide the Audited Annual Reports for 5 (five) years preceding the year for which the



Audited Annual Report is not being provided. Notwithstanding the same, in case the Bidder is an entity where Statutory Auditor is not required to be appointed under applicable law, a certificate from an independent chartered accountant may be provided by such Bidder;

10. Certificate of Beneficial Ownership

11. Any other document **as specified in the AITB.**

Technical Bids shall be unpriced bids and shall contain no prices or price schedules or financial information or other reference to rates and prices for completing the works. Technical Bids containing such price information will be rejected.

#### **2.16.4 Financial Bid**

Letter comprising the Financial Bid as per format at **Appendix-II** along with the Breakup of the Financial Bid in the **Forms** annexed to Appendix-II. The Bid Price submitted by the Bidder should be exclusive of any kind of taxes and duties of any nature levied in the Authority's Country in accordance with the IDEAS Guidelines as defined under the Conditions of Contract. The Currency of the Financial Bid shall be **as specified in the AITB**. Unless otherwise specified in the AITB, the Bidder shall submit the Financial Bid for the entire Works on a "single responsibility" basis such that the total lump sum Bid Price, subject to any adjustments, in accordance with the Agreement, covers all the Contractor's obligations under the Contract. The Works shall include any work which is necessary to satisfy the Authority's Requirements as outlined in the Conditions of Contract, or is implied by the Agreement, and all works which (although not mentioned in the Agreement) are necessary for stability or for the completion, or safe and proper operation, of the Works.

Bidder shall indicate in the price schedule as per format at Part B Form-XI all the specified components of prices, including the unit prices and total bid prices. The details in the price schedule are deemed to include all elements of cost i.e. no arithmetical correction or price adjustments are allowed during evaluation and execution of the Bid. The Authority shall have the discretion to make arithmetical correction in the proposal and the same does not vest any liability on the Authority. Such corrections shall be binding on the Contractor. Provided that, if the Contractor fails to accept the arithmetical corrections of its Bid by the

Authority, the Contractor shall forfeit its Bid Security.

#### **2.16.5 Bid Prices and Discounts**

The prices and discounts quoted, if any, by the Bidder in the Letter of Financial Bid shall conform to the requirements specified below.

- (a) The price to be quoted in the Letter of Financial Bid, shall be the total price of the Bid, excluding any discounts offered. A Financial Bid submitted with an adjustable price quotation will be treated as non-responsive and rejected.
- (b) The Bidder shall quote the discounts, if any, and the methodology for their application in the Letter of Financial Bid. In the event bids are invited for individual lots (contracts) or for any combination of lots (packages), the Bidder shall specify in their Bid the discounts as may be applicable to each Package, or alternatively to individual contracts within the Package and the manner in which the discounts will apply. Provided that only unconditional discounts shall be considered for the purpose of evaluation. Any conditional discount shall not be considered for evaluation of the Financial Bid.
- (c) Bidders would not be allowed to withdraw the offered unconditional discount after opening of Financial Bids till the time of Bid validity.
- (d) The Bidder shall give a breakdown of the prices in the manner and detail required in the Financial Bid. These will not in any way limit the Bidders "single responsibility" in accordance with Sub-Clause 2.16.4. The cost of any items that the Bidder may have omitted is deemed to be included in the total lump sum Proposal price and will not be paid for separately by the Authority.

#### **2.16.6** Without prejudice to the manner of Submission of Bids defined under Sub-Clause 2.19.2, the Bidder shall submit the original copies of the following documents physically at the address in the manner specified in Clause 2.11 [Correspondence with the Authority]:

- a. Original Power of Attorney (POA) for signing the Bid as per format at **Appendix-IV**;
- b. If applicable, Power of Attorney by each member of JV as per the format at **Appendix-IV**;
- c. if applicable, original Power of Attorney for Lead Member of Joint Venture as per the format at **Appendix-V**;

- d. if applicable, original Joint Bidding Agreement for Joint Venture as per the format at **Appendix-VI**;
- e. Bid Security. If the Bid Security is provided in the form of Bank Guarantee then the original Bank Guarantee as per the format at **Appendix-III**, in accordance with Paragraph 1.2.4(b) and Sub-Clause 1.2.7, or in any other form in accordance with the provisions of this RFP;
- f. Evidence of payment of the Bid Processing Fee in accordance with Paragraph 1.2.4(a)

Above documents shall be submitted in an envelope which shall be securely sealed in such a manner that opening and resealing cannot be achieved undetected and clearly bear the details in accordance with Paragraph 2.15.1(e).

- 2.16.7** Bids submitted in any other manner as specified under Sub-Clause 2.19.2 shall not be entertained and shall be rejected.

**2.17 Bid Due Date**

- 2.17.1** Bids must be received by the Authority no later than the date and time in accordance with Clause 1.3 [Schedule of Bidding Process] or any other date or time as may be extended in the manner provided in this RFP.
- 2.17.2** The Authority may, at its discretion, extend the deadline for the submission of Bids by amending the Bidding Document in accordance with Clause 2.13 [Amendment of RFP], in which case all rights and obligations of the Authority and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended uniformly for all Bidders.

**2.18 Late Bids**

- 2.18.1** Bids received by the Authority after the specified time on or after the Bid Due Date shall not be eligible for consideration and shall be summarily rejected and returned unopened. Without prejudice to manner of submission of Bids, the Bid Security accompanying such Bids shall be returned to the Bidder.

**2.19 Procedure for Tendering**

- 2.19.1** The procedure for accessing RFP shall be in accordance with Paragraph 1.2.1(a). Whatsoever procedure is adopted under this ITB, the Authority shall obtain valid evidence of receipt of Bidding Document from the Prequalified Bidders.
- 2.19.2** The Bid shall be submitted to the Authority in a manner **as specified in the AITB**. If nothing is **specified in the AITB**, the Bid submission shall be offline.

In the event that the manner of Bid submission is offline, the Bidder shall prepare the bids in accordance with Clause 2.15 [Preparation and Signing of Bid] and submit to the address and in accordance with Clause 2.11 [Correspondence with the Authority]. Any specific procedure for submission of electronic/online Bid, if permitted, shall be as **specified in**

the AITB.

### 2.19.3 Modifications/ Substitution/ Withdrawal of Bids

Prior to the Bid Due Date, a Bidder may modify, substitute or withdraw its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization. The corresponding substitution or modification of the Bid must accompany the respective written notice received by the Authority prior to the deadline prescribed for submission of Bids. The respective envelopes shall be clearly marked **“WITHDRAWAL,” “SUBSTITUTION,”** or **“MODIFICATION;”**, as the case maybe. The Bids requested to be withdrawn shall be returned unopened to the Bidders.

However, in the event the Bid submission procedure is electronic/online, the modifications/ substitution/ withdrawal of Bids shall be in a manner **as specified in AITB**. No Bid shall be permitted to be withdrawn, substituted, or modified in the interval between the Bid Due Date and the expiration of the period of Bid Validity, including any extension thereof. Without prejudice to the manner of submission of Bids, the Bid last submitted or the Bid as last modified by the Bidder shall be considered for evaluation.

## D. BID OPENING

### 2.20 Opening of Technical Bids

2.20.1 Except in the cases specified in Sub-Clause 2.19.3, the Authority shall publicly open and read out all Bids received by the Bid Due Date, at the date, time and place in accordance with Clause 1.3 [Schedule of Bidding Process] and Sub-Clause 2.11.1, in the presence of Bidders designated representatives who choose to attend.

- (a) First, envelopes marked **“WITHDRAWAL”** shall be opened and read out and the envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Bid opening.
- (b) Next, envelopes marked **“SUBSTITUTION”** shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Bid opening.
- (c) Envelopes marked **“MODIFICATION”** shall be opened and read out with the corresponding bid. No Bid modification shall be permitted unless the

- corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only Bids that are opened and read out at Bid opening shall be considered for evaluation.
- (d) Subsequently all other Bids shall be opened one at a time,

For every Bid that is opened, the Authority shall publicly read out the name of the Bidder and whether there is a modification; the presence or absence of a Bid Security, and any other details as the Authority may consider appropriate.

However, in the event the Bid submission procedure is electronic/online, the manner of Bid opening shall be **as specified in the AITB**, and the Bids of only those Bidders shall be opened whose documents have been received physically in accordance with Sub-Clause 2.16.6.

The Authority shall prepare minutes of the Bid opening, including information disclosed to those present at the time of Bid opening.

The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

- 2.20.2** The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3 of Bidding Document.
- 2.20.3** Bidders are advised that the Bidding Process will be entirely at the discretion of the Authority. Notwithstanding anything contained in this RFP. The Authority reserves the right to accept any bid, and to or reject any or all Bids, and to annul the Bidding Process at any time, without thereby incurring any liability to the Bidders.
- 2.20.4** Any information contained in the Bid shall not in any way be construed as binding on the Authority, its associates, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 2.20.5** The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bids without assigning any reasons and invite fresh Bids for the Project at its discretion.
- 2.20.6** If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information from evaluation.

## 2.21 Opening of Financial Bids

- 2.21.1** The Financial Bids of only the Technically Qualified Bidders in accordance with Clause 3.4 [Technical Qualification] shall be opened. The Financial Bid of the Bidders declared as disqualified in Quality Scoring as under Paragraph 3.4.2(b) shall be returned unopened or shall not be opened in case of electronic/online Bid submission as the case maybe.
- 2.21.2** The Authority shall inform the venue and time of opening of the Financial Bids to the Technically Qualified Bidders. The Authority shall open the Financial Bids of the Technically Qualified Bidders only on the scheduled date and time in the presence of the authorized representatives of the Bidders who may choose to attend. If the Bidder is required to submit separate Financial Bids for multiple lots/packages, the Financial Bid shall be opened lot/package wise;
- The Authority shall publicly announce the Bid Prices quoted by the Technically Qualified Bidders. If the Bidder is required to quote for multiple lots /packages in the single Financial Bid, the Bid price for each lot/package as submitted by the Bidder, including the discount shall be read out. Only discounts read out during the time of Financial Bid opening shall be considered for evaluation.
- 2.21.3** The Letter of Financial Bid of each Bidder is to be initialed by the representatives of the Authority attending the Financial Bid opening. The Authority shall neither discuss the merits of any Bid reasons for or rejection of any Bid. Thereafter, the Authority shall prepare a record of opening of the Financial Bids.

## 2.22 Validity of Bids

- 2.22.1** The Bids shall be valid for a period of not less than the days **as specified in the AITB** from the Bid Due Date (the “**Bid Validity**”). A Bid valid for a shorter period shall be rejected by the Authority. If required, the Authority may request the Bidders to extend the validity of their Bids provided that the request and the responses shall be made in writing. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid including any withdrawal of discounts offered by the Bidder.
- If a Bid Security is requested in accordance with Paragraph 1.2.4(b), it shall also be extended for the corresponding period.

## 2.23 Confidentiality

- 2.23.1** (a) Information relating to the evaluation of Bids and recommendation of the award of the Project shall not be disclosed to Bidders or any other persons who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process until information on award of the Project is communicated to all

Bidders.

(b) Any attempt by a Bidder to influence the Authority in the evaluation of the Bids or decisions to award the Project may result in the rejection of its Bid.

(c) The Authority / Bidder will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority / Bidder may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

#### 2.24 Correspondence with the Bidder

- 2.24.1 Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid. However, the Authority would communicate the result of technical evaluation to all the Bidders who have submitted a Bid in the form provided in Clause 2.19 [Procedure for Tendering], who have not been summarily rejected or whose Bids have not been returned unopened for any reasons whatsoever.

Notwithstanding the above, from the time of Bid opening to the time of award of the Project, if a Bidder wishes to contact the Authority on any matter related to the Bidding Process, it shall do so in writing.

### E. BID SECURITY AND PERFORMANCE GUARANTEE

#### 2.25 Bid Security

- 2.25.1 The Bidder shall furnish as part of its Bid, a Bid Security for the amount and currency in accordance with Paragraph 1.2.4(b). If the Bid Security is provided in the form of Bank Guarantee the same shall be in accordance with Sub-Clause 1.2.7 and in the format at **Appendix-III** (the “**Bank Guarantee**”). The Bid Security shall be valid for a period as specified under Paragraph 1.2.4(b). In case of a JV, the Bid Security shall be in the name of the JV that submits the Bid.
- 2.25.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 2.25.3 Save as provided in above Sub-Clause 2.25.2, the Authority shall return Bid Security of all Bidders except the Selected Bidder, after 30 days of Bid Validity Period or when the Bidding Process is cancelled / annulled by the Authority and the Bidders shall not be required to ask for the same. The Bid Security will be returned without any interest thereon.

For the Selected Bidder, the Authority shall be responsible to return the Bid Security within 15 days from signing of the



Agreement without any interest, upon the Bidder furnishing the Works Performance Security and Signing the Agreement and the Bidders shall not be required to ask for the same.

**2.25.4** The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages, inter alia, in any of the events specified in Sub-Clause 2.25.5 hereinbelow. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage in case of withdrawal of its Bid or in case of any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

**2.25.5** The Bid Security shall be forfeited and appropriated by the Authority as Damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the Bidding Document and / or under the Agreement, or otherwise, under the following conditions:

- (a) If a Bidder has made misleading or false representations in the forms, statements, affidavits, and attachments submitted as a part of the Bid.
- (b) If a Bidder engages in a corrupt practice, fraudulent practice, anti-competitive practice, coercive practice, undesirable practice, restrictive practice, or obstructive practice as specified in Section-4 of this RFP;
- (c) If a Bidder withdraws its Bid during the period of Bid Validity as specified in this RFP or during the extended Bid Validity period when extended by mutual consent of the respective Bidder(s) and the Authority;
- (d) If a Bidder fails to accept arithmetical corrections of its Bid in accordance with Clause 3.6 [Correction of Arithmetical Errors];
- (e) If a Bidder, after having been notified within the period of Bid validity of the acceptance of its Bid by the Authority refuses to or fails to submit the original documents for scrutiny within the stipulated time as specified in this RFP;
- (f) In the case of Selected Bidder, if it fails within the specified/extended time limit by the Authority:
  - (i) To sign and return the duplicate copy of LOA;
  - (ii) To furnish the Works Performance Security as per Clause 2.26 [Works Performance Security]; or



(iii) To sign the Agreement.

**2.26 Works  
Performance  
Security**

- 2.26.1** The Selected Bidder shall furnish to the Authority an irrevocable and unconditional guarantee from a Bank in accordance with Sub-Clause 1.2.7 and as per the format at in **RFP Appendix-VII** (the “**Works Performance Security**”) for an amount as prescribed in the Conditions of Contract.
- 2.26.2** The Works Performance Security shall be valid for a period in accordance with the Conditions of Contract.
- 2.26.3** The Selected Bidder shall provide Works Performance Security, within a period prescribed by the Authority which will be at-least 30 days from the date of issuance of the LOA. If no such period is prescribed, then within 30 days of the date of issuance of the LOA.
- 2.26.4** In the event the Selected Bidder fails to provide the Works Performance Security, as prescribed herein, as per the provisions of Sub-Clause 2.26.3, the award shall be considered to be withdrawn.
- 2.26.5** For avoidance of any doubt, in case of failure of submission of Works Performance Security within the period of 30 days (thirty days) of receipt of LOA, the award shall be deemed to be cancelled/ withdrawn and the Bid Security shall be encashed and the proceeds thereof appropriated by the Authority. Thereupon all rights, privileges, claims and entitlements of the Bidder under or arising out of the award shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and the award shall be deemed to have been withdrawn by the Authority.
- 2.26.6** The Agreement will be executed within 10 days of receipt of Works Performance Security.

## SECTION-3 BID EVALUATION

### 3.1 Evaluation of Technical Bids

- 3.1.1** (a) The Authority shall open the Bids at the date and time in accordance with Clause 1.3 [Schedule of Bidding Process], at the place specified in Clause 2.11 [Correspondence with the Authority], and in the presence of the Bidders who choose to attend.
- (b) For those Bidders whose Bids are opened in accordance with Clause 2.20 [Opening of Technical Bids], the Authority will determine if the Technical Bid is responsive, in accordance with Clause 3.2 [Tests of Responsiveness] (the “**Responsive Bid**”).
- (c) For the Responsive Bids, the Authority will scrutinize and evaluate the Bids on pass/fail basis. The Responsive Bids meeting the terms and conditions stipulated in the RFP and meeting the requirements under Clause 2.2 [Eligibility and Qualification of Bidders], shall be declared as “**Technically Eligible**” [Ref Clause 3.3 [Technical Eligibility].
- (d) The Quality Scoring of the Technically Eligible Bidders shall be undertaken as per the criteria and manner in accordance with Clause 3.4 [Technical Qualification] to identify the “**Technically Qualified Bidders**”. If Quality Scoring is not applicable in accordance with Sub-Clause 3.4.1, the “**Technically Eligible**” bidders shall be adjudged “**Technically Qualified Bidders**”.
- (e) The Financial Bids of the Technically Qualified Bidders would be opened for further scrutiny, and evaluation for identification of the “**Selected Bidder**” in accordance with Clause 3.7 [Evaluation of Financial Bids and Selected Bidder].
- 3.1.2** If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the relevant information for consideration of eligibility and qualification of the Bidder.
- 3.1.3** To facilitate evaluation of Technical Bids, the Authority may, at its sole discretion, but without any obligation to do so, seek clarifications in writing from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose (or, if not specified, 7 days from receiving such a request). Any request for clarification(s) and all clarification(s) in response thereto shall be in writing or in electronic mode, and no change in prices or substance of the Bids shall be sought, offered, or permitted that may grant any undue advantage to such Bidder. The Bids will be examined and evaluated in accordance with the provisions set out in this Section-3 [Bid Evaluation]. Any clarification submitted by a Bidder regarding its Bid that is not in response to a request by

the Authority shall not be considered.

The Authority reserves its right to, but without any obligation to do so, seek any shortfall information/ documents only, either physically or electronically after the Technical Bid opening, in case of historical documents which pre-existed at the time of the Bid Opening, and which have not undergone change since then and do not grant any undue advantage to any Bidder.

**3.1.4** If a Bidder does not provide clarifications sought under Sub-Clause 3.1.3 above within the prescribed time, its Bid is liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

**3.1.5** The Authority may, at its sole discretion, waive any minor issues such as missing pages/ attachment or illegibility in a submitted document, provided that they do not constitute any material deviation. Such 'minor' issues may be conveyed to the Bidder, with a request to the Bidder to confirm and rectify the issue. The following definitions shall apply with respect to evaluation of Technical and Financial Bids:

- (a) "**Deviation**" is a departure from the requirements specified in the Bidding Document;
- (b) "**Reservation**" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
- (c) "**Omission**" is the failure to submit part or all of the information or documentation required in the Bidding Document.

A deviation/ reservation/ omission from the requirements of the Bidding Document shall be considered a material or substantive deviation as per the following:

- (a) which affects in any substantive way the scope, quality, or performance standards of the scope of work of the Bidder;
- (b) which limits in any substantive way, inconsistent with the Bidding Document, the Authority's rights, or the Contractor's obligations under the contract; or
- (c) Whose rectification would unfairly affect the competitive position of other Contractors presenting Responsive Bids.

A 'minor' issue may be, in the sole opinion of the Authority:

- (a) If accepted, would not affect in any substantial way the scope, quality, or performance of the requirements of the Authority, or limit in any substantial way, Authority's rights or the Bidder's obligations under the Agreement; or
- (b) If rectified, would not unfairly affect the competitive position of other Bidders presenting / submitting responsive Bids.

### 3.2 Tests of Responsiveness

**3.2.1** As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

- (a) It is received in the manner specified in Sub-Clause 2.19.2 as per the format at **Appendix-I**, including applicable Form;
- (b) It is received by the Bid Due Date including any extension thereof;
- (c) It is signed and submitted in accordance with Clause 2.15 [Preparation and Signing of Bid] and Clause 2.16 [Documents comprising Technical and Financial Bids];
- (d) Documents listed at Sub-Clause 2.16.6 are received physically at the address as specified in Clause 2.11 [Correspondence with Authority];
- (e) It is accompanied by the Bid Security in accordance with Paragraph 1.2.4(b) and Sub-Clause 1.2.7;
- (f) It is accompanied by the evidence of payment of the Bid Processing Fees in accordance with Paragraph 1.2.4(a)
- (g) It is accompanied by Power of Attorney for Lead Member of Joint Venture and the Joint Bidding Agreement as specified in Sub-Clause 2.1.4, if so required;
- (h) It contains all the information and documents (complete in all respects) and in formats as requested in this RFP;
- (i) It contains certificates from its auditors in the formats specified in the RFP;
- (j) It does not contain any condition or qualification, unless explicitly sought by the Authority; and
- (k) Meets the requirement of the Bidding Document

without material deviation, reservation or omission:

The interpretation of Deviation, Reservation, Omission, Substantive and Minor shall be in accordance with Sub-Clause 3.1.5.

- 3.2.2 The Authority shall reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid after the Bid Due Date.

### 3.3 Technical Eligibility

- 3.3.1 For the Responsive Bidders, the Technical Eligibility of the Bidders shall be evaluated as per the requirements stipulated in Clause 2.2 [Eligibility and Qualifications of the Bidders] and other terms and conditions of eligibility as determined in Section-1 [Introduction] and Section-2 [Bidding Criteria and Requirements] of the RFP.

- 3.3.2 During the technical evaluation and at any time after that, the Authority shall have the right to get the Bid Security verified from the issuing bank or financial institution, at the discretion of the Authority and at the cost of the Bidder. The Bidder shall assist the Authority in such verification process.

- 3.3.3 The evaluation of the Bidder's qualification under Technical Eligibility shall be on pass/fail basis.

- 3.3.4 The Bidders meeting the eligibility conditions in accordance with Sub-Clause 3.3.1 shall be adjudged as **"Technically Eligible"**.

### 3.4 Technical Qualification

- 3.4.1 If Quality Scoring is applicable **as specified in the AITB**, then for ascertaining the Technical Qualification, the Technically Eligible Bidders shall be assigned Quality Score by the Authority. **"Quality Score"** for the purpose of this Clause shall mean the evaluation score assigned by the Authority against the parameters as **specified in the AITB**. Decision of the Authority regarding assigning Quality Score shall be final.

For avoidance of doubt, the Quality Scoring shall be done by the Authority only for the Technically Eligible Bidders. The Bidder shall submit information required for the purpose of Quality scoring as per format in **Form-XI of Appendix-I**.

- 3.4.2 (a) The Technically Eligible Bidder shall be declared as Technically Qualified in the Quality Scoring (the **"Technically Qualified Bidders"**) on scoring a minimum score **as specified in the AITB**.

(b) For avoidance of doubt, if the Bidder fails to score minimum score under Paragraph 3.4.2(a), the Bidder will be declared **"Technically Disqualified"** in Quality Scoring.

If Quality Scoring is not applicable in accordance with Sub-Clause 3.4.1, the **"Technically Eligible"** Bidders shall be

adjudged “Technically Qualified Bidders”.

### 3.5 Evaluation of Financial Bids

**3.5.1** (a) The Authority shall evaluate only those Financial Bid for the Technically Qualified Bidders which meets the requirements of the Bidding Document without material deviation, reservation, or omission. The interpretation of Deviation, Reservation, Omission, Substantive and Minor shall be in accordance with Sub-Clause 3.1.5.

(b) Subject to compliance with above clause and Sub-Clause 2.16.4, the Authority shall evaluate Financial Bid on the parameters and methodologies as below:

- (i) the Bid price;
- (ii) Price Adjustments due to discounts offered;
- (iii) Price adjustment due to quantifiable non-material non-conformities;
- iv) Price adjustment for correction of arithmetic errors in accordance with Clause 3.6 [Correction of Arithmetical Errors].

The Authority reserves the right to seek clarifications on the Bid Price and detailed price analyses for any or all items of the Bill of Quantities.

(c) For the purpose of evaluation under this Clause, the Authority may waive any non-conformities in the Financial Bid that do not constitute a material deviation, reservation or omission. The Authority may require the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify ‘minor’ non-conformities in the Bid related to documentation requirements. Provided that the Authority shall not request information or documentation on such non-conformities related to any aspect of the price of the Financial Bid. Failure of the Bidder to comply with the request may result in the rejection of its Financial Bid.

**3.5.2** 3.5.2 Where fewer than 5 substantially Responsive Bids are received, an abnormally low bid (the “**Abnormally Low Bid**”) shall be the lowest evaluated Bid which is 20% or more below the Project Cost Estimate in which case the Authority may seek written clarifications from the Bidder to produce detailed price analyses in relation to any or all items of the bill of quantities, scope, allocation of risk and responsibility or any other requirement, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed by the Bidder. If, after evaluation of the price analyses, the Authority determines that the Bidder has substantially failed to demonstrate its capability to deliver the Project at the offered price, the Authority shall reject the Bid and the evaluation shall proceed with the next ranked Bid.

Where at least 5 or more substantially Responsive Bids are received, the Abnormally Low Bid shall be identified as per the

following criteria:

- a. The Authority shall calculate the average bid prices by adding all bid prices and dividing the sum by number of bids received, which shall be the mean (the “**Mean**”).
- b. The standard Deviation of Bid prices shall be calculated as follows:

Standard Deviation ( $\sigma$ ) =

Where  $\sigma$  = Standard Deviation symbol

$\mu$  = Mean

N = total number of Bids received

- c. Calculate the Abnormally Low Bid Limit (the “**ALB Limit**”) by subtracting the average price minus the standard deviation amount.
- d. Any evaluated bid which is lower than the ALB Limit shall be an Abnormally Low Bid.

- 3.5.3 The estimated effect of the price adjustment provisions under the Agreement, if any, applied over the period of execution of the Project, shall not be taken into account in ascertaining the Financial Bid.

### 3.6 Correction of Arithmetical Errors

- 3.6.1 The Authority reserves the right to make any corrections/ adjustments for any discrepancy in the Financial Bid submitted by a Bidder in case of any adjustments to be made/ cure discrepancies between the Technical Bid and Financial Bid. The Authority shall have the discretion to correct arithmetical errors in the Financial Bids where such correction is being made at the behest of the Authority, on the following basis

- (a) if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Authority, there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

Bidders shall be requested to accept correction of arithmetical errors or any other correction, adjustments or discrepancies, if any. Failure to accept the correction in accordance with this Clause, shall result in the rejection of the Bid. No change,



including any voluntary increase or decrease, in the prices of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Authority in the evaluation of the Bids.

This Clause shall not be deemed to vest any liability on the Authority to undertake such review / corrections and corrections.

### 3.7 Evaluation of Financial Bids and Selected Bidder

**3.7.1** Amongst such Technically Qualified Bidders, without prejudice to Clause 3.5 [Evaluation of Financial Bids] and 3.6 [Correction of Arithmetical errors] above, the Lowest Bidder shall be declared as the Selected Bidder (the “**Selected Bidder**”).

For avoidance of doubt, the Selected Bidder shall be the Bidder whose Bid meets the terms and conditions of this RFP, and whose Bid has been determined to be:

- (a) Responsive to the RFP;
- (b) Technically Eligible
- (c) Technically Qualified (if applicable in accordance with Clause 3.4); and
- (d) Bid with the lowest evaluated Bid Price.

**3.7.2** If in the opinion of the Project Authority the (a) Financial Bid is found to be substantially high, unbalanced or front loaded after evaluation of the price analyses; or (b) negotiations are required on the payment arrangements, mobilization arrangements; then, taking into consideration the information submitted by the Selected Bidder the Authority may invite the Selected Bidder for negotiation. Such negotiation will be undertaken only with the Lowest Bidder, without any change in the scope / obligations or any other aspect of the Agreement, and without prejudice to the Authority’s rights to annul the Bidding Process at its discretion and invite fresh Bids.

**3.7.3** In the event that the contract is not awarded to the Lowest Bidder for any reason except in accordance with Clause 3.5.2, the Authority shall annul the Bidding Process and invite fresh Bids. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite fresh Bids hereunder.

**3.7.4** After ascertaining the Selected Bidder, the Authority shall notify the Bidders, in writing, about the result of Financial Bid opening. The Authority shall issue a notification letter (the “**Letter of Award**” or “**LOA**”) to the Selected Bidder, in duplicate in the format set forth in **Appendix-VIII**. The LOA shall specify the sum that the Authority will pay to the Contractor in consideration of the supply of Goods and maintenance in accordance with the Agreement (the “**Contract Price**”). The Selected Bidder shall, within 10 (ten)



days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgment thereof. Until a formal contract is prepared and executed, the LOA shall constitute a binding contract. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA.

- 3.7.5** After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to submit Performance Security for supply in accordance with Sub-Clause 2.26.3. Submission of the Works Performance Security shall be prerequisite for signing of the Agreement. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Conditions of Contract Agreement. Failure to submit the Performance Security may lead to annulment of the LOA, cancellation of the Bid and forfeiture of the Bid Security.

Notwithstanding the above, in case signing of the Agreement is prevented by any trade restrictions attributable to India or Authority / Authority's Country, or to the use of the Plant and installation services to be supplied, where such trade restrictions arise from trade regulations from a country supplying those Plant and installation services, the Bidder shall not be bound by its Bid if the source of country supplying those plant and machinery have been identified in the Bid, however, the Bidder can demonstrate to the satisfaction of the Authority that signing of the Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for export / import of the Plant and installation services under the terms of the Agreement.

- 3.7.6** The Authority shall also notify all other Bidders of the results of the Bidding and shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with Sub-Clause 3.7.4, requests in writing the grounds on which its Bid was not selected by the Authority. The Bid Security shall be returned to the Bidders in accordance with Sub-Clause 2.25.3.
- 3.7.7** Cartel formation and pool rates are not permitted. However, if more than one Bidder quotes the same bid price as the lowest bid, then the Authority shall call for resubmission of Financial Bids provided that the Bid price shall be lower the original Bid price.

**3.8 Contacts  
during Bid  
Evaluation**

**3.8.1** Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

Clause 2.11 from old Supply document to be incorporated.

**SECTION-4 MISCELLANEOUS****4. Miscellaneous**

- 4.1 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- a. suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - b. consult in writing with any Bidder in order to receive clarification or further information;
  - c. select or not to select any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - d. retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder;
  - e. independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 4.2 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, Damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and / or performance of any obligations hereunder and the Bidding Document, pursuant hereto, and/ or in connection with the Bidding Process, to the fullest extent permitted by Applicable Law, and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 4.3 Bidder as a single entity or JV will need to comply with the provisions of the Memorandum of Instructions on Project Exports and Service Exports of the Reserve Bank of India, and shall submit the Post Award Approval (if applicable), issued by the authorized dealer of the Bidder. It is clarified that obtaining necessary approvals pertaining to the "Foreign Exchange Management Act" (FEMA) from the Reserve Bank of India / Authorised Banks, shall be the sole responsibility of the Bidder.
- 4.4 In the event of any dispute or differences relating to the interpretation and Bid of the provisions of commercial contract(s), the same shall be dealt in accordance with the Dispute Resolution Mechanism set out in the Conditions of Contract
- 4.5 All stakeholders viz. the Authority, Contractor, Suppliers, Sub-Contractors and Consultants etc, shall observe highest standards of ethics and integrity in regard to corrupt and fraudulent/prohibited practices as set forth under the Applicable Guidelines, Applicable Laws and Applicable Laws of India as defined under the Conditions of

Contract and not indulge in prohibited practices or other misdemeanors, either directly or indirectly, at any stage during the Bidding Process or the execution of resultant contracts.

- 4.6 The Bidder shall not, by themselves or by a third party, offer, ask or accept for itself or for a third party, financial, including agency commission or non-financial advantage or even direct or indirect promise or any other acts, as offsets for Bidding or contract award and execution as applicable, if susceptible of being qualified as criminal unlawful acts in accordance with national laws of any party involved.
- 4.7 Without prejudice to the rights of the Authority hereinabove, if in accordance with administrative procedures of the Authority's Country, the Government of India, the Exim Bank and the Authority, it is determined that a Bidder in the process of submission of this Bid or in case of award, during the contract performance has directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, anti-competitive practice, coercive practice, undesirable practice, restrictive practice, or obstructive practice, the Authority, inter alia, shall reject the Bid or proposal to award the contract or the subsequent contract performance and declare the Bidder ineligible to be awarded future contract.
- 4.8 For the purposes of this Clause, the following terms shall have the meaning hereinafter respectively assigned to them:
  - a) **"corrupt practice"** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Paragraph 2.2.1(d), engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
  - b) **"fraudulent practice"** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
  - c) **"Anti-competitive practice"** means any collusion, bid rigging or anti-competitive arrangement, or any other practice coming under the purview of The Competition Act, 2002, between two or more Bidders, that may impair the transparency, fairness and the

progress of the procurement process or to establish Bid Prices at artificial, non-competitive levels;

- d) **“coercive practice”** means impairing or harming or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- e) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest;
- f) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process; and
- g) **“Obstructive practice”** means any practice which materially impede the Authority’s investigation into allegations of one or more of the above mentioned prohibited practices either by deliberately destroying, falsifying, altering; or by concealing of evidence material to the investigation; or by making false statements to investigators and/ or by threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or by impeding the Authority’s rights of audit or access to information.

- 4.9 The Contractor, its Sub-contractors and the personnel of either of them shall not, either during the term or after the expiration of the Agreement, disclose any proprietary or confidential information relating to the Project or operations without the prior written consent of the Authority. In case of third-party information gathered in execution of the Project, similar confidentiality shall be maintained.
- 4.10 In further pursuance of this policy, Bidders shall permit and shall cause its agents (whether declared or not), Sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit the Authority, Government of Authority’s Country, Government of India and Exim Bank to inspect all accounts, records and other documents relating to any prequalification process, Bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Exim Bank.
- 4.11 The Bidder agrees that the Bidder has read the Debarment Policy of Exim Bank and the Bidder acknowledges that the Bidder shall be liable for Debarment in in case of misrepresentations in the bid or in case of non-performance of the Agreement or in case of meeting any condition of debarment as outlined in the Debarment Policy of Exim Bank.

## PART-II: APPENDIX TO INSTRUCTIONS TO BIDDERS

### 5.1 Appendix to Instructions to Bidders

Following Clauses, wherever appearing in the ITB, shall be taken to be negated or additional provisions to be added to, or existing provisions to be altered. Wherever there is any conflict between the provisions in the ITB and that in the AITB, the provisions contained in the AITB shall prevail.

#### Section-1: Introduction

Condition	Clause	Particulars
<b>Brief Particulars of the Project</b>		
Borrower	1.1.1	<i>Name of the LOC Borrower</i>
Authority	1.1.1	<i>[Name of the Project Authority to be specified]</i>
Project	1.1.1	<i>[Mention Name of Project]</i>
Identification of the Tender	1.1.1	<i>[Mention Name, Reference Number, Number of Lots (Contracts)]</i>
Project Information Memorandum (PIM) (Yes/ No)	1.2.2	<i>[Yes / No to be mentioned]. If provided to be enclosed with the document.</i>
Project Implementation/ delivery Schedule	1.1.4	<i>The implementation schedule is as under:</i> <ol style="list-style-type: none"> <li>1. Supply of goods under and in accordance with the provisions of an Supply Agreement in [6/12/18/months**] from the "Appointed Date"</li> <li>2. Warranty/Guarantee Period of [12/24/ months**]</li> <li>3. Maintenance of Project subsequent to Warranty/Guarantee Period of [24/36/48/60 months**]</li> </ol>
Project Cost Estimate	1.1.4	<i>[Mention Cost Put to Tender]</i>
<b>Brief Description of Bidding Process</b>		
Procedure for obtaining the RFP by the Prequalified Bidders	1.2.1(a)	<i>[Online / Office and details of how to procure the RFP to be added]</i>  <i>[The document should also be made available through the Authority Country's Mission / Embassy / Consulate in India]</i>
Amount and Mode of payment of Bid Processing Fee	1.2.4(a)	<i>Amount and Mode of Payment of the Bid Processing Fees to be prescribed here.</i>  <i>The Bid Processing Fees shall be not more than USD 1000.</i>
Amount and Currency of Bid Security	1.2.4(b)	<i>[USD _____ (United States Dollar only) (in figures and words)].</i>

		<i>The Bid Security shall be an amount equivalent to 2% of the Estimated Project Cost. However, the Authority may prescribe a higher Bid Security not exceeding 5% of the Estimated Project Cost</i>
Instruments for providing Bid Security	1.2.4(b)	<i>By way of a Bank Guarantee or any other instrument acceptable to the Authority</i>
Validity of Bid Security	1.2.4(b)	<i>Validity period linked to Bid Validity to be specified. Bid Security Validity should be atleast 45 days beyond Bid Validity</i>
Acceptable Banks for providing Bank Guarantee	1.2.7	<i>[Bank in India / Banks in Authority's Country etc to be mentioned here]</i>

Schedule of Bidding Process	1.3.1	The Authority shall adhere to the schedule of Bidding Process as specified under:
Sr. No.	Event Description	Date
1	Invitation of RFP (Notice Inviting Tender)	<i>[To be specified**]</i>
2	Pre-Bid meeting	<i>[To be specified**]</i>
3	Last date for receiving queries	<i>[To be specified**]</i>
4	Bid Due Date	<i>[To be specified**]</i>
5	Physical Submission of Bid Security/POA etc.	<i>[To be specified**]</i>
6	Opening of Technical Bids	<i>[To be specified**]</i>
7	Declaration of Technically Eligible Bidders	<i>[To be specified**]</i>
8	Declaration of Technically Qualified Bidders	<i>[To be specified**]</i>
9	Opening of Financial Bid	<i>[To be specified**]</i>
10	Letter of Award (LOA)	<i>[Within 50 days of opening of Financial Bids]</i>
11	Return of signed duplicate copy of LOA	<i>[Within 10 days of issuance of LOA in accordance with Sub-Clause 3.8.3**]</i>

Reporting Currency	1.2.4	<i>United States Dollars (USD)</i>
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## Section-2: Bidding Criteria and Requirements

Condition	Clause	Particulars
Eligible Bidders	2.2.1	Only prequalified Bidders with reference to Invitation for Prequalification (PQ) No.: _____ <i>[Mention the name of the prequalified Bidders]</i>

<b>Bid Capacity Requirements</b>	2.2.2.b	<p><i>[Additional requirements for ascertaining “Bid Capacity” in addition to the declaration submitted by the Bidder for meeting the requirements under PQ, if any].</i></p> <p><i>In case additional requirements are stipulated, suitable Form reference to be provided.</i></p>
<b>Technical Capacity Requirements</b>	2.2.3.b	<p><i>[Additional requirements for ascertaining “Technical Capacity” in addition to the declaration submitted by the Bidder for meeting the requirements under PQ, if any].</i></p> <p><i>In case additional requirements are stipulated, suitable Form reference to be provided.</i></p>
<b>Financial Capacity Requirements</b>	2.2.4.d	<p><i>[Additional requirements for ascertaining “Financial Capacity” in addition to the declaration submitted by the Bidder for meeting the requirements under PQ, if any].</i></p> <p><i>In case additional requirements are stipulated, suitable Form reference to be provided.</i></p>
<b>Other Eligibility Conditions</b>	2.2.5	<p><i>[Requirements for ascertaining other eligibility conditions, if any].</i></p> <p><i>In case requirements are stipulated, suitable Form reference to be provided.</i></p>
<b>Additional / Supplemental Conditions in case of JV</b>	2.2.6	<i>In case additional eligibility conditions are stipulated under Sub-Clause 2.2.2, 2.2.3, 2.2.4 or 2.2.5, then the conditions for meeting the requirement under the respective clauses by the JV members to be specified here.</i>
<b>Alternative Bids Permitted (Yes / No)</b>	2.4	<i>[Yes / No]</i>
<b>Pre-Bid Meeting</b>	2.7.1 (c)	<i>[Mention date, time and place and link for Pre-Bid Meeting]</i>
<b>Correspondence with the Authority</b>	2.11.1	<i>[Details and Address for Communication, Clarification, Bid Submission and Bid Opening]</i>
<b>Number of Copies of Bids</b>	2.15.1 (a)	<i>[Mention the Number of copies of the Bid required to be submitted applicable in case</i>



		<i>of offline submission of Bids only]</i>
<b>Documents comprising Technical Bid</b>	2.16.3	<i>[Mention any other document required that shall form part of the Technical Bid]</i>
<b>Currency of Financial Bid</b>	2.16.4	United States Dollars (USD)
<b>Procedure for Submission of Bids</b>	2.19.2	<i>[Mention the manner of submission of Bids, physical or offline / online or electronic as the case maybe] [In case, the submission of Bid is electronic/online, mention the specific procedure for the same.]</i>
<b>Modifications/ Substitution/ Withdrawal of Bids</b>	2.19.3	<i>In case, the submission of Bid is electronic/online, mention the specific procedure for the same for Modifications, Substitution and Withdrawal of Bids</i>
<b>Opening of Technical Bids</b>	2.20.1	<i>[In case, the submission of Bid is electronic/online, mention the specific procedure for opening of Technical bids]</i>
<b>Validity of Bids</b>	2.22.1	<i>The Bid shall be valid for a period of [150**] days from the Bid Due date</i>

### Section-3: Bid Evaluation

<b>Applicability of Quality Scoring</b>	3.4.1	<i>Yes / No</i>
<b>Parameters for Quality Scoring</b>	3.4.1	<i>[If quality scoring is applicable, mention the parameters in details for calculation of Quality Score]. <b>Suitable Form under Appendix-I to be provided for the Bidder to submit information for Quality Scoring</b>  <b>Qualitative criteria should be objective to the maximum extent possible and clearly defined or explained in a manner that the Bidder should be in a position to rate itself on the parameters.</b></i>
<b>Minimum Score for Technical Qualification</b>	3.4.2	<i>If quality scoring is applicable, then the following shall be applicable  the Bidder should score a minimum score of _____ ( _____) (in figures and words) marks in order to be technically qualified.  <b>It may be noted that the technical score should not have any weightages while evaluation of Financial Bids. The technical</b></i>

		<i>scoring is only to ascertain the eligibility and technical soundness of the Bidder. If the weightages are assigned to the technical score and the Financial Bid then the selection method shall be classified as QCBS and explicit approval of the Government of India shall be required for such mode of selection.</i>
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**Part-III: Bidding Form and Appendices**

[The information in Forms to be provided in case (a) there is change in information submitted by the Bidder during prequalification stage; or (b) there is additional information sought by the Authority, in which case the Forms shall be modified suitably by the Authority].

(Appendix-I) Form-II	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-III (A)	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-III (B)	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-III (C)	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-IV	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-V (A)	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-V (B)	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-VI	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-VII	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-VIII	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-IX	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>
(Appendix-I) Form-X	<i>[Required / Not Required / Required Only in case of change in information submitted at the time of PQ].</i>



## PART-III: BIDDING FORMS

**RFP APPENDIX-I: TECHNICAL BID**

Date: *[insert day, month, and year]*

RFP No.: *[insert RFP number\*\*]*

RFP Title: *[Insert RFP Title\*\*]*

To,

*[Name and Address of Authority]*

Dear Sir,

Sub: Bid for *[Name of the Project\*\*]*

1. With reference to your RFP document dated <sup>1</sup>\_, including Addendum No(s).\_\_\_\_<sup>2</sup>, we (**Name of the Bidder, or Name of JV members as applicable**), having examined the Bidding Document and understood its contents, hereby submit our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Bid and in Forms, are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of selection as a Bidder for the captioned Project and maintenance of the Project thereof.
4. I/We confirm that I/we meet all the criteria specified in the RFP and agree and undertake to abide by all the terms and conditions of the RFP document.
5. I/We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
6. I/We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by Applicable Law, our right to challenge the same on any account whatsoever.
7. I/We understand that the Authority may cancel the Bidding Process at any time and that the Authority is neither bound to accept any Bid that Authority may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
8. I/We agree and understand that the Bid is subject to the provisions of the Bidding Document. In no case, we shall have any claim or right of whatsoever nature if the Project is not awarded to us or our Bid is not opened or rejected in accordance with the terms and conditions of the RFP.

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<sup>1</sup>\$ All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

<sup>2</sup> *insert the number and issuing date of each addendum or "nil" if no addendum is issued*

## 9. I/We declare that:

- a) I/We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.
- b) I/We do not have any Conflict of Interest in accordance with provisions of the Bidding Document;
- c) I/We confirm that I/we am/are currently not under default on any loan to any bank/ financial institution (FI) and our account has not been classified as Non-Performing Asset (NPA) as per Central Repository of Information on Large Credits (CRILC) database. We further confirm that none of our promoters/directors (excluding nominee directors and independent directors) appear in Credit Information Bureau India Ltd. (CIBIL) Defaulter List, Reserve Bank of India (RBI) Negative List or RBI Willful Defaulter List (Suit filed as well as non-suit filed).
- d) I/We confirm that we have not been debarred by Exim Bank
- e) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt, fraudulent, anti-competitive, coercive, undesirable, restrictive or obstructive practices, as defined in the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any Government, Central or State of India and the Authority's Country;
- f) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt, fraudulent, anti-competitive, coercive, undesirable, restrictive or obstructive practices; and
- g) I/We declare that I/we have the necessary equipment and personnel / have the ability to source the necessary equipment and personnel to undertake the Project in the manner provided herein and within the timelines as may be stipulated.
- h) I/We confirm that there have not been any records of poor performance during the last five years by us, as on the date of submission of the Bid, for projects in which we are acting as the 'Contractor', including but not limited to abandoning the work, rescission of the contract for reasons which are attributable to our non-performance, inordinate delays in completion, consistent history of litigation resulting in awards against us or any of the constituents, or financial failure due to insolvency and/or bankruptcy. Additionally, there has not been a rescission of a contract as a part of a joint venture on account of reasons such as the lead partner withdrawing;

## 10. Integrity Obligations:

- a) I/ We commit to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of the Bidding Process.
- b) I/ We have not, during the Bidding Process, given, offered or promised to give, directly or indirectly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of Exim Bank, Authority and/or any other intermediary involved in the Bidding Process connected directly or indirectly with the Bidding Process, or to any person, organization or third party related to the contract in exchange for any

advantage in the bidding, evaluation, contracting and implementation of the Project.

c) I/ We will not collude with other parties interested in the Project to impair the transparency, fairness and progress of the Bidding Process, Bid evaluation, contracting and implementation of the Project.

d) I/ We will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

11. I/We confirm that I/ our Joint Venture satisfy/ satisfies the Bid Capacity, Technical Capacity and Financial Capacity as specified in Sub-Clause 2.2.2, 2.2.3 & 2.2.4 and meet(s) all the eligibility requirements as specified under Clause 2.2 [Eligibility and Qualification of the Bidders] the RFP document and am/are qualified to submit a Bid.
12. I/We declare that we/ any Member of the Joint Venture, or our/ its Associates are not a member of a/any other Joint Venture submitting a Bid for the Project.
13. I/We certify that in regard to matters other than security and integrity of the India / Authority's Country , we/ any Member of the Joint Venture or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community. I/We further certify that in regard to matters relating to security and integrity of the country, we/any Member of the Joint Venture or any of our/ their Associates have not been facing any investigation or charge-sheeted by any agency of the Government or convicted by a court of law.
14. I/We further certify that we have not made any misleading or false representations in the forms, statements, affidavits and attachments submitted as a part of the Bid.
15. I/We further certify that we have not been (a) blacklisted/ debarred/ sanctioned/ suspended from bidding by any Multilateral Development Banks such as World Bank, Asian Development Bank, African Development Bank, or Ministry/Authority of Government of India (GOI) or the Authority's Country or Exim Bank, in accordance with extant rules and procedures, or (b) convicted for an offense under (i) India's Prevention of Corruption Act, 1988, or (ii) the Bharatiya Nyaya Sanhita, 2023 or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.
16. I/We further certify that I/we or any member have/has not been admitted by the National Company Law Tribunal (NCLT) for initiating corporate insolvency resolution process under the Indian Bankruptcy Code (IBC).
17. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process and/or contract execution, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.

18. The Statement of Legal Capacity as per format provided in RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and, in case of JV, the power of attorney for Lead Member of Joint Venture, are also enclosed.
19. I/We hereby confirm that I/we do not have a close business relationship or family relationship or in its employment any near relations (defined as first blood relations, and their spouses, of the Bidder or the Bidder's spouse) in our employment any near relations of persons involved in decision making in the Project at the Authority.
20. I/ we confirm that no legal, financial or technical adviser of the Authority in relation to the Project is engaged by us.
21. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above-mentioned Project and the terms and completion thereof.
22. I/We agree to the provisions of the Public Procurement Orders Nos. 1 & 2 dated July 23, 2020, Public Procurement Order No. 3 dated July 24, 2020, and Public Procurement Order No.4 dated February 23, 2023, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India, or any other Procurement Guidelines issued by the Government of India, and undertake to abide by the provisions of these Orders. I/We have read the Clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and countries that restrict the participation of Bidders from India and on sub-contracting to contractors from such countries; I/We certify that I/we shall not sub-contract any work to an Agency from such countries unless such Agency is registered with the Competent Authority. I/We hereby certify that I/we fulfil all requirements in this regard and are eligible to bid as per the above Public Procurement Orders. We agree to submit/ ensure that our Sub-contractors shall submit, at the Authority's request, evidence of the origin of materials, equipment and services.
23. I/We agree to adhere to the provisions of Applicable Guidelines in accordance with the Agreement, including the IDEAS Guidelines, inter alia the requirement of meeting minimum percent (%) Indian Content as defined under the Agreement.
24. In the event of we being declared as the Selected Bidder, we agree to enter into Agreement in accordance with the draft Conditions of Contract that has been provided to us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
25. I/We have studied all the Bidding Document carefully. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of the Project.



26. I/We offer Bid Security of USD (United States Dollars only (in figures and words) to the Authority in accordance with the RFP document.
27. The Bid Price has been quoted by us after taking into consideration all the terms and conditions stated in the RFP, draft Conditions of Contract, our own estimates of costs and after a careful assessment of the Site and all the conditions that may affect the Project cost and Completion of the Project.
28. I/We shall keep this offer valid for the period as specified in the RFP and the Bid shall remain binding upon us and as may be extended in accordance with the terms of the Bidding Document.
29. I/We hereby submit our Bid and offer a Bid Price as indicated in the Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Document and the Agreement.
30. We hereby confirm that we have not appointed any agent and we have not paid any agency commission for this Bidding Process. If selected, we also confirm that we will not appoint any agent and nor will we pay any agency commission for execution of the Project.
31. I/We confirm that there is no material change in the information submitted at the time of Prequalification and I/we continue to meet the eligibility criteria stipulated at the time of Prequalification.

**OR [Select Appropriate Option]**

I/We confirm that there is change in the information submitted by us at the time of prequalification and I/We hereby furnish updated information in the corresponding forms.

32. I/ We confirm that we have obtained all consents/ made all intimation from/to third parties including but not limited to lenders, counter-parties and undertake to obtain such consents/ make such intimations, if required, for the purposes of undertaking the Project.

*For JVs as Bidders. Delete declaration no 34 and 35 if the Bidder is not a JV:*

33. We confirm that there are no changes in the constitution of the JV as declared at the time of prequalification and the JV shall be maintained during the currency of the Contract or the Bidding Process.
34. I/We agree and undertake to be jointly and severally liable for all the obligations under the resulting contract for Project execution till final completion of the Project in accordance with the Conditions of Contract.)<sup>3§</sup>
35. We recognise and accept that Exim Bank is only financing the projects of the Project Authority subject to its own conditions which are set out in the Funding Agreement it has entered into with the Project Authority / Borrower. As a matter of consequence, no legal relationship exists between Exim Bank and our

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<sup>3§</sup> Omit if the Bidder is not a Consortium.

company, our Joint Venture or our Sub-contractors under the Agreement. The Project Authority retains exclusive responsibility for the preparation and implementation of the Bidding Process and the performance of the Agreement.

36. We understand that this Bid, together with your written acceptance thereof included in notification letter in accordance with Sub-Clause 3.7.4, shall constitute a binding contract, until a formal contract is prepared and executed;

37. I/We confirm that the contents of this form have not been altered / modified unless explicitly required to be altered / modified at places provided by the Authority. The contents including the consents / agreements and declarations provided in this Form are as per the Form provided by the Authority in the RFP.

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

Signature

Name And Designation of the Authorized Signatory

Name and Seal of the Bidder / Lead Member

Name of the Bidder [*In the case of the Bid submitted by joint venture specify the name of the Joint Venture as Bidder*]

Signature [*insert signature(s) of an authorized representative(s) of the Bidder; Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid*]

Name [*insert full name of person(s) signing the Bid*]

In the capacity of [*insert capacity of person(s) signing the Bid*]

Address [*insert street number/town or city/country address*]

Dated on [*insert day number*] day of [*insert month*], [*insert year*]

[For a joint venture, all members shall sign. Failure to comply with this requirement may result in rejection of Bid]

**FORM-I: Details of the Bidder**  
(Appendix-I)

*[to be filled by Bidder if being a Single Entity or as Lead Member of JV]*

Date: *[insert day, month, year]*  
RFP No. and Title: *[insert RFP number and title]*

Bidder's name: <i>[insert full name]</i>
In case of Joint Venture (JV), name of each member: <i>[insert full name of each member in JV]</i>
Bidder's country* of registration: <i>[indicate country of Constitution]</i>
Bidder's actual year of incorporation: <i>[indicate year of Constitution]</i>
Bidder's legal address [registered in India]: <i>[insert street/ number/ town or city/ country]</i>
Bidder's authorized representative information: Name: <i>[insert full name]</i> Designation: <i>[insert designation]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
Has the Bidder/ constituent of the JV been barred by the Central/ State Government, or any entity controlled by it, from participating in any project: [Yes/No] If yes, does the bar subsist as on the date of Bid Application: [Yes/No]

In case of a JV, Information regarding the role of each Member should be provided as per table below:

Sr. No.	Name of Member	Part or Section of the contract to be performed {Refer Paragraph 2.2.1(c.ix)} <sup>4§</sup>	Percentage of share in the JV {Refer Sub-Clause 2.2.9}
1.			
2.			

<sup>4§</sup> All provisions contained in curly parenthesis shall be suitably modified by the Bidder to reflect the particulars relating to such Bidder.

**Attachments to be submitted:**

1. Articles & Memorandum of Association, Certificate of Incorporation /Partnership Deed (in case of partnership firm) of the Bidder
2. In case of JV, letter of intent to form JV or JV agreement, and documents as above for each member of the JV.
3. For a Bidder as a single entity or in case of JV, for each member:
  - Permanent Account Number [PAN]: Self attested copy
  - GST Registration details, as applicable: Self attested copy
  - Screening Committee Application/Approval of Project Exports Promotion Council of India - PEPC [MOCI].
4. Organizational chart, a list of Board of Directors, and the Beneficial Ownership

**FORM-I(A): Details of JV Members**  
(Appendix-I)

*[The following form is in addition to Form I (in case the Bidder is a JV), and shall be completed separately to provide information relating to each JV member]*

Date: [insert day, month, year]  
RFP No. and Title: [insert RFP number and title]

Bidder name: <i>[insert full name of the JV]</i>
Bidder's JV Member's name: <i>[insert full name of Bidder's JV Member]</i>
Bidder's JV Member's country* of registration: <i>[indicate country of registration]</i>
Bidder JV Member's date of constitution: <i>[indicate date of constitution in dd/mmm/yyyy]</i>
Bidder JV Member's legal address registered in India: <i>[insert street/ number/ town or city/ country]</i>
Bidder JV Member's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
Has the Bidder/ constituent of the JV been barred by the Central Government, or any entity controlled by it, from participating in any project: [Yes/No] If yes, does the bar subsist as on the date of Bid Application: [Yes/No]

**FORM-II: Contract Non-Performance and Litigation**  
(Appendix-I)

*[Each of the following tables shall be filled in for the Bidder and for each member of a Joint Venture]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

Information pertaining to: *[Insert name of JV Leader or JV Member/s]*

**A. Past Contract Non-Performance**

[Contract Non-performance has occurred/Non-performance of any contract has not occurred since the date preceding five (5) years from the Bid Due Date].

If Yes, provide details Contract(s) not performed

Year	Non-performed portion of Contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Reporting Currency Equivalent)
<i>[insert financial year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, date, value and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount in Reporting Currency equivalent and specify exchange rate and date]</i>
	<i>Total:</i>		

**B. Pending Litigation**

Pending Litigation: [Pending Litigation /No Litigation Pending]

If Yes, provide details of Pending Litigation

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (Reporting Currency Equivalent) (exchange rate)	Amount of specific provision already made, if any
<i>[insert financial year]</i>	<i>[insert amount]</i>	Contract Identification: [indicate complete contract name, number, date, value and any other identification]  Name of Employer: <i>[insert full name]</i>  Address of Employer: <i>[insert street/city/country]</i>  Matter in dispute: <i>[indicate main issues in dispute]</i>  Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i>  Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>	<i>[insert amount in Reporting Currency equivalent and specify exchange rate]</i>
	<i>Total:</i>			<i>Total:</i>

### C. Litigation History

Litigation since the date preceding five (5) years from the Bid Due Date: [Contract Litigation Awarded/No Litigation History]

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (Reporting Currency) (exchange rate)
<i>[insert financial year]</i>	<i>[insert percentage]</i>	Contract Identification: [indicate complete contract name, number, date, value and any other identification]  Name of Employer: <i>[insert full name]</i>  Address of Employer: <i>[insert street/city/country]</i>  Matter in dispute: <i>[indicate main issues in dispute]</i>  Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i>  Result of dispute: <i>[Indicate if resolution was treated by the Adjudicator, under Arbitration or dealt with by the Judiciary and whether resolved in favour or against the Bidder]</i>	<i>[insert amount in Reporting Currency equivalent and specify exchange rate and date]</i>
	<i>Total:</i>		

Registration No/ Membership No and Stamp:

(of the Statutory Auditors of the Bidder/each JV member)

Date:

Place:

UDIN:



**FORM-III: Financial Capacity of the Bidder**  
(Appendix-I)

*[The following table shall be filled in for the Bidder and for each member of a Joint Venture and shall be certified by the Statutory Auditors. Failure to comply with this requirement may result in rejection of the Bid.]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

Information pertaining to: *[Insert name of JV leader or JV member/s]*

**Form-III (A) Financial data**

Type of Financial information	Historic information for previous five (5) <i>years</i> , (amount in Reporting Currency)				
	D-4	D-3	D-2	D-1	D <sup>5</sup> FY [Year of Invitation of RFP]
<b>Sources of Fund</b>					
Share Holder's Fund					
Loan Fund					
<b>Application of Fund</b>					
Fixed Assets					
Investments					
Net Current Assets					
(i) Current assets, loans and advances					
Less: (ii) Current liabilities & provisions					
Misc. exp. to the extent not W/Off or adjusted					
Profit and Loss Account					
<b>Net Worth</b>					
Net Worth					
<b>Information from Income Statement</b>					
Income					
Expenditure					
Profit/(Loss) Before Tax (PBT)					
Profit/(Loss) After Tax (PAT)					
<b>Information From Cash Flow Statement</b>					

<sup>5</sup> FY to be updated before launching the RFP

Cash Flow from Operating Activities					
Cash Flow from Investments					
Cash Flow from Financing Activities					

Registration No/ Membership No:  
(of the Statutory Auditors of the Bidder/each JV member)

Stamp

Date:

Place:

UDIN:

### Form-III (B) Sources of Finance

*[Specify sources of finance to meet the cash flow requirements for works currently in progress]*

#### B. 1 Details of Credit Facilities available to the Bidder (Amount in Reporting Currency)

Sr. No.	Type of Facility	Sanctioned Limit	Utilised Limit	Unutilised Limit
A.	Fund Based Limits			
	a.			
	b.			
	c.			
B.	<b>Total Fund Based</b>			
C.	Non-fund Based Limits			
	a			
	b			
	c			
D.	<b>Total Non –fund Based</b>			
E.	<b>Total Fund and Non-fund Based Limit</b>			

**B.2 Details of Liquid Assets such as cash and bank balance, marketable securities and any other financial means which may be used meet the cash flow requirements for works currently in progress by the Bidder**

Sr No	Type of Liquid Assets	Amount (in Reporting Currency)
1.		
2.		
3.		

Registration No/ Membership No:

Stamp

(of the Chartered Accountants of the Bidder/each JV member)

Date:

Place:

UDIN:

### **B.3 Financial documents**

1. The Bidder shall submit copies of audited Financial Statements for the last 5 Financial Years calculated from the year of Invitation of Bids under this RFP. The financial statements shall:
  - a. Reflect the financial situation of the Bidder or in case of JV for each member, and not an affiliated entity (such as parent company or group member).
  - b. Be independently audited and certified by the Statutory Auditors.
  - c. Be complete, including all notes to the financial statements
  - d. Correspond to accounting periods already completed and audited.
2. Provided that in case the Annual Accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall provide Provisional Results for the Latest Financial Year duly certified by the Statutory Auditor. In such a case, the Bidder shall also provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
3. Please submit Statement of Consolidated Credit Facilities (sanctioned, utilised and available) from Lead Banker or respective Bank statements. The statements shall also be certified by the Chartered Accountants of the Bidder/each JV member.
4. Supporting documents issued by the Banks for additional financial means for likely future commitments to be attested by the respective banks. These documents shall be of latest available date and shall be valid beyond the last date of submission of the Bid.

Registration No/ Membership No:  
(of the Chartered Accountants of the Bidder/each JV member)  
Date:  
Place:  
UDIN:

Stamp

### Form-III (C) Annual Turnover

Year	Amount (INR)			Exchange rate*	USD equivalent
	Contracts in India	Overseas Contracts	Total Turnover		
2019-20					
2020-21					
2021-22					
2022-23					
2023-24					

\* Refer Clause 1.4 [Reporting Currency] for source of exchange rate. Exchange rate prevalent on 31<sup>st</sup> March shall be used to calculate turnover for respective financial year.

Registration No/ Membership No:  
(of the Statutory Auditors of the Bidder/each JV member)

Stamp

Date:

Place:

UDIN:

**FORM-IV: Ongoing Contracts**  
(Appendix-I)

*[The following table shall be filled in for the Bidder and for each member of a Joint Venture and shall be certified by the Chartered Accountants of the Bidder/each JV member. Failure to comply with this requirement may result in rejection of the Bid.]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

Information pertaining to: *[Insert name of JV leader or JV member/s]*

Contract Identification	Role of Bidder	Start Date	Contractual Completion Date	Intended/ Revised Completion Date	Residual period for completion	Residual value of Work	Annual Residual value of Work
1	2	3	4	5	6	7	8
<b>Contract Ref:</b> <b>Brief Title of the works:</b> <b>Amount of contract:</b> <i>[insert amount in currency, mention currency used, exchange rate and US\$ equivalent*]</i> <b>Name &amp; Address of Employer:</b>	<i>[insert "Prime Contractor" or "JV Member"]</i>				<i>[Insert period in years starting from Application Submission Deadline. In case less than a year, value to be</i>	<i>[Insert value in US\$ equivalent including amount billed but pending payment up to deadline for submission of Application]</i>	<i>[Insert value in US\$ equivalent]</i> <div style="text-align: right;"><i>[7 divide by 6]</i></div>

					considered shall be 1]		
							[Insert Total for all Contracts in USD]

\* Exchange rate prevalent as on the working day preceding the date of Invitation for RFP (RFP) shall apply to ascertain residual value in Reporting Currency equivalent. Refer Clause 1.4 [Reporting Currency] for source of exchange rate

Registration No/ Membership No:  
 (of the Chartered Accountants of the Bidder/each JV member)  
 Date:  
 Place:  
 UDIN:

Stamp

## FORM-V: Project Execution Experience

(Appendix-I)

**Form A. General Experience**

*[The following table shall be filled in for the Bidder and in the case of a JV Bidder, for each Member]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

Information pertaining to: *[Insert name of JV leader or JV member/s]*

*[Identify contracts that demonstrate similar experience in India. List contracts chronologically, according to their commencement (starting) dates and attach Final Acceptance Certificates.]*

Contract Identification	Start Date	Initial Contractual End Date	Actual Completion Date and Reasons for delay, if any	Role of Bidder
Contract name: <i>[insert full name]</i> Brief Description of the works performed by the Bidder: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in currency, mention currency used, exchange rate and Reporting Currency equivalent*]</i> Name of Employer: <i>[indicate full name]</i> Address: <i>[indicate street/number/town or city/country]</i>	<i>[indicate date as dd/ mmm/ yyyy]</i>	<i>[indicate date as dd/ mmm/ yyyy]</i>		<i>[insert "Prime Contractor" or "JV Member"]</i>

\* Refer Clause 1.4 [Reporting Currency] for date and source of exchange rate

Final Acceptance Certificate/Completion Certificate / Testimonial Letters issued by the Main Client / Project Authority, and Concession Granting Authority in case of SPV, to be attached for each contract in an orderly fashion.

## Attachments to be submitted under Form-V.A

1. Final Acceptance Certificate/ Completion Certificate/ Testimonial Letters issued by the main client/Project Authority for each contract listed in Form V.A giving, inter alia, details of scope and value of work executed by the Bidder, contract start and completion dates.
2. ➤ In case the contracts listed in Form V.A are executed by the Bidder as a member of JV, a copy of Agreement between main client/Project Authority and JV and the JV Agreement to substantiate Individual JV member's delineated roles, responsibilities and scope and value of work.
3. ➤ Sub-contractor's experience and resumes, if any, submitted with the application shall not be taken into account in determining the Bidder's compliance.



**Form B. Specific Experience**

*[The following table shall be filled in for contracts completed by the Bidder, and each member of a Joint Venture, as applicable,]*

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

RFP No. and title: *[insert RFP number and title]*

Information pertaining to: *[Insert name of JV leader or JV member/s]*

**Information**

Similar Contract No.	<i>[insert number] of [insert number of similar contracts required]</i>		
Contract Identification	<i>[insert contract name and number, if applicable]</i>		
Contract date	<i>[dd/mmm/yyyy]</i>		
Completion date	Contractual: <i>[dd/mmm/yyyy]</i>	Actual: <i>[dd/mmm/yyyy]</i>	
Role in Contract <i>[check the appropriate box]</i>	<input type="checkbox"/> Prime Contractor		<input type="checkbox"/> Member in JV
Total Contract Amount	<i>[insert total contract amount in contract currency]</i>		USD <i>[insert Exchange rate and total contract amount in Reporting Currency equivalent]*</i>
If member in a JV, specify participation in total Contract amount	<i>[insert a percentage amount]</i>	<i>[insert total contract amount in local currency]</i>	<i>[insert exchange rate and total contract amount in Reporting Currency equivalent] *</i>
Employer Details	Employer's Name: Address: Telephone, fax number, E-mail:		
Description of the similarity	<i>[Name the Sector/ Sub-sector] [Briefly mention the similarity in terms of sectoral characteristics and technical aspects listed in Sub-Factor D.2]</i>		
<b>For the above contract, mention the following attributes</b>			
1. Capacity/ Physical size of key works items	<i>[insert capacity/ physical size of key work items]</i>		
2. Complexity	<i>[insert description of complexity in accordance with the technical aspects mentioned under Part IV D.2]</i>		
3. Methods/ Technology	<i>[insert specific aspects of the methods/ technology involved in the contract]</i>		
4. Rate of Execution for key items	<i>[insert execution rates for key items]</i>		
5. Other Characteristics	<i>[insert other characteristics as appropriate]</i>		

*Note:*

- \* Refer Clause 1.4 [Reporting Currency] for date and source of exchange rate.
- \* Final Acceptance Certificate /Completion Certificate / Testimonial Letters issued by the main Client / Project Authority, and Concession Granting Authority in case of SPV, to be attached for each contract, in an orderly fashion

## Attachments to be submitted under Form-V.A

1. Final Acceptance Certificate/ Completion Certificate/ Testimonial Letters issued by the main client/Project Authority for each contract listed in Form V.A giving, inter alia, details of scope and value of work executed by the Bidder, contract start and completion dates..  
 In case the contracts listed in Form V.A are executed by the Bidder as a member of JV, a copy of Agreement between main client/Project Authority and JV and the JV Agreement to substantiate Individual JV member's delineated roles, responsibilities and scope and value of work.
2. Sub-contractor's experience and resumes, if any, submitted with the application shall not be taken into account in determining the Bidder's compliance.

**FORM-VII: Manufacturer's Authorization**  
(Appendix-I)

Date: *[insert day, month, year]*  
Joint Venture Member Name: *[insert full name]*  
RFP No. and title: *[insert RFP number and title]*

To: \_\_\_\_\_

**WHEREAS**

We \_\_\_\_\_, who are official manufacturers of \_\_\_\_\_, having factories at \_\_\_\_\_, do hereby authorize \_\_\_\_\_ to submit a bid the purpose of which is to provide the following goods, manufactured by us \_\_\_\_\_, and to subsequently negotiate and sign the Contract.

We, -----, are proven and reputable manufacturers of the Goods. We have factories at-----. We hereby authorise Messrs----- (name and address of the authorised dealer) to submit a bid, process the same further and enter into a contract with you against above referred tender process for the supply of above Goods manufactured by us. Their registration number with us is ....., dated/ since.....

We further confirm that no Contractor or firm or individual other than Messrs. .... (name and address of the above-authorised dealer) is authorized for this purpose. We confirm that confirm that the equipment being bid for to be supplied shall be new and unused.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Duly authorized to sign this Authorization on behalf of:

\_\_\_\_\_

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**FORM-VIII Statement of Legal Capacity  
(Appendix-I)**

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

Ref. Date:

To,

\*\*\*\*\*

\*\*\*\*\*

Dear Sir,

We hereby confirm that we/ our members in the JV (constitution of which has been described in the application) satisfy the terms and conditions laid out in the RFP document.

[We have agreed that {insert member's name} will act as the Lead Member of our JV.] \*

We have agreed that ..... {insert individual's name} will act as [our representative/ will act as the representative of the JV on its behalf]\* and has been duly authorized to submit the Bid. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,  
(Signature, name and designation of the authorized signatory)  
For and on behalf of.....

*\*Please strike out whichever is not applicable.*

**FORM-IX: Certified Management System**  
(Appendix-I)

[The following table shall be filled in for the Bidder and in the case of a JV Bidder, each Member]

Bidder's Name: *[insert full name]*

Date: [insert day, month, year]

RFP No and title: [insert RFP number and title]

Information pertaining to: [Insert name of JV leader or JV member/s]

ISO Accreditation/ Certified Management System	Process/ Discipline Certified/ Inclusions	Certification Start Date	Certification Valid up to	Certifying Organization
[indicate the quality management system accreditation]	[indicate certificate identification number and mention which process or discipline has been certified and inclusions]	[dd/mmm/yyyy]	[dd/mmm/yyyy]	[indicate the name of the certifying organization and contact details]

Attachments to be submitted:

Self-attested copy of ISO Accreditation / Quality Management System Certificate valid as on the deadline for submission of bid

**FORM-XI: Information for Quality Scoring**  
(Appendix-I)

*[Specify information required from Bidders for the purposes of Quality Scoring under Clause 3.4 [Technical Qualification]]*

**RFP APPENDIX-II: FINANCIAL BID**

Dated: \_\_\_\_\_

To,

[Name and Address of the Authority]

Dear Sir,

Sub: Bid for [Name of the Project\*\*\*]

1. With reference to your Bidding document dated .....<sup>6\$</sup>, we (**Name of the Bidder, or Name of JV Members as applicable**), having examined the Bidding document and understood its contents, hereby submit our Bid for qualification for the aforesaid Project. The Bid is unconditional and unqualified.
2. We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Contractor for the aforesaid Project, and we certify that all information provided in the Technical Bid including applicable Forms, thereto are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. The Bid Price has been quoted by us after taking into consideration all the terms and conditions stated in the RFP, draft Conditions of Contract, our own estimates of costs and after a careful assessment of the Site and all the conditions that may affect the Project cost and completion of the Project.
4. We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event we being declared as the Selected Bidder, we agree to enter into an Agreement in accordance with the draft Conditions of Contract that has been provided to us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. We shall keep this offer valid for the period as specified in the RFP Clause 2.22 [Validity of Bid].
7. We hereby submit our Bid and offer a Bid price, excluding discount, of USD \_\_\_\_\_ (United States Dollars \_\_\_\_\_ only) (in figures and words) inclusive of all applicable taxes for undertaking the aforesaid Project in accordance with the Bidding Document and the draft Conditions of Contract.

<sup>7</sup>[In case of multiple lots, total price of each lot is as follows:

---

<sup>6\$</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

<sup>7</sup> Omit if Lot/package not applicable

Lot I: USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words)

Lot (n): USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words)

In case of multiple lots, the Bid total price of all lots (sum of lots) is USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words)

8. The discounts offered and the methodology for their application are as follows:
  - i) The discounts offered are:
  - ii) The exact method of calculations to determine the net bid price after application of discounts is as specified below:
9. We confirm that the contents of this form have not been altered / modified unless explicitly required to be altered / modified at places provided by the Authority. The contents including the consents / agreements and declarations provided in this Form are as per the Form provided by the Authority in the RFP.

Signature

Name And Designation of the Authorized Signatory

Name and Seal of the Bidder / Lead Member



**FORM-XI: Breakup of Financial Bid**  
(Appendix-II)

**Part A**

[The Breakup of Financial Bid as provided below is indicative in nature. The Authority shall suitably modify the Form on a case-by-case basis.]

The detailed breakup are as under

Sr. No.	Description of Activity	Quantity (if applicable)	Unit Price (in USD)	Indian Content (in USD)	Local Content (in USD)	Third Party (in USD) (along with the Name of Country)	Indian Content (in %)	Total Cost (in USD)
1.1								
1.2								
1.3								
	<b>Totals</b>							

**RFP APPENDIX–III: BANK GUARANTEE FOR BID SECURITY**  
 (Refer Clause 2.25 [Bid Security])

Beneficiary: \_\_\_\_\_

RFP No: \_\_\_\_\_

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

Guarantee No.: \_\_\_\_\_

Guarantor: \_\_\_\_\_

We have been informed that \_\_\_\_\_ *[Name of the Bidder]* (hereinafter called the "Bidder") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of \_\_\_\_\_ *[Name of the Project]* under RFP No. \_\_\_\_\_.

Furthermore, we understand that, as per the terms and conditions of said RFP forming part of the Bidding Document, the Bid must be supported by a Bid Security and the Bidder wishes to submit the Bid Security in form of a Bank Guarantee.

At the request of the Bidder, we, as Guarantor, hereby irrevocably and unconditionally undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ Only) upon receipt by us of the Beneficiary's demand in writing, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Bidder is in breach of such terms and conditions of the Bidding Document that entitle the Beneficiary to forfeit and appropriate the Bid Security, along with identification of such terms and conditions in the statement.

The demand must be received by us at the following office / address \_\_\_\_\_ *[insert address of office / email id]* on or before \_\_\_\_\_ *[insert the date in accordance with the RFP]*, when this guarantee shall expire. This guarantee shall be subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

\_\_\_\_\_  
*[signature(s)]*

**Note:** All italicized text is for use in preparing this form and shall be deleted from

*the final product.*

**RFP APPENDIX-IV: FORMAT FOR POWER OF ATTORNEY FOR SIGNING OF BID**  
 (Refer Sub-Clause 2.16.3)

Know all men by these presents, We \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms. (name), \_\_\_\_\_ son/daughter/wife of and presently residing at \_\_\_\_\_, who is presently employed with us and holding the position of \_\_\_\_\_, as our true and lawful attorney (hereinafter referred to as the "**Attorney**") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the [insert name of the Project] proposed or being developed by the [insert name of the Authority] (the "**Authority**") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Agreement with the Authority.

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

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

For  
 \_\_\_\_\_  
 (Signature, name, designation and address)

Witnesses:

- 1.
- 2.

(Notarized)

Accepted

\_\_\_\_\_ (Signature)

(Name, Title and Address of the Attorney)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common*

*seal affixed in accordance with the required procedure.*

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

# **RFP APPENDIX-V: FORMAT FOR POWER OF ATTORNEY FOR LEAD MEMBER OF THE JV**

(Refer Sub-Clause 2.16.3)

Whereas the [insert name of the Authority] (the “**Authority**”) has invited Bids from interested parties for the [insert name of the Project] (the “**Project**”).

Whereas, \_\_\_\_\_ and \_\_\_\_\_ (collectively the “**Joint Venture**”) being Members of the Joint Venture are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_ and M/s. \_\_\_\_\_ having our registered office at....., (hereinafter collectively referred to as the “**Principals**”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s. \_\_\_\_\_ having its registered office at \_\_\_\_\_, being one of the Members of the Joint Venture, as the Lead Member and true and lawful attorney of the Joint Venture (hereinafter referred to as the “**Attorney**”). We hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Joint Venture and any one of us during the Bidding Process and, in the event the Joint Venture is awarded the contract, during the execution of the Project and in this regard, to do on our behalf and on behalf of the Joint Venture, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all Bids and other documents and writings, participate in Bidders and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Joint Venture and generally to represent the Joint Venture in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to

or arising out of the Joint Venture's bid for the Project and/ or upon award thereof till the contract is entered into with the Authority.

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

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

For \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title)

For \_\_\_\_\_  
(Signature)

Witnesses:

1.

2.

\_\_\_\_\_  
(Executants)  
(To be executed by all the Members of the Joint Venture)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by*

*Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.*



**RFP APPENDIX-VI: FORMAT FOR JOINT BIDDING AGREEMENT FOR JOINT VENTURE**  
 (Refer Sub-Clause 2.16.3])  
 (To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the \_\_\_\_\_ day  
 of \_\_\_\_\_ 20\_\_\_\_

**AMONGST**

1. {\_\_\_\_\_ incorporated under the \_\_\_\_\_ Act,  
 [year]}<sup>8§</sup>  
 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the  
**"First Part"** which expression shall, unless repugnant to the context include its  
 successors and permitted assigns)

**AND**

2. {\_\_\_\_\_ incorporated under the \_\_\_\_\_ Act,  
 [year]}<sup>9§§</sup>  
 and having its registered office at \_\_\_\_\_ (hereinafter referred to as the  
**"Second Part"** which expression shall, unless repugnant to the context include its  
 successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively  
 referred to as the **"Parties"** and each is individually referred to as a **"Party"**

**WHEREAS,**

- (A) [Name of the Project Authority] (hereinafter referred to as the **"Authority"**  
 which expression shall, unless repugnant to the context or meaning thereof,  
 include its administrators, successors and assigns) has invited Bids (the **"Bid"**)  
 by its Request for Proposal No dated \_\_\_\_\_ (the **"RFP"**) for selection  
 of Bidders for [mention name of project] (the **"Project"**) procurement of Goods.
- (B) The Parties are interested in jointly bidding for the Project as members of a  
 Joint Venture and in accordance with the terms and conditions of the RFP  
 document in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the  
 Joint Venture shall enter into a Joint Bidding Agreement and furnish a copy  
 thereof with the Bid Application.

**NOW IT IS HEREBY AGREED as follows:**

**1. Definitions and Interpretations**

In this Joint Bidding Agreement, the capitalised terms shall, unless the

<sup>8§</sup> Please mention name of the Lead Member of the JV/ Joint Venture, whether company,  
 LLP, partnership, etc, stating the relevant Act (with year) under which incorporated.

<sup>9§§</sup> Please mention name of other than Lead Member of the JV/ Joint Venture, whether  
 company, LLP, partnership, etc, stating the relevant Act (with year) under which  
 incorporated.

context otherwise requires, have the meaning ascribed thereto under the RFP.

## 2. Joint Venture

- 2.1 The Parties do hereby irrevocably constitute an unincorporated Joint Venture (the “JV” or “Joint Venture”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Joint Venture and not individually and/ or through any other Joint Venture constituted for this Project, either directly or indirectly or through any of their Associates.

## 3. Covenants

The Parties hereby undertake that in the event the Joint Venture is declared the selected Bidder and awarded the Project, it shall, if required by the terms of the local laws of Authority’s Country and the Bidding Process, incorporate a joint venture / or any other form of corporate entity for entering into an Agreement with the Authority and for performing all its obligations as the Contractor in terms of the Agreement for the Project.

## 4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- a) Party of the First Part shall be the Lead member of the Joint Venture and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Joint Venture during the Bidding Process and until the date under the Agreement when all the obligations of the Contractor shall become effective;
- b) The Lead Member shall exclusively carry out the overall project management and coordination of the Project;
- c) In case the contract to undertake the Project is awarded to the Joint Venture, the Lead Manager conveys the commitment(s) of a Lead Member in accordance with the RFP;
- d) Party of the Second Part shall be \_\_\_\_\_; and {define the role of the Second Party or state “the other member of the Joint Venture”};
- {(c) Party of the Third Part shall be \_\_\_\_\_<sup>10\$</sup>; and}
- {(d) Party of the Fourth Part shall be \_\_\_\_\_<sup>11\$</sup>. and}

## 5. Joint and Several Liability

Notwithstanding the arrangement inter se the parties, the Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Agreement, till such time as the final

<sup>10\$</sup> define the role of the Second Party or state “the other member of the Joint Venture”

<sup>11\$</sup> define the role of the Second Party or state “the other member of the Joint Venture”

completion of the Project is achieved in accordance with the Agreement. For avoidance of doubt, the completion of project shall mean the end of maintenance period.

## **6. Stake in the Joint Venture**

6.1 The Parties agree that the proportion of shareholding / participation interest/ profit share/ economic interest, amongst the Parties shall be as follows:

First Party:

Second Party:

6.2 The Parties undertake that a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital / participation interest / profit share / economic interest/ any such equivalent instrument representing ownership in the Bidder, as applicable, of the JV/ Joint Venture shall, at all times be held by the First Party.

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above shall, at all times between the Appointed date of the Project and the final completion thereof, hold subscribed and paid up equity share capital or any such equivalent instrument representing ownership in the Bidder, as applicable, of the JV/ Joint Venture equivalent to at least 26% (twenty six per cent) of the Total Project Cost.

## **7 Representation of the Parties**

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorized by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favor of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Joint Venture member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other

governmental authorization, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## 8 Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the final completion of the Project is achieved under and in accordance with the Agreement, in case the Project is awarded to the Joint Venture. However, in case the Joint Venture is does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not selected for award of project or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

## 9 Miscellaneous

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

9.3 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

IN WITNESS WHEREOF THE PARTIES ABOVE NAMED HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of

LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)

(Signature)

(Name)

(Designation)  
(Address)

(Designation)  
(Address)

In the presence of:

1.

2.

*Notes:*

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

**RFP APPENDIX-VII: FORM OF BANK GUARANTEE**

(Refer Sub-Clause 2.26 [ Performance Security])

**(Performance Security)**Beneficiary: *[Insert name of the Project Authority]*

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

Contractor: \_\_\_\_\_

Guarantee No.: \_\_\_\_\_

Guarantor: *[Insert name and address of the Bank issuing the Guarantee]*

We have been informed that \_\_\_\_\_ *[Name of the Bidder]* (hereinafter called the "**Applicant**")

[has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary

OR

has been issued a Letter of Award bearing No. \_\_\_\_\_, dated \_\_\_\_\_ by the Beneficiary],

for the execution of \_\_\_\_\_ (hereinafter called the "**Contract**").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required to be submitted by the Applicant to the Beneficiary.

At the request of the Applicant, we as Guarantor, hereby unconditionally and irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ (United States Dollars \_\_\_\_\_), (the "**Guaranteed Amount**") upon receipt by us of the Beneficiary's demand in writing supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for demand or the sum specified therein. We agree that in accordance with the terms and conditions of the Contract if there is an accumulative increase or decrease of the Contract Price, and that therefore the Guaranteed Amount should be adjusted, we shall promptly inform you that we have received such statement and have adjusted the Guaranteed Amount accordingly. In the case of a request for a decrease of the amount of the Performance Security, the above statement shall be accompanied by your written consent to such decrease.

This guarantee shall expire, on [*insert 60 (sixty) days after the expected completion date as described in Conditions of Contract Clause 13.3* (the “**Expiry Date**”), and any demand for payment under it must be received by us at the following office [*insert address of office and email for correspondence*] on or before the Expiry Date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

---

*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

**RFP APPENDIX-VIII: FORMAT OF LOA**

(See Sub-Clause 3.7.4)

No. \_\_\_\_\_

Dated \_\_\_\_\_

To,

(Name of selected Bidder)

**Subject: (project description)- Letter of Award (LOA)-Reg.**

Reference: Your bid for the subject work dated .....

Sir,

This is to notify you that your Bid dated ..... for supply of Goods (project Description), at your quoted bid price amounting to USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words) has been determined to be the lowest evaluated bid and is substantially responsive and has been accepted.

2. You are requested to return a duplicate of the LOA as an acknowledgement within 10 (ten) days of the date of issue of LOA and provide your consent to enter into Agreement and the enforceability of the provisions of the Agreement.

3. You are also requested to furnish Performance Security for supply for an amount of .....as per Clause 2.26 [ Performance Security for supply] of the RFP within 30 (thirty) days of receipt of this Letter of Award (LOA).

4. You are also requested to execute the Agreement within 30 (Thirty) days of the date of issue of LOA.

5. In case of failure of submission of Performance Security for supply within 30 (thirty) days period from this LOA the award shall be deemed to be cancelled and Bid Security shall be encashed by the Authority as per Clause 2.26 [Bid Security] of the RFP.

Yours faithfully,

(Authorized signatory)



**ENCLOSURE-I Project Information Memorandum**  
(Include Project Description)

Country:

State/Region:

Indian Mission:

- Background and Major Component of the Project:
- Salient Features:
- Site and Location:
- Execution Period:
- Description of Goods to be supplied:

**CONDITIONS OF CONTRACT**

**PROCUREMENT OF GOODS**

## PART-IV: FORM OF THE CONTRACT AGREEMENT

### Contract Agreement

*[To be adequately stamped and registered, if required in accordance with Applicable Law]*

THIS CONTRACT AGREEMENT is entered into on this the..... day of ....., 20.....  
("Contract Agreement")

#### Between

#### [Name and Details of Project Authority]

(hereinafter referred to as the "**Authority**" or "**Project Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**;

#### And

[insert name of Selected Bidder], the selected Bidder having its registered office at {insert registered office address of the Selected Bidder}, having Company Identification Number (CIN) as {insert CIN}, (hereinafter referred to as the "**Contractor**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **Other Part**.

#### Whereas:

- A. The Authority intends to undertake [Name of Project] (hereinafter called the "**Project**").
- B. The Authority resolves to undertake the procurement of Goods in accordance with the terms and conditions to be set forth in an agreement to be entered into.
- C. The Authority, accordingly, invited the proposals (the "**Request for Proposal**" or "**RFP**") from the eligible Prequalified Bidders as per the technical and commercial terms and conditions prescribed in the RFP for undertaking the Project.
- D. After evaluation of the bids received, the Authority accepted the Bid of the Selected Bidder and issued its Letter of Award No. {insert details} dated {insert date} (hereinafter called the "**LOA**") to the Selected Bidder for the Project at the Contract Price specified hereinafter, requiring the selected Bidder to, inter alia:
  - (i) Give its consent to enter into this Contract Agreement and the enforceability of the provisions thereof, within 10 (ten) days of the

receipt of LOA;

- (ii) Submit Performance Security as per RFP requirements, and
- (iii) Execute this Agreement within 30 (Thirty) days of the date of receipt of LOA.

E. The Contractor has fulfilled the requirements specified in Recital D (i) and D (ii) above.

The Authority and the Contractor agree as follows:

1. In this Contract Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Agreement referred to.

2. The following documents shall be deemed to form and be read and construed as part of the Agreement formed by execution of this Contract Agreement:

- (i) the Letter of Award (LOA);
- (ii) the Letter comprising the Technical Bid of the Contractor;
- (iii) the Letter comprising the Financial Bid of the Contractor;
- (iv) the minutes of the Pre-Bid Meeting(s);
- (v) the addenda Nos \_\_\_\_\_(if any);
- (vi) Conditions of Contract
- (vii) the Specifications and Standards;
- (viii) the Drawings;
- (ix) the completed Schedules (as attached with this Contract Agreement)
- (x) any appendices (as attached with this Contract Agreement); and
- (xi) any other documents forming part of the Agreement.

3. In consideration of the payments to be made by the Authority to the Contractor as specified in the Agreement, the Contractor hereby covenants with the Authority to supply the Goods, to remedy defects, and undertake maintenance therein, in conformity in all respects with the provisions of the Agreement.

4. The Authority hereby covenants to pay the Contractor in consideration of the execution and completion of the Project in the manner contemplated in the Agreement, the remedying of defects therein and maintenance, the Contract Price or such other sum as may become payable under the provisions of the Agreement at the times and in the manner prescribed by the Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS**

**AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED  
For and on behalf of THE AUTHORITY by:

(Signature)  
(Name)  
(Designation)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
THE CONTRACTOR by:

(Signature)  
(Name)  
(Designation)

In the presence of :

Authority's Witness: 1. {2}.

Contractor's Witness: 1. {2}.

{COUNTERSIGNED and accepted by :

{Name and particulars of other members of the Joint Venture}

## PART-V. GENERAL CONDITIONS OF CONTRACT (GCC)

### SECTION-6 DEFINITIONS AND INTERPRETATION

#### 6.1 Definitions

6.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

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

**“Affiliate”** means, in relation to either Party and/or Members, a person who controls, is controlled by, or is under the common control with such Party or Member;

**“Agreement”** means the Contract Agreement, Letter of Award the Letter comprising the Technical Bid of the Contractor, Letter comprising the Financial Bid of the Contractor, minutes of the pre-bid meeting(s), addenda (if any), these Conditions, the Specifications and Standards, the Drawings, the Schedules, appendices and further documents (if any) which are specified as part of the Agreement in the Contract Agreement, all being the binding contract between the Parties to the Contract Agreement.

**“Applicable Guidelines”** means (i) the Public Procurement Guidelines of the Government of India and Procurement Guidelines of the Export-Import Bank of India, (ii) IDEAS Guidelines, and (iii) Public Procurement Order No. 4 dated February 23, 2023, issued by the Public Procurement Division of the Department of Expenditure, Ministry of Finance, Government of India as may be in force and effect, including any clarifications / amendments, along with any other guidelines if specified in the **Special Conditions of Contract (SCC)**.

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

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

**“Applicable Permits”** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws of Authority’s Country and Applicable Laws in India in connection with the completion and maintenance of the Project during the subsistence of this Agreement;

**“Appointed Date”** shall mean the date as **defined in the SCC**;

**“Authority”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**“Authority’s Country”** means the country in which the Project Site (or most of it) is located, where the Permanent Works are to be executed;

**“Authority’s Engineer”** or **“Authority’s Representative”** means the person appointed by the Authority to act as the Engineer for the purposes of the Agreement, or other person appointed from time to time by the Authority and notified to the Contractor in accordance with Clause 19.1.1;

**“Base Date”** means the last date of that calendar month, which precedes the Bid Due Date by at least 28 (twenty eight) days;

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

**“Bids”** shall mean the bids submitted by any and all pre-qualified Bidders;

**“Bid Security”** means the bid security provided by the Contractor to the Authority in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

**“Calendar Year”** means the year commencing from the first day of January of any year and ending on the thirty-first day of December of the same year;

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

(a) the enactment or commencement of any new law in the Authority’s Country;

(b) the repeal, modification or re-enactment of any existing law in the Authority’s Country;

(c) change in the interpretation or application of any law in the Authority’s Country 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; or

(d) any change in the rates of any of the Taxes or royalties in the Authority’s Country that have a direct effect on the Project;

e) the introduction, adoption, change or repeal by any Government Instrumentality of any material condition in any Applicable Permits or in connection with the issuance, renewal, or modification of any Applicable Permits, which apply across the industry and not only for the purposes of this particular Project or is required to be complied by the Contractor.

**“Completion Date” or “Delivery Completion Date” or “Date of Completion”** shall mean the date on which the Works are deemed to have been completed in accordance with the Agreement ; or date stated in the Final Acceptance Certificate or Maintenance Completion Certificate as the case may be, issued by the Authority/ Authority’s Engineer; or the date on which part(s) are taken over or used by the Authority, as relevant to the context;

**“Consignee”** means the person to whom the goods are required to be delivered as stipulated in the Agreement.

**“Contract Inclusion Letter”** means the approval accorded by Exim Bank for funding the Project and this Agreement under the LOC;

**“Contractor” or “Supplier”** means the Indian Entity named as contractor in the Letter of Award accepted by the Authority and the legal successors in title to this person(s).

**“Contractor”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**“Contractor’s Personnel”** means the Project Manager, Contractor’s Representative and all personnel whom the Contractor utilizes on Site, who may include the staff, labor



and other employees of the Contractor and of each Sub-contractor; and any other personnel assisting the Contractor in the execution of the Works. Contractor's Personnel includes Key Personnel;

**"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);

**"Delivery Period"** means the period commencing from the Appointed Date and ending on the date of the Provisional Acceptance Certificate;

**"Cost"** means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit;

**"Cure Period"** means the period specified in this Agreement (if not stated, period of 7 (seven) days) 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 Contractor requires any reasonable action by the Contractor that must be approved by the Authority or the Authority's Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Authority's Engineer to accord their approval;

**"Day"** means a calendar day and **"year"** means 365 days;

**"Defect"** means any defect or deficiency in the Goods or any part thereof, which does not conform with the Specifications and Standards;

**"Document"** or **"Documentation"** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs,

films, cassettes, flash drive, hard drive, solid state drive, or expressed in any other written, electronic, audio or visual form; and shall include the Contractor's Documents;

**"Drawings"** means all of the drawings, calculations and documents pertaining to the Project as set forth in **Schedule-G**, and shall include 'as-built' drawings of the Project;

**"Emergency"** means a condition or situation that is likely to endanger the safety or security of the individuals on or about the Project, including Users thereof, or which poses an immediate threat of material damage to the Works or any of the Project Assets;

**"Encumbrances"** means, 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;

**"Exim Bank"** means Export-Import Bank of India, a corporation established under the Export-Import Bank of India Act, 1981 (an enactment by the Parliament of India) and having its Head Office at Centre One Building, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai-400 005, India;

**"GOI"** means the Government of India;

**"Goods"** (including the terms 'Stores', 'Material(s)' in specific contexts) means and includes all articles, material, commodity, or procured or otherwise acquired by the Authority. Any reference to Goods shall be deemed to include specific small work or some services that are incidental or consequential to the supply of such goods;

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced contractor 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 Contractor in accordance with this Agreement, Applicable Laws of India, Applicable Laws of Country, and Applicable Permits of Country in reliable, safe, economical and efficient manner;

**“Government”** means the Government of the Authority’s Country in which the Project Site (or most of it) is located, where the Goods are to be shipped or delivered, including specific small work or some services that are incidental or consequential to the supply of goods to be undertaken;

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

**“Handing Over of Site”** means the constructive possession of the Site free from encroachments and encumbrances, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for completion of the Project in accordance with this Agreement;

**“IDEAS Guidelines”** means the Guidelines issued by the Government of India vide letter F.No.5/7/2019-IDEAS dated March 31, 2022, as amended from time to time

**“Inspection”** means activities such as measuring, examining, testing, analysing, gauging one or more characteristics of the goods or services or works, and comparing the same with the specified requirement to determine conformity

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

**“Joint Venture”** or **“JV”** means the consortium of entities which have formed a joint venture for implementation of this Project;

**“Lead Member”** shall, in the case of a Joint Venture, mean the member of such Joint Venture who has been so identified in the Bid submitted by the Contractor;

**“Letter of Award” or “LOA”** means the letter of formal Award, signed by the Authority, including any annexed memoranda comprising agreements between and signed by both Parties;

**“LOC”** means the Lines of Credit extended by Exim Bank to the Project Authority or to the Government in the country of the Project Authority, under the IDEAS Guidelines, the proceeds from which shall be partly or fully be used for funding this Agreement;

**“Materials”** means things of all kinds intended to form or forming part of the Goods, including the supply-only materials (if any) to be supplied by the Contractor under the Agreement;

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

**“Notice of Dissatisfaction”** means the notice given by either Party to the other indicating its dissatisfaction;

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

**“Permanent Works”** means the permanent works to be executed by the Contractor that are incidental or consequential to the supply to goods under the Agreement;

**“Plant”** means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Authority and relating to the construction or operation of the Works;

**“Performance Security”** (includes the terms ‘Security Deposit’ or ‘Performance Bond’ or ‘Performance Bank Guarantee’ or other specified financial instruments in specific contexts) means a monetary guarantee to be furnished by the successful Bidder or Contractor in the form prescribed for the due performance of the Agreement

**“Project Assets”** means all physical and other assets relating to (a) tangible assets such as goods; and (b) project facilities situated on the Site;

**“Section”** means a part of the Project;

**“Site”** means the places where the goods are to be delivered, including specific small work or some services that are incidental or consequential to the supply of goods to be undertaken and any other places as may be specified in the Agreement as forming part of the Site;

**“Specifications and Standards”** means the drawing/ document/ standard or any other details governing the construction, manufacture or supply of goods or performance of services that prescribes the requirement to which goods or services have to conform as per the Contract.

**“Sub-contractor” or “Subcontractor”** means any person or persons to whom a part of the Works has been sub-contracted by the Contractor and the permitted legal successors in title to such person or sub-contractors (to any tier) of such person, but not an assignee to such person;

**“Taxes”** means any taxes in India or in the Authority’s Country including all corporate/ personal / value added taxes, excise duties, import / customs duties, sales tax, special levies, local taxes, cess and any impost or surcharge 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.

**“Temporary Works”** means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects;

**“Test”** means such test as is prescribed by the particulars governing the construction, manufacture or supply of Goods as may be prescribed by the Agreement or considered necessary by the Authority’s Engineer or any agency acting under the direction of the Authority whether performed or made by Authority’s Engineer or any agency acting under the direction of the Authority;

**“User”** means a person who uses or intends to use the Project or any part thereof in accordance with the provision of this Agreement and Applicable Laws;

**“Works”** means all works including survey and investigation, design, drawing, drafting, construction, fabrication, repair, overhaul, renovation, decoration, installation, erection, excavation, dredging, Temporary

Works and other things necessary to complete the Project in accordance with this Agreement.

## 6.2 Interpretation

6.2.1 In this Agreement, unless the context otherwise requires,

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

(b) references to 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;

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

(d) 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;

(e) any reference to ‘Goods’ shall be deemed to include the incidental works or services as required to deliver the Goods;

(f) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the delivery Period, and “develop” shall be construed accordingly;

(g) any reference to any period of time shall mean a reference to that according to standard time in the Country unless the context otherwise requires;

(h) any reference to “**day**” shall mean a reference to a calendar day;

(i) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in New Delhi, India and in Capital City of the Country are generally open for business;

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

(k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;

provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(l) the words implying singular shall include plural and vice versa;

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

(n) the term “in writing” means communicated in written form and delivered against receipt;

(o) “**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;

(p) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganization**” 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, reorganization, dissolution, arrangement, protection or relief of debtors;

(q) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Clause(s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(r) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Authority’s Engineer shall be valid and effective only if it is in writing under the hand of a duly authorized



representative of such Party or the Authority's Engineer, as the case may be, in this behalf and not otherwise;

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

(t) references to Recitals, Clauses, Sub-Clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-Clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;

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

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

6.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Contractor to the Authority shall be provided free of cost and in three copies, and if the Authority is required to return any such Documentation with its comments and/or approval, it shall be entitled to retain two copies thereof.

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

6.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

### 6.3 Measurements and Arithmetic Conventions

6.3.1 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.

#### **6.4 Priority of Agreements and Errors/Discrepancies**

6.4.1 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 resolved in the manner set out in Sub-Clause 6.4.2.

6.4.2 Subject to the provisions of Sub-Clause 6.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between the provisions of the Special Conditions of Contract and this General Conditions of Contract, the provisions of the Special Conditions shall prevail;
- (b) between the Clauses of this General Conditions of Contract and the Schedules, the Clauses of Schedules shall prevail;
- (c) between the Schedules and Special Conditions of Contract, the Special Conditions shall prevail;
- (d) between two or more Clauses of this Agreement, the provisions of a specific Clause of this Agreement relevant to the issue under consideration shall prevail over those in other Clauses;
- (e) between Schedules and Annexes, the Schedules shall prevail;
- (f) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (g) between RFP and contract, the conditions of contract shall prevail.
- (h) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (i) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (j) between any value written in numerals and that in words, the latter shall prevail; and

- (k) in all other cases not forming a part of the above, the Special Conditions Contract shall prevail.

## **6.5. Modifications and Amendments**

6.5.1. If any of the Agreement provisions must be modified after the Agreement have been signed, the modifications shall be made in writing and signed by the Authority, and no modified provisions shall be applicable unless such modifications have been done. No variation in or modification of the terms of the Agreement shall be made except by a written amendment signed by the Authority. Requests for changes and modifications may be submitted in writing by the Contractor to the Authority. At any time during the currency of the Agreement, the Authority may suo-moto or, on request from the Contractor, by written order, amend the Agreement by making alterations and modifications within the general scope of the Contract.

6.5.2 If the Contractor does not agree to the suo-moto modifications/ amendments made by the Authority, he shall convey his views within 14 days from the date of amendment/ modification. Otherwise, it shall be assumed that the Contractor has consented to the amendment.

6.5.3 Any verbal or written arrangement abandoning, modifying, extending, reducing, or supplementing the Agreement or any of the terms thereof shall be deemed conditional and shall not be binding on the Authority unless and until the same is incorporated in a formal instrument and signed by the Authority, and till then the Procuring Entity shall have the right to repudiate such arrangements.

6.5.4. Any variation or amendment in the Scope as per Section 7 in the Agreement to be covered under the LOC is subject to approval of Exim Bank.

## **6.6 Joint and several liability**

6.6.1 If the Contractor has formed a Joint Venture of two or more persons for implementing the Project:

(a) these persons shall, without prejudice to the provisions of this Agreement, be deemed to be jointly and severally liable to the Authority for the performance of this Agreement; and

(b) the Contractor shall ensure that no change in the composition of the Joint Venture is effected. However, the Authority may permit change in the composition of the Joint Venture in exceptional and unavoidable circumstances. Provided that the Authority shall permit such change only with prior approval of Exim Bank. It is however clarified that, upon such permitted change in the composition of the Joint Venture, each Member and the Joint Venture shall

continue to adhere to the Technical Capacity and Financial Capacity requirements as per this RFP.

6.6.2 Without prejudice to the joint and several liability of all the members of the Joint Venture, the Lead Member shall represent all the members of the Joint Venture and shall at all times be liable and responsible for discharging the functions and obligations of the Contractor. The Contractor shall ensure that each member of the Joint Venture shall be bound by any decision, communication, notice, representation, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member.

## **6.7 Law and Language**

6.7.1 The Agreement shall be governed by the applicable law of the Authority's Country and the Procurement Guidelines of Exim Bank shall be adhered to.

6.7.2 The language of the Agreement shall be English. If there are versions of any part of the Agreement which are written in more than one language, the version which is in English shall prevail. The language for communications and all notices, documentation and proceedings which relate to this Agreement between the parties shall be in writing and in English.

## SECTION-7 SCOPE OF THE PROJECT

### 7.1 Scope of the Project

7.1.1 Under this Agreement, the scope of the Project (“**Scope of the Project**”) shall mean and include:

(a) Undertaking the supply of Goods of the description, specifications and drawings and in quantities set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of Incidental services as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**;

(b) Undertaking the supply of spares along with the main equipment or after commissioning of the equipment for maintenance of equipment beyond the warranty period, as specified in the SCC; and

Performance and fulfilment of all other obligations of the Contractor, including maintenance obligations, in accordance with the provisions of this Agreement and matters incidental thereto to the extent required by Good Industry Practice or necessary for the performance of any or all of the obligations of the Contractor under this Agreement.

### 7.2 Scope of Incidental Services

7.2.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) training of the Purchaser’s personnel, at the Supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

7.2.2 The Contractor shall, unless specifically excluded in the Agreement, perform all such Work and/or supply all such items and materials not specifically mentioned in the Agreement but are required for attaining Completion of the Project as if such Work and/or items and materials were expressly mentioned in the Agreement.

7.2.3 After completion of the Project, the Contractor shall maintain the project in accordance with Section-17 [Maintenance Obligations]. In addition to the supply of Mandatory Spare Parts included in the Agreement, if any, the Contractor agrees to supply spare parts required for the operation and maintenance of the Project as identified in and in accordance with Clause 17.1 [Maintenance Manual].

**SECTION-8 OBLIGATIONS OF THE CONTRACTOR****8.1 Obligations of the Contractor**

8.1.1 Subject to and on the terms and conditions of this Agreement, the Contractor shall undertake the supply of Goods of the description, specifications, and Drawings, and in the quantities outlined under this Agreement and on the dates specified therein.

The Contractor shall be required to perform specified incidental works and services integral to the supply of Goods under this Agreement.

The Contractor shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

8.1.2 The Contractor shall supply entirely brand new, unused goods and incorporate all recent improvements in design and materials unless prescribed otherwise by the Authority in the Agreement, conform to materials, manufacture and workmanship as stipulated in the Agreement, free of all defects and faults using specified/ appropriate materials, manufacture, and workmanship throughout and consistent with the established and generally accepted standards for Goods of the type ordered and in full conformity with the specification, Drawing or samples, if any.

8.1.3 The Contractor shall comply with all Applicable Laws, Applicable Guidelines and Applicable Permits (including renewals as required), environmental and forest clearances approvals / permits, local customs, rules, and regulations in the performance of its obligations including Maintenance Obligations under this Agreement.

8.1.4 Save and except as otherwise provided in this Agreement or Applicable Laws, the Contractor shall, in discharge of all its obligations under this Agreement, conform with and shall adhere to Good Industry Practice at all times.

8.1.5 The Contractor shall remedy and rectify any and all loss or damage to the Project assets, occurring on or after the Appointed Date and until the date of Provisional Acceptance Certificate, with respect to the Works completed prior to the issuance of the Provisional Acceptance Certificate and/or Final Acceptance Certificate, with respect to the Works referred to in the Punch List, at its own cost, save and except to the extent that any such loss or damage shall have arisen from any default of the Authority or on account of a Force Majeure Event in which case the provisions of Section-24 [Termination] shall apply.

8.1.6 The Contractor shall remedy any and all loss, defects or damage to the Project during the Warranty/Guarantee Period at its own cost, to the extent that such loss, Defect or damage shall have arisen out of the reasons specified in Clause 18.3 [Cost of remedying Defects]. The Contractor shall maintain the Project

during the Warranty/Guarantee Period at its own cost, to the extent of meeting its Maintenance Obligations in accordance with Section-17 [Maintenance Obligations].

8.1.7 The Contractor shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) Within 15 days of Signing of the Agreement, provide to Exim Bank necessary documents and information for issuance of the Contract Inclusion Letter in accordance with Sub-Clause 9.5.1.

(b) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits set forth in **Schedule-E** and other Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

(c) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for Materials, methods, processes, know-how and systems used or incorporated into the Project;

(d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Sub-contractors in connection with the performance of its obligations under this Agreement;

(e) ensure and procure that its Sub-contractors comply with all Applicable Permits and Applicable Laws in performance by them of any of the Contractor's obligations under this Agreement;

(f) 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 be violative of any of the provisions of this Agreement;

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

(h) ensure that Contractor and its Sub-contractors comply with the safety and welfare measures for labour in accordance with local laws and Good Industry Practice;

(i) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, Documents relating to the Project, and Change of Scope Orders and other communications sent under this Agreement, and provide access to all these documents at all reasonable times to the Authority, Authority's Engineer and its authorised personnel, and Exim Bank;

(j) cooperate with other contractors employed by the Authority, Government Instrumentalities and personnel of Government Instrumentalities;

(k) not interfere unnecessarily or improperly with the convenience of the public, or the access to and use and occupation of all the existing facilities within the Site, irrespective of whether they are public, in the possession of the Authority, Government Instrumentalities or others;

(l) shall be responsible for the adequacy, stability and safety of all the Contractor's operations and activities, of all methods of Construction and of all the Works;

(m) effect and maintain at its own cost the insurances in accordance with this Agreement;

(n) ensure that the Construction, Materials and workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

8.1.8 The Contractor shall undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works. The Contractor shall provide all necessary superintendence of the Works for the proper fulfilling of the Contractor's obligations under this Agreement.

8.1.9 The Contractor shall provide the Contractor's Documents, and shall make available all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the execution, completion of Works and remedying defects and fulfilling the Contractor's obligations under this Agreement.

8.1.10 The Contractor shall maintain required staff and necessary. The Contractor shall also ensure or cause to ensure required staff,



equipment, and Materials for maintenance of the Project during the Maintenance Period.

8.1.11 The Contractor shall ensure that the value of goods and services sourced from India (the “**Indian Content**”) by the Contractor under this Agreement shall constitute at least the percentage of the total Contract Price **as specified in the SCC**. The materials, equipment and services to be supplied under the Contract may have their origin in any country subject to the restrictions specified in the Bidding Documents and provisions of this Contract. The restrictions on the Bidder including but not limited to the provisions of (RFP) Clause 2.2.10 shall also apply to the materials, equipment and services to be supplied under the Contract. At the Authority/ Exim Bank’s request, contractor may be required to provide evidence of the origin of materials, equipment and services. The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

8.1.12 The Contractor shall facilitate and attend to the inspection, if any, carried out by the Authority / Authority’s Engineer, Government Instrumentalities or the Exim Bank and/or persons appointed by the Bank, comply with their statutory requirements and effectively arrange for replying to their observations and remarks.

8.1.13 The Contractor shall give all notices, pay all applicable taxes, duties and fees, and obtain all permits, licences and approvals, as required by the laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Authority harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence. Levy of taxes shall be in accordance with Sub-Clause 20.1.3.

## **8.2 Obligations relating to Sub-Contracts and any other agreements**

8.2.1 The Contractor shall not sub-contract Works comprising more than the percentage of the Contract Price **as specified in the SCC** and shall carry out the remaining Works directly under its own supervision and through its own personnel. The Parties expressly agree that only for the purposes of this Sub-Clause 8.2.1, the Contract Price shall exclude any sub-contract for supplier of labour and material.

8.2.2 The Parties agree that in case of the Contractor being a JV, the obligation of the Contractor to carry out Works corresponding to at least the percentage of the Contract Price **as specified in the SCC** shall be discharged solely by the Lead Member. Further, The Parties agree that the obligation of the Contractor to carry out

Works corresponding to at least the percentage of the Contract Price **as specified in the SCC** shall be discharged solely by the JV member(s).

8.2.3 The Contractor shall not sub-contract any part of the Works for which sub-contracting is not permitted **as specified in the SCC**.

8.2.4 In the event of any Sub-contract for Works, the Contractor shall take prior approval of the Authority's Engineer before entering into any such Sub-contract. The Contractor shall submit the name and particulars, including the relevant experience of the Sub-contractor, to the Authority's Engineer along with a request for seeking approval for appointment of the Sub-contractor. The Authority's Engineer, in consultation with the Authority, shall examine the particulars of the Sub-contractor and no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor or 15 (fifteen) business days from the date of receipt of last material information in this regard, whichever is later, shall convey its decision on appointment of the Sub-contractor. The Authority's Engineer shall provide reasons in case it decides not to proceed with the Sub-contract, and the Contractor shall comply therewith. For avoidance of doubt, such approval by the Authority's Engineer shall be required for appointment of all the Sub-contractors, irrespective of the Sub-contractor being an equipment supplier, labour or material supplier or any other Sub-contractor. The decision of the Authority's Engineer shall be final and binding on the Contractor.

8.2.5 Without prejudice to Clause 2.2.10, the Contractor shall follow the qualification criteria **as specified in the SCC** for the appointment of a Sub-contractor.

For clarification of doubt the qualification criteria specified in the SCC shall be over and above the eligibility criteria of the Sub-contractor in accordance with Clause 2.2.10 and other eligibility conditions in accordance with the Bidding Document.

8.2.6 The Contractor shall be responsible for the acts or defaults of any Sub-contractor, its agents or employees, as if they were the acts or defaults of the Contractor and approval of a Sub-contractor by the Authority / Authority's Engineer shall not establish any contractual relationship between the Sub-contractor and the Authority.

8.2.7 It is expressly agreed that the Contractor shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the agreements with its Sub-contractors or any other agreement that may be entered into by the Contractor, and no default under any such agreement shall excuse the Contractor from its obligations or liability hereunder.

### 8.3 Obligations relating to Employment of Foreign Nationals

8.3.1 The Contractor acknowledges, agrees and undertakes that employment of foreign personnel (including Indian personnel) by the Contractor and/or its Sub-contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals by the Government Instrumentalities, including employment/ residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Contractor. The Authority shall, on the request of the Contractor, endeavour in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's Personnel.

8.3.2 Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to cause any such visas/work permits and approvals by the Contractor or any of its Sub-contractors or their sub-contractors shall not in any manner (a) excuse the Contractor from the performance and discharge of its obligations and liabilities under this Agreement; or (b) be construed as a Force Majeure Event.

### 8.4 Obligations relating to Contractor's Personnel and Representative

8.4.1 The Contractor shall ensure and procure that the personnel engaged by it or by its Sub-contractors for performance of its obligations under this Agreement are at all times appropriately and adequately qualified, skilled and experienced in their respective functions in conformity with Good Industry Practice.

8.4.2 The Authority's Engineer may, for reasons to be specified in writing, direct the Contractor to remove any member of the Contractor's or Sub-contractor's personnel from the Project with the approval of the Authority, who

- (a) are involved in misconduct or lack of care;
- (b) carries out duties incompetently or negligently;
- (c) fails to perform within the provisions of the Agreement;
- or
- (d) persists in any conduct which is prejudicial to safety, health, or the protection of environment or personnel.

8.4.3 The Contractor shall, on receiving a direction from the Authority's Engineer under the provisions of the Sub-Clause 8.4.2, ensure and procure the removal of such person or persons from the Project with immediate effect. The Contractor shall further ensure that such persons have no further connection with the Project. The Contractor shall then appoint a suitable replacement for the person.

8.4.4 The Contractor shall appoint a Contractor's Representative (the "**Project Manager**") and shall give him all authority necessary to act on the Contractor's behalf under the Agreement.

8.4.5 The Project Manager shall, on behalf of the Contractor, receive instructions from the Authority and Authority's Engineer under Clause 19.4 [Instructions of the Authority's Engineer].

8.4.6 The Project Manager shall be fluent in the language for communications as specified in Clause 6.6 [Law and Language]. If the Project Manager is not fluent in the said language, the Contractor shall make competent interpreters available during all working hours.

8.4.7 Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, housing, feeding and transport.

8.4.8 The Contractor shall provide and employ on the Site in the installation of the facilities such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Agreement.

8.4.9 The Contractor shall at its own expense provide the means of repatriation to all of its and its Sub-contractor's personnel employed on the Agreement at the Site to the place where they were recruited or to their domicile. It shall also provide suitable temporary maintenance of all such persons from the cessation of their employment on the Agreement to the date programmed for their departure. In the event that the Contractor defaults in providing such means of transportation and temporary maintenance, the Authority may provide the same to such personnel and recover the cost of doing so from the Contractor.

## **8.5 Labor Laws**

8.5.1. This clause shall be applicable only if it is specifically indicated to be applicable in SCC. The Contractor shall obtain all relevant labour registrations and shall comply with all the relevant labour laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

8.5.2 The Contractor shall at all times during the progress of the Agreement use its best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst its employees and the employees of its Sub-contractors.

## **8.6 Rates of Wages and Condition of Labor**

8.6.1 The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

8.6.2 The Contractor shall inform the Contractor's Personnel about their liability and applicability to pay personal income taxes as applicable in respect of such of their salaries, wages and allowances as are chargeable under the Laws for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

**8.7 Working Hours** No work shall be carried out on the Site on locally recognized days of rest, or on public holidays or outside the normal working hours, unless:

- (a) otherwise stated in the Agreement,
- (b) the work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Authority's Engineer.

**8.8 Facilities for Staff and Labor** Except as otherwise stated, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Authority's Personnel as stated in the Specification. The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

**8.9 Health and Safety** 8.9.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. The Contractor shall:

- a. Comply with all applicable health and safety regulations and Laws;
- b. Comply with all applicable health and safety obligations specified in the Contract;
- c. Take care of the health and safety of all persons entitled to be on the Site and other places, if any, where the Works are being executed;
- d. Keep the Site, Works (and the other places, if any, where the Works are being executed) clear of unnecessary obstruction so as to avoid danger to these persons;
- e. Provide fencing, lighting, safe access, guarding and watching of the Works or Section thereof during the course of execution of Works;
- f. Provide health and safety training of Contractor's Personnel as appropriate maintain training records;
- g. Take precautionary and safety measures for prevention or reducing the risk of transfer of Sexually Transmitted Diseases (STD), Sexually Transmitted Infections or HIV-AIDS among the Contractor's Personnel and the local community.

8.9.2

	<p>8.9.3 The Contractor shall send to the Authority's Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Authority's Engineer may reasonably require.</p> <p>8.9.4 In the event of the death of any of the Contractor's Personnel or accompanying members of their families, the Contractor shall be responsible for making the appropriate arrangements for their return or burial.</p>
<b>8.10 Record of Contractor's Personnel</b>	The Contractor shall keep accurate records of the Contractor's Personnel, including the number of each class of Contractor's Personnel on the Site and their name, age, gender, hours worked, and wages paid. These records shall be available for inspection until the issuance of Final Acceptance Certificate.
<b>8.11 Alcohol or Drugs</b>	The Contractor shall not, otherwise than in accordance with the Applicable Laws import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal by Contractor's Personnel.
<b>8.12 Arms and Ammunition</b>	The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
<b>8.13 Prohibition of Forced or Compulsory Labor and Child Labour</b>	<p>8.13.1 The Contractor shall not employ "<b>Forced or Compulsory Labour</b>" in any form. "<b>Forced or Compulsory Labour</b>" consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.</p> <p>8.13.2 The Contractor shall not employ any child to perform any work that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.</p>
<b>8.14 Obligations relating to Contractor's care of the Works</b>	The Contractor shall bear full risk in and take full responsibility for the care of Works, and of Materials, Goods and equipment for incorporation therein, on and from the Appointed Date and until the date of Provisional Acceptance Certificate, with respect to the Works completed prior to the issuance of the Provisional Acceptance Certificate, and/or Final Acceptance Certificate, with respect to the Works referred to in the Punch List.
<b>8.15 Obligations relating to information</b>	8.15.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers necessary to enable it to perform any of its functions, the Contractor shall provide such information to the Authority forthwith and in the manner and form required by the Authority.



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

#### **8.16 Unforeseeable difficulties**

8.17.1 Except as otherwise specified in this agreement:

- (a) The Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Works;
- (b) The Contractor acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in this Agreement save and except as provided in Sub-Clause 9.1.2 and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Contractor, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion/ Delivery Date;
- (c) The Contractor accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Works;
- (d) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (e) the Scheduled Completion/Delivery Date shall not be adjusted to take account of any unforeseen difficulties or costs.

For the purposes of this Clause 8.17, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions, climatic conditions, which the Contractor encounters at the Site during execution of the Works. Provided, however, that such unforeseeable difficulties shall exclude the Force Majeure events as specified under Clause 22.2 [Non-Political Event], Clause 22.3 [Indirect Political Event] and Clause 22.4 [Political Event].

#### **8.18 Transport of Goods**

8.18.1 If no instruction is provided in the Agreement, the Contractor shall arrange transportation of the ordered Goods as per its procedure.

8.18.2 Shipping Arrangements:

In the case of FOB contracts, shipping arrangements shall be made by the Authority. The Contractor shall give adequate notice to the Authority and its Forwarding Agents/ Nominees about the readiness of the cargo from time to time and at least six weeks' notice in advance of the required date of dispatch for finalizing the shipping arrangements. In the case of CFR/ CIP/ CIF Contracts, the

Contractor shall arrange the shipment, insurance (as applicable) as per the instructions from the Authority. The Contractor shall be responsible for customs clearance, permits, fees and charges related to the import, transport and handling of all Goods, including all obligations necessary for their delivery to the Site.

#### 8.18.3 Airlifting

Should the Authority intend to airlift all or some of the Goods, the Contractor shall pack the Goods accordingly upon receiving intimation to that effect. Such deliveries shall be agreed upon well in advance and paid for as may be mutually agreed.

#### 8.18.4 Distribution of Dispatch Documents for Clearance/ Receipt of Goods

h. the Contractor shall send all the relevant dispatch documents well in time to the Authority to enable it to clear or receive (as the case may be) the Goods in terms of the Agreement. Unless otherwise stipulated in the Agreement, the usual documents involved and the drill to be followed in general for this purpose are as Procurement of Goods follows:

ii. For Local Goods within 24 hours of dispatch, the Contractor shall notify the Authority, consignee, and others concerned, if mentioned in the Agreement, the complete details of dispatch and also supply the following documents (as relevant) to them by post/ courier besides advance intimation by digital means (or as instructed in the Agreement or SCC):

- a. the Contractor's Invoice indicating, inter alia description and specification of the Goods, quantity, unit price, total value;
- b. Packing list;
- c. Insurance certificate;
- d. Railway receipt/ Road Consignment note, if applicable;
- e. Manufacturer's guarantee certificate and in-house inspection certificate;
- f. Inspection certificate issued by the Authority's Engineer
- g. Expected date of arrival of goods at destination and
- h. Any other document(s), as and if mentioned explicitly in the Contract.

iii. For Imported Goods, within 3 days of dispatch, the Contractor shall notify the Authority, consignee and other concerned, if mentioned in the Agreement, the complete details of dispatch and also supply the following documents to them by Courier (or as instructed in the Agreement), besides advance intimation by digital means:

- a. Clean on-Board Airway Bill/ Bill of Lading (B/ L)
- b. Original Invoice
- c. Packing List
- d. Certificate of Origin from Seller's Chamber of Commerce



- e. Certificate of pre-dispatch inspection by the Procuring Entity's representative/ nominee
- f. Certificate of Quality and current manufacture from OEM
- g. Dangerous Cargo Certificate, if any.
- h. Insurance Policy of 110% if CIP contract.
- i. Performance Bond/ Warranty Bond Certificate or origin '.

**8.19. Freight**

The Contractor shall dispatch the goods at standard routes identified by the Contractor. Where alternative routes exist, the Authority shall, if called upon to do so, indicate the most economical route available or name the authority whose advice in the matter shall be taken and acted upon. If any advice of any such authority is sought, his decision or advice in the matter shall be final and binding on the Contractor.

**8.20 Quantity Tolerance**

Unless otherwise stipulated in the Contract, the obligation for completing supplies by the Contractor shall be considered complete if the Goods have been supplied to the tolerance of plus or minus 5% of the quantity or of the total value of goods ordered in the Contract. Only the supplied quantity shall be paid for as per the terms of the Contract.

**8.21 Spare parts in Supply of Capital Goods/ Machinery and Plant**

8.21.1 If Agreement declares it to be the procurement of Capital Goods/ Machinery & Plant as specified in SCC, the Contractor shall supply/ provide any or all of the following materials, information, etc. about spare parts manufactured and/ or supplied by them:

a. The spare parts as selected by the Authority to be purchased from the Contractor, subject to the condition that such purchase of the spare parts shall not relieve the Contractor of any contractual obligation including warranty obligations; and

b. In case the production of the spare parts is discontinued within the service life of the equipment supplied hereunder (or a period stipulated in the Agreement)

(i) sufficient advance notice to the Authority before such discontinuation to provide adequate time for it to purchase the required spare parts etc., and

(ii) immediately following such discontinuation, as and if requested by the Authority, provide free of cost the designs, drawings, layouts, specifications, and alternative sources of supply of such spare parts

8.21.2 The Contractor shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods so that the same is supplied to the Authority promptly on receipt of the order from the Authority.

**8.22 Protection of Environment**

The Contractor shall take all reasonable steps to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations at the site. The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities

shall not exceed the values stated in the Specifications or prescribed by Applicable Laws.

### 8.23 Site Data

8.23.1 The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied itself before entering into this Agreement in all material respects including but not limited to:

- (a) the form and nature of the Site (including, inter-alia, the surface and sub-surface conditions and geo-technical factors);
- (b) the hydrological and climatic conditions;
- (c) the extent and nature of the works already completed and Materials necessary for the execution and completion of the Works and the remedying of any defects that includes already executed part also;
- (d) the suitability and the adequacy of the Site for the execution of the Works;
- (e) the means of access to the Site and the accommodation the Contractor may require;
- (f) arranging permits as required as per **Schedule-E** of this Agreement;
- (g) the requirements of operation and maintenance;
- (h) all other factors and circumstances affecting the Contractor's rights and obligations under this Agreement, the Contract Price and Time for Completion;
- (i) the Temporary Works required for the Contract, and familiarization with the local customs and regulations; and
- (j) the arrangements for logistics including shipping the goods, equipment, manpower etc. to the Project Site.

### 8.24 Clearance of Site

8.24.1 During the provision of the Works, and as a pre-condition to the issue of the Final acceptance Certificate, the Contractor shall clear away and remove from the Site, all Contractor's equipment, surplus material, wreckage, rubbish and Temporary Works, and shall keep the Site free from all unnecessary obstructions and shall not store or dispose of any Contractor's equipment or surplus materials on the Site. Provided that the Contractor shall maintain the equipment, Materials and manpower at the Project Site for the Warranty/ Guarantee Period and Maintenance Period to ensure that the Contractor continues to meet its obligations under this Agreement.

However, as a pre-condition to the issuance of maintenance completion certificate, the Contractor shall remove such

equipment, Materials and manpower on site for performance of its obligation during Warranty/ Guarantee period and Maintenance Period, the Contractor shall leave the Site and the Works in a clean and safe condition to the sole satisfaction of the Authority.

8.24.2 The Contractor shall confine the Contractor's operations to the Site, and to any additional areas which may be obtained by the Contractor and acknowledged by the Authority as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

#### **8.25 Sufficiency of the Contract Price**

8.25.1 The Contractor shall have satisfied itself as to the correctness and sufficiency of the Contract Price. The Contract Price shall cover all its obligations under this Agreement, in addition to all risks the Contractor has agreed to undertake under this Agreement, including those associated with the performance of its obligations including maintenance obligations under this Agreement and all things necessary for the provision of the Works in a manner satisfactory to the Authority and in accordance with this Agreement.

#### **8.26 Contractor's Documents**

8.26.1 The Contractor's Documents shall comprise the documents:

- (a) Stated in the Specifications and Standards;
- (b) Required to satisfy all Applicable Permits;
- (c) Design and Drawings;
- (d) Maintenance Manual; and
- (e) Any other document as required under the agreement.

8.26.2 Unless otherwise stated in the Specifications and Standards, the Contractor's Documents shall be written in the Language in accordance with Sub-Clause 6.6.2.

8.26.3 The Contractor shall prepare all Contractor's Documents and the Authority and the Authority's Engineer shall have the right to inspect the preparation of all these documents, wherever they are being prepared.

8.26.4 If the Specifications and Standards or this Agreements specify that a Contractor's Document is to be submitted to the Authority's Engineer for review, it shall be submitted accordingly, together with a notice from the Contractor stating that the Contractor's Document is ready for review and that it complies with this Agreement.

8.26.5 The Authority's Engineer shall, within the time period specified under this Agreement, or where no time period is specified, within 21 days after receiving the Contractor's Document and the notice from the Contractor, notify the Contractor:

- (i) of its no-objection (which may include comments concerning minor matters which will not substantially affect the Works); or
- (ii) that the Contractor's Document fails (to the extent stated) to comply with this Agreement, with reasons.

After receiving a notice under Paragraph 8.24.5(ii) above, the Contractor shall revise the Contractor's Document and resubmit it to the Authority's Engineer for review and the period of 21 days for review shall be calculated from the date that the Authority's Engineer receives it.

#### **8.27 Inspection**

The Contractor shall permit and shall cause its Sub-contractors and sub-consultants to permit, the Authority, Authority's Engineer, Exim Bank and/or persons appointed by the Exim Bank to inspect the premises of the Contractor, sub-contractors or Site and all accounts and records relating to the submission of the Bid and the performance of the obligations under the Agreement, and to have such accounts and records audited by auditors appointed by the Exim Bank, if required by the Exim Bank.

#### **8.28 Compliance with Laws**

8.28.1 The Contractor shall comply with all Applicable Laws, Applicable Laws in India, Applicable Guidelines including the IDEAS Guidelines, Applicable Permits (including renewals as required), Applicable Permits in India, local customs, rules, and regulations in the performance of its obligations under this Agreement.

8.28.2 As between the Parties, the Authority shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Authority. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of the Agreement. They shall not, without the Authority's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

#### **8.29 Debarment by Exim Bank**

The Contractor undertakes that it shall comply with the terms and conditions of this Agreement including the obligations of the Contractor. Failure to meet the obligations may lead to debarment by Exim Bank in accordance with the Debarment Policy of Exim Bank..

## SECTION-9 OBLIGATIONS OF THE AUTHORITY

### 9.1 Obligations of the Authority

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

9.1.2 The Authority shall specify the Scope of the Project and the Works to be performed by the Contractor.

9.1.3 All information and / or data to be provided by the Authority as described in this Agreement shall be deemed to be accurate, except when the Authority expressly states otherwise. Without Prejudice to the above, the Authority shall be responsible for the correctness of the following data and information provided by (or on behalf of) the Authority:

- (a) Portions, data and information which are stated in the Conditions of Contract as being immutable or the responsibility of the Authority;
- (b) Definitions of intended purposes of the Works or any parts thereof;
- (c) Criteria for the testing and performance of the completed Works; and
- (d) Portions, data and information which cannot be verified by the Contractor, except as otherwise stated in the Conditions of Contract.

9.1.4 The Authority shall be responsible for acquiring and providing access to all other areas reasonably required for the proper execution of Works under the Agreement, including all requisite rights of way and access to the Site for successful execution of the Project..

9.1.5 The Authority upon receiving the Works Performance Security under Clause 11.1 [Performance Security] and after signing of this Agreement, shall provide:

- (a) Handing Over of Site in accordance with the provisions of Clause 12.2 [Procurement of the Site] and Clause 12.3 [Delay in handing over the site] within a period of 30 (thirty) days from the date of request for site access by the Contractor, of no less than the percentage of the total land required for the Project **as specified in the SCC**; and
- (b) Approval of drawings in accordance with the Specifications and Standards, as specified in SCC and subject to the terms and conditions specified in such approval, to the extent possible.

9.1.6 If the Contractor suffers delays and/or incurs cost as a result of failure by the Authority to give any such approvals or access within the stipulated time, in accordance with the provisions of Sub-Clause 9.1.5, it shall entitle the Contractor to Time Extension and

Damages in accordance with the provisions of Clause 12.3 [Delay in handing over the site] and Clause 20.7 [Payment of Damages]. However, if and to the extent the Authority's failure was caused by any error or delay by the Contractor, including any error or delay in submission of any applicable Contractor's Documents, the Contractor shall not be entitled to such Time Extension.

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

- (a) upon written request from the Contractor, provide reasonable assistance to the Contractor in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable than those generally available to commercial customers receiving substantially equivalent services;
- (b) ensure that no barriers that would have a Material Adverse Effect on Works are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (d) support, cooperate with and facilitate the Contractor in the implementation of the Project in accordance with the provisions of this Agreement;
- (e) shall make necessary shipping arrangements in case of FOB Contracts, subsequent to notice by the Contractor about the readiness of the cargo as per Clause
- (f) shall provide reasonable assistance for customs clearance, permits, related to the import and handling of all Goods;
- (g) upon written request from the Contractor and subject to the provisions of Clause 8.3 [Obligations relating to employment of foreign nationals], provide reasonable assistance to the Contractor and any expatriate personnel of the Contractor or its Sub-contractors to obtain applicable visas and work permits for the purposes of discharge by the Contractor or its Sub-contractors of their obligations under this Agreement and agreements with the Sub-contractors.
- (h) shall obtain environmental and forest clearance for the Project from the concerned authorities and Government Instrumentalities as per Good Industry Practice;
- (i) shall provide sufficient, properly qualified operating and maintenance personnel;
- (j) shall be responsible for the continued operation of the Project after Completion and shall be responsible for facilitating the Tests in accordance with Clause 14.10 [Tests] and Clause 15.1 [Tests on Completion].

9.1.8 In case of any variation in the Contract Price, in accordance with any provision of this Agreement or otherwise, the payment for which is to be made from the proceeds of the LOC through a Payment Authorization issued by the Borrower to Exim Bank, the Authority shall obtain consent of Exim Bank before any such variation in the Contract Price is approved by the Authority.

**9.2 Obligations relating to Operation & Maintenance**

The Authority shall undertake the operation and maintenance of the facilities existing prior to the Appointed Date within the Site and for continued operations of the Project after completion of the Project in accordance with Section-15 [Final Acceptance Certificate] and Section-17 [Maintenance Obligations].

**9.3 Obligations relating to Environmental and Forest Clearances**

9.3.1 The Authority represents and warrants that the environmental and forest clearances required for commencement of works have been procured by the Authority. The Authority agrees and undertakes that the Environmental and Forest clearance shall be obtained prior to handing over of the Site in accordance with Paragraph 9.1.5(a).

9.3.2 In the event of any delay, the Contractor shall be entitled to Time Extension for the period of such delay in accordance with the provisions of Clause 13.4 [Extension of time for completion] and shall also be entitled to Damages calculated as if the Handing Over of Site for and in respect of such Sections of the Project has not been provided in accordance with the provisions of Clause 12.2 [Procurement of the Site] and as a consequence thereof, the Contractor shall be entitled to Damages under and in accordance with the provisions of Clause 12.3 [Damages for delay in handing over the site]. For the avoidance of doubt, the present status of environmental and forest clearances is specified in **Schedule-A**.

**9.4 Permits, Licenses or Approvals**

9.4.1 Upon written request from the Contractor, and subject to the Contractor complying with Applicable Laws, the Authority shall provide reasonable support to the Contractor in procurement of the following in a timely and expeditious manner:

- (a) Applicable Permits / licenses required from any Government Instrumentality necessary for implementation of the Project including but not restricted to:
  - (i) any permits, licenses or approvals required by the Laws of the Authority's Country, which the Contractor is required to obtain in accordance with this Agreement;
  - (ii) permits and approvals for the delivery of Goods, including clearance through customs; and
  - (iii) any permits, licenses or approvals for the export of Contractor's Equipment when it is removed from the Site.
- (b) copies of the Laws of the Authority's Country which are relevant to the Agreement but are not readily available.



9.4.2 The Authority shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Authority; and the Authority shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so.

#### **9.5 Authority's Financial Arrangements**

9.5.1 The Authority undertakes that the Authority has financial arrangements from Exim Bank which will enable the Authority to pay the Contract Price punctually in accordance with Clause 20.1 [Contract Price]. Within 15 days of signing of this Agreement, the Authority shall directly or through the Borrower as the case may be, forward a request to Exim Bank (Contract Inclusion Form) for issuance of Contract Inclusion Letter allocating part of the LOC proceeds to fund this Agreement. The Authority agrees that issuance of Contract Inclusion Letter is one of the conditions for achieving the Appointed Date. The Authority undertakes that the Authority shall have other financial arrangements for the Works not forming part of the Contract Inclusion Letter.

9.5.2 If Exim Bank has notified to the Borrower that Exim Bank has suspended disbursements under its LOC, which finances in whole or in part the execution of the Works, the Authority shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Authority's Engineer, within 7 days of the Borrower having received the suspension notification from Exim Bank. If alternative funds will be available in appropriate currencies to the Authority to continue making payments to the Contractor beyond a date 60 days after the date of Exim Bank notification of the suspension, the Authority shall provide reasonable evidence in its notice of the extent to which such funds will be available and shall also notify the Contractor about the mechanism for making payment under the Agreement .

9.5.3 Exim Bank shall not, under any circumstances whatsoever, be liable for any payment obligation towards or by the Borrower.

#### **9.6 Authority's Use of Contractor's Documents**

9.6.1 The Contractor shall be deemed (by signing the Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
- (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Contractor's Documents which are in the form of



computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Agreement, including replacements of any computers supplied by the Contractor.

9.6.2 The Contractor shall retain the copyright and other intellectual property rights in the documents made by (or on behalf of) the Contractor, which are not included under the Contractor's Documents but are incidental to the performance of the Contractor's obligations under this Agreement. The documents made by (or on behalf of) the Contractor, which are not included under the Contractor's Documents but are incidental to the performance of the Contractor's obligations under this Agreement shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause.

#### **9.7 Authority's Reimbursement of Taxes**

In accordance with the provisions of Sub-Clause 20.1.3, if the taxes paid by the Contractor have to be reimbursed by the Authority, the Authority shall promptly reimburse such taxes in accordance with Sub-Clause 20.1.3

**SECTION-10 REPRESENTATIONS, DISCLAIMER AND WARRANTIES****10.1  
Representations  
and Warranties of  
the Contractor**

The Contractor represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) 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;
- (c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (d) it is incorporated in and 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;
- (e) the information furnished in the Bid, and Request for Proposal or otherwise and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (f) the execution, delivery and performance of this Agreement will not conflict with, or result in the breach of, or 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;
- (g) 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 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;
- (h) 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 or Government of India 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;
- (i) 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;
- (j) no representation or warranty by it contained herein or in any other document furnished by it to the Authority contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
  - (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the contract or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority, Authority's Engineer, or any Government Instrumentality in connection with the Project or this Agreement;
  - (l) all information provided by it in response to the Request for Proposal or otherwise, is true and accurate in all respects;
  - (m) all undertakings and obligations of the Contractor arising from the Request for Proposal or otherwise shall be binding on the Contractor as if they form part of this Agreement;
  - (n) nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and any Sub-contractors, designers, consultants or agents of the Contractor;
  - (o) it is adequately financed, has the requisite knowledge, expertise, technical know-how, experience, resources, infrastructure, licenses, patents, copy rights for carrying out the Works including designing, supplying and procuring Goods and Materials, and for providing installation and construction services required for completion of the Project, remedying the defects during Defects Liability Period and performing its maintenance obligations; and
  - (p) it shall comply with the Applicable Laws and Applicable Guidelines during the execution of the Project.

## 10.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Contractor that:

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

which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;

- (f) it has complied with Applicable Laws in all material respects;
- (g) it will timely facilitate Handing Over of Site to the Contractor;
- (h) it shall have procured, as on the Appointed Date, Handing Over of Site such that the Contractor can commence the works forthwith in accordance with Sub-Clause 9.1.5; and
- (i) it shall comply with the Applicable Laws and the Applicable Guidelines.

### 10.3 Disclosure

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

### 10.4 Disclaimer

10.4.1 The Contractor acknowledges that prior to the execution of this Agreement, the Contractor has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, suitability and availability of access routes to the Site, requirements of Applicable Laws, Applicable Permits 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. Save and except as provided in Sub-Clause 9.1.3 and Clause 10.2 [Representations and Warranties of the Authority], the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Contractor confirms that it shall have no claim whatsoever against the Authority in this regard.

10.4.2 The Parties agree that any mistake or error in or relating to any of the matters set forth in Sub-Clause 10.4.1 above shall not vitiate this Agreement or render it voidable.

10.4.3 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Sub-Clause 10.4.1 above, that Party shall immediately notify the other Party, specifying the mistake or error.

10.4.4 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Contractor; and the

Authority shall not be liable in any manner for such risks or the consequences thereof.

## SECTION-11 PERFORMANCE SECURITY

### 11.1 Performance Security

11.1.1 The Contractor shall, for ensuring the performance of its obligations hereunder, provide to the Authority, an irrevocable and unconditional Bank Guarantee, at Contractor's cost, issued by a Bank acceptable to the Authority as **specified in the SCC**, for an amount equal to 5% (five percent) of Contract Price in the currency of the Agreement, in the form set forth in **RFP Appendix-VII (the "Works Performance Security")**, prior to signing of this Agreement. The Works Performance Security shall be valid for the period **as specified in the SCC**. Until such time the Works Performance Security is provided by the Contractor pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon providing the Works Performance Security, the Authority shall release the Bid Security to the Contractor.

Provided that whenever, a Change in Scope in accordance with Section-16 [Change of Scope] or withdrawal of works in accordance with Sub-Clause 12.3.3, results in an increase or decrease in the Contract Price, the Works Performance Security shall be adjusted to the equivalent amount of Works Performance Security as required under this Clause.

11.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that in the event of failure of the Contractor to provide the Works Performance Security in accordance with the provisions of Sub-Clause 11.1.1, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Contractor under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Contractor, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

11.1.3 After completion of delivery and at least 15 days before release of the Works Performance Security or the commencement of the Period, whichever is earlier, the Contractor shall provide to the Authority, an irrevocable and unconditional Bank Guarantee, at Contractor's cost, issued by a Bank in accordance with Sub-Clause 11.1.1, for an amount equal to 5% (five percent) of Contract Price and in currency United States Dollar, in the form set forth in **RFP Appendix-VII (Form of Bank Guarantee) (the "Maintenance Performance Security")**. The Maintenance Performance Security shall be valid for the period **as specified in the SCC**.

11.1.4 Works Performance Security and Maintenance Performance Security shall be jointly referred to as the **"Performance Security"**.

### 11.2 Extension of Performance Security

The Contractor shall provide the Performance Security for the period in accordance with Sub-Clause 11.1.1 and Sub-Clause 11.1.3; provided that it shall procure the extension of the validity

of the Performance Security, as necessary, 60 (sixty) days prior to the date of expiry thereof, wherever required.

### **11.3 Appropriation of Performance Security**

11.3.1 Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it as Damages for the Contractor's Default.

11.3.2 The Authority shall not encash or appropriate the Performance Security, except for amounts to which the Authority is entitled under this Agreement in the event of:

- (a) failure by the Contractor to extend the validity of the Performance Security, as described in Clause 11.2 [Extension of Performance Security], in which event the Authority may claim the full amount (or, in the case of previous reduction(s), the remaining amount) of the Performance Security;
- (b) failure by the Contractor to pay the Authority an amount due, as agreed or determined under this Agreement or agreed or decided under Section-24 [Termination];
- (c) failure by the Contractor to remedy a Defect under Section-18 [Warranty/ Guarantee Period];
- (d) circumstances which entitle the Authority to terminate this Agreement in accordance with Clause 24.1 [Termination for Contractor's Default], irrespective of whether a notice of termination has been given; or
- (e) if under Clause 18.2 [Remedy and rectification of Defects and deficiencies], the Contractor removes any defective or damaged Plant from the Site, failure by the Contractor to repair such Plant, return it to the Site, reinstall it and retest it by the date agreed by the Authority / Authority's Engineer.

11.3.3 Upon such encashment and appropriation from the Performance Security, the Contractor shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Contractor shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with contractual provisions. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Contractor shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Contractor's Default, and in the event of the Contractor not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with the provisions of this Agreement.

11.3.4 The Authority shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent that the Authority was not entitled to make the claim.

11.3.5 Any amount which is received by the Authority under the Performance Security shall be taken into account:

- (a) in the final payment to the Contractor; or
- (b) if the Agreement is terminated, in payment due to the Contractor under then in accordance with Sub-Clause 24.6.1.

#### **11.4 Release of Performance Security**

11.4.1 The Authority shall release the Works Performance Security within the days as **specified in the SCC**, under this Agreement. Notwithstanding the aforesaid, the Parties agree that the Authority shall not be obliged to release the Performance Security until all Defects identified during the Warranty Period/Guarantee period or the extended Warranty Period/Guarantee period, as the case may be, have been rectified.

11.4.2 The Authority shall release the Maintenance Performance Security within the days as **specified in the SCC**, under this Agreement.

#### **11.5 Retention Money**

11.5.1 From every payment for Works due to the Contractor in accordance with the provisions of Clause 20.5 [Stage Payment for Works], the Authority shall deduct 12.5% (twelve and half per cent) of each IPC thereof as guarantee money for performance of the obligations of the Contractor during the Delivery Period (the “**Retention Money**”) subject to the condition that the maximum amount of Retention Money shall not exceed 10% (ten per cent) of the Contract Price in accordance with the IDEAS Guidelines.

11.5.2 Upon occurrence of a Contractor’s Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor’s Default.

11.5.3 The Authority shall release or cause to release the Retention Money within the days of Final Acceptance Certificate **as specified in the SCC**, under this Agreement.

11.5.4 The Parties agree that in the event of Termination of this Agreement, the Retention Money specified in this Clause 11.5 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 24.6 [Termination Payment].



## SECTION-12 HANDING OVER OF SITE AND UTILITIES MANAGEMENT

**12.1 The Site** The site of the Project (the “**Site**”) shall comprise the site described in **Schedule-A** in respect of which the Handing Over of Site shall be provided by the Authority to the Contractor as may be specified in SCC. The Authority shall be responsible for:

- (a) acquiring and providing Handing Over of Site in accordance with this Agreement, free from all encroachments and encumbrances, and free access thereto for the execution of work under this Agreement (the “**Handing Over of Site**”); and
- (b) obtaining licenses and permits for environment clearance and forest clearance for the Project.

### **12.2 Procurement of the Site**

12.2.1 The Authority, Authority’s Engineer and the Contractor shall, promptly after signing of this Agreement, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site, which should not materially and adversely differ from the status of the Site as on the Base Date. Subject to the provisions of Sub-Clause 12.2.2, such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and land has not been given to the Contractor. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute valid evidence of Handing Over of Site by the Authority to the Contractor for discharging its obligations under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. In case the status of the Site at the time of handing over is materially and adversely different from the status of the Site as on the Base Date, which would result in the Contractor to execute any additional works not forming part of the Scope of Works, the Contractor shall be entitled to claim for extension of Time for Completion and reasonable cost as may be determined by the Authority’s Engineer in consultation with the Contractor.

For the avoidance of doubt, the Parties agree that subject to the provisions of Sub-Clause 12.2.2 and Sub-Clause 12.2.3, whenever the Contractors requests for access to site, Authority shall arrange Handing Over of Site, the Authority shall by notice inform the Contractor of the proposed date and time when the Authority, Authority’s Engineer and the Contractor shall inspect the specified parts of the Site, and prepare a memorandum which shall be deemed to constitute a valid evidence of Handing Over of Site to the Contractor in accordance with the provision of this Sub-Clause 12.2.1 and acceptance by the Contractor.

12.2.2 Notwithstanding anything to the contrary contained in this Clause 12.2, the Authority shall specify the parts of the Site, if any, for which Handing Over of Site shall be arranged to be provided to

the Contractor on the dates specified in **Schedule-A**. Such parts shall also be included in the Appendix prepared in pursuance of Sub-Clause 12.2.1. For the avoidance of doubt, the Parties expressly agree that the Appendix shall in no event contain Sections of the Project the cumulative area of which exceeds the percentage of the total land required for the Project for which Handing Over of Site has not been done as on the Appointed Date.

12.2.3 The Authority shall provide the Handing Over of Site to the Contractor, in respect of the site identified in the **Annex-I** by the date specified in **Schedule-A** for each part of the Site referred to therein, but in no case later than 30 days from the date of request from Contractor for providing access to site or the date **as specified in the SCC, whichever is earlier** for those parts of the Site for which no time has been specified in **Schedule-A**, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Contractor, it shall pay to the Contractor, Damages in accordance with Clause 12.3 [Delay in handing over the site] and shall provide suitable Extension of Time.

### 12.3 Delay in Handing over the Site

12.3.1 In the event the Handing Over of Site is not provided by the Authority on or before the date(s) specified in Clause 12.2 [Procurement of the Site] for any reason other than Force Majeure or breach of this Agreement by the Contractor, then the Authority shall pay reasonable damages to the Contractor **as specified in the SCC**.

In accordance with this Sub-Clause 12.3.1, the Contractor shall, subject to the provisions of Clause 13.4 [Extension of time for Completion] be entitled to Time Extension equal to the period of such delay, save and except that:

- (a) if any delays involve time overlaps, the overlaps shall not be additive; and
- (b) such Time Extension shall be restricted only to the Works which are affected by the delay in Handing Over of Site.

For the avoidance of doubt, the Parties expressly agree that the Damages specified hereunder and the Time Extension specified in Clause 13.4 [Extension of time for completion] shall be restricted only to failure of the Authority in Handing Over of Site and in respect of the Site required for Works in accordance with the Good Industry Practice.

12.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Contractor expressly agrees that Works on all parts of the Site for which Handing Over of Site is granted within the time period **as specified in the SCC**, of the Appointed Date, or with respect to the parts of the Site provided in **Schedule-A**, no later than the date(s) specified therein, as the case may be, shall be completed before the Scheduled Completion Date and shall not qualify for any Time Extension.

12.3.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority may at any time withdraw any part of the Works or Site including the associated Works forming part of this Agreement, subject to such Works not exceeding an aggregate value, such value to be determined in accordance with **Schedule-F**, equal to 10% (ten per cent) of the Contract Price.

Provided that if Handing Over of remaining Site has not been provided within the days as **specified in the SCC**, from the Appointed Date [the “**Long Stop Date**”], for commencing delivery or any incidental services on any part of the Site included in the Appendix, the affected Works shall be deemed to be withdrawn under the provisions of this Sub-Clause 12.3.3 unless the Parties agree to the contrary, and such Works shall not be computed for the purposes of the aforesaid ceiling of 10% (ten per cent) of the Contract Price hereunder. For the avoidance of doubt, the Parties agree that such deemed withdrawal of Works hereunder shall be without prejudice to the Contractor’s entitlement to Damages in accordance with the provisions of this Agreement.

12.3.4 In the event of withdrawal of Works under Sub-Clause 12.3.3, including deemed withdrawal of Works, the Contract Price shall be reduced by an amount equal to the percentage of the value of the Works withdrawn **as specified in the SCC** and the Contractor shall not be entitled to any other compensation or Damages for the withdrawal of Works, including their deemed withdrawal. For avoidance of doubt, in such case, the Works Performance Security requirement shall also be reduced in accordance with Sub-Clause 11.1.1.

Provided that if any Works are withdrawn after commencement of the delivery or incidental services, the Authority shall pay to the Contractor percentage of the fair value of the work done **as specified in the SCC**, as assessed by the Authority’s Engineer.

#### **12.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 12.2 [Procurement of the Site], the Authority shall ensure that the Site being made available to the Contractor pursuant hereto be free from all Encumbrances and occupations and without the Contractor 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 Site for the duration of the Project Delivery Schedule. For the avoidance of doubt, it is agreed that the existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that, unless otherwise specified in this Agreement, the Contractor accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

**12.5 Protection of Site from Encroachments**

On and after signing the memorandum and/or subsequent memorandum referred to in Sub-Clause 12.2.1, and until the issue of the Provisional Acceptance Certificate, the Contractor shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment thereon takes place. During the delivery or incidental services Period, the Contractor shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Sub-contractor or other person claiming through or under this Agreement to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Contractor therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement. In the event of any encroachment or occupation on any part of the Site, the Contractor shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.

**12.6 Temporary Right of Way**

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

**12.7 Access to the Authority and the Authority's Engineer**

12.7.1 The Site given to the Contractor by the Authority hereunder shall always be subject to the right of access of the Authority, the Authority's Engineer, Exim Bank and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

12.7.2 The Contractor shall ensure, subject to all relevant safety procedures that the Authority has unrestricted access to the Site during any Emergency.

**12.8 Geological and Archaeological Finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of this Agreement with the Contractor for the Works, and the Contractor hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or concerned Government Instrumentality. The Contractor 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 Authority or the Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses and time incurred by the Contractor hereunder shall be compensated by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a

reasonable period so as to enable the Contractor to continue its Works with such modifications as may be deemed necessary.

#### **12.9 Familiarity of Site Conditions**

The Contractor acknowledges that it bears the responsibility to become familiar with the Site conditions prior to commencing any work. The Contractor shall conduct a Site visit to check Temporary Works on the Site and logistics and review all available site data, including geotechnical reports, environmental reports, and Site surveys, to understand the site's conditions and the nature and extent of the work required. The Contractor shall also perform any additional Site investigations necessary to identify any potential hazards or risks. Any unforeseen site conditions discovered during the course of the work shall be promptly brought to the attention of the Authority, and the Contractor shall take all necessary measures to deal with such conditions in accordance with the Agreement.

#### **12.10 Existing Utilities and Roads**

Notwithstanding anything to the contrary contained herein, the Contractor shall ensure that the respective entities owning the existing roads, right of way, level crossings, structures, or utilities on, under or above the Site are enabled by it to keep them in continuous satisfactory use, if necessary, by providing suitable temporary diversions with the authority of the controlling body of that road, right of way or utility.

#### **12.11 Shifting of Obstructing Utilities**

12.11.1 The Contractor shall, in accordance with Applicable Laws and with assistance of the concerned utility owning agency and Government Instrumentalities, cause shifting of any utility (including electric lines, water pipes, telephone cables etc.) to an appropriate location or alignment in accordance with the standards and specifications of utility owning agency, if such utility or obstruction adversely affects the execution of Works in accordance with this Agreement. The actual cost of such shifting, as estimated and communicated by the entity owning the utility and approved by the Authority in consultation with the Contractor, shall be incurred by the Contractor and reimbursed by the Authority to the Contractor, to the extent of shifting of such Obstructing Utilities which have not been specified under the Scope of Work. The Contractor shall execute the utility shifting works under the supervision of the utility owning agency and the Authority's Engineer. The parties agree that sub-contracting for undertaking works under this Sub-Clause 12.11.1 shall not form part of the permissible limit of works which can be sub-contracted by the Contractor in accordance with Sub-Clause 8.2.1.

12.11.2 Without prejudice to the above, the Authority or the utility owning agency may cause shifting of the Obstructing Utilities at its own cost and convenience. In the event of any delay in such shifting by the Authority / entity owning the utility beyond a period of 120 (one hundred and twenty) days from the date of notice by the Contractor to the entity owning the utility and to the Authority, the

Contractor shall be entitled to Time Extension in accordance with Clause 13.4 [Extension of time for Completion] and Damages in accordance with Clause 12.3 [Delay in Handing Over the Site] for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

12.11.3 The dismantled material/scrap of existing utility shall belong to the Contractor for disposal as deemed fit by the Contractor, subject to any Applicable Laws unless otherwise agreed. In the event of shifting the Obstructing Utility forming part of the Scope of Work of the Contractor, the parties agree that there should not be any upgradation/augmentation of facilities of the obstructing utilities being shifted. In case of any upgradation, the Authority / utility owners shall bear the costs of such upgradation.

#### **12.12 New Utilities**

The Contractor shall allow, with prior approval from the Authority, access to the Site for laying new utilities as the Government Instrumentality may specify, subject to compensation or damages if such access causes damage or financial loss to the Contractor.. For the avoidance of doubt, it is agreed that use of the Site under this Clause 12.12 shall not in any manner relieve the Contractor of its obligation to deliver and maintain the Project in accordance with this Agreement. In the event any Works is affected by a new utility or works undertaken in accordance with this Clause 12.12, the Contractor shall be eligible for a Time Extension in accordance with Clause 13.4 [Extension of time for Completion] and Damages for carrying out the additional works or restoration works as determined by the Authority's Engineer in consultation with the Authority, for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

#### **12.13 Felling of Trees**

The Authority shall obtain Applicable Permits for felling of trees if, and only if, such trees cause a Material Adverse Effect, on the construction or maintenance of the Works, to be identified by the Authority and/or the Authority's Engineer for this purpose. Such felling of trees shall be a part of the Scope of the Project and performed by the Contractor in accordance with the Applicable Permits obtained by the Authority. In the event of any delay in felling thereof for reasons not attributable to the Contractor, the Contractor shall be eligible for a Time Extension in accordance with Clause 13.4 [Extension of time for Completion] as determined by the Authority's Engineer for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive

The Parties hereto agree that the felled trees shall be, subject to provisions of Applicable Laws and deemed to be owned by the Authority / Government Instrumentalities and shall be disposed in



such manner and subject to such condition as the Authority at its sole discretion may consider appropriate. q

**12.14  
Dismantling of  
Structures**

The Contractor, at its own cost shall dismantle the structures in the acquired lands, including disposal of the dismantled material in its sole discretion as deemed appropriate while complying with environmental guidelines / regulations and Good Industry Practice. In the event of any delay in dismantling of structures thereof for reasons not attributable to the Contractor, the Contractor shall be entitled to Time Extension in accordance with Clause 13.4 [Extension of time for Completion] and Damages in accordance with Clause 12.3 [Delay in Handing Over the Site] as determined by the Authority's Engineer for and in respect of the part(s) of the Works affected by such delay; provided that if the delays involve any time overlaps, the overlaps shall not be additive.

**SECTION-13 INITIATION OF WORKS, DESIGN AND CONSTRUCTION****13.1 Design and Drawings**

13.1.1 Design and Drawings shall be developed in conformity with the Specifications and Standards set forth in **Schedule-D**. In the event, the Contractor requires any relaxation in design standards in any of the Goods, the alternative design criteria for such goods shall be provided for review of the Authority's Engineer.

13.1.2 In respect of the Contractor's obligations with respect to the Design and Drawings of the Project as set forth in **Schedule-G**, the following shall apply:

- a) The Contractor shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Delivery Schedule, 3 (three) copies each of the Design and Drawings, to the Authority's Engineer for review. Provided that if the Authority's Engineer requires additional drawings which are reasonably required to determine the compliance of the design as per the Agreement or are required in accordance with good industry practice, the Contractor shall prepare and submit them promptly to the Authority's Engineer at the Contractor's cost.
- b) by submitting the Design and Drawings for review to the Authority's Engineer, the Contractor 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, Specifications and Standards, Applicable Laws, and Good Industry Practice;
- c) within 15 (fifteen) days of the receipt of the Design and Drawings or from submission of the last clarification by the Contractor whichever later, the Authority's Engineer shall review the same and convey its observations or no-objection (which may include comments concerning minor matters which will not substantially affect the Supply) to the Contractor with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards; If the Authority's Engineer does not give its observations or no-objection within..... extended review period as above, the Authority's Engineer shall be deemed to have given No-objection to the Design and Drawings.
- d) if the aforesaid observations of the Authority's Engineer indicate that the Design and Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Design and Drawings shall be revised by the Contractor in conformity with the provisions of this Agreement and be resubmitted to the Authority's Engineer for review. The Authority's Engineer



shall give its observations, if any, within 10 (ten) days of receipt of the revised Design and Drawings. In the event the Contractor fails to revise and resubmit such Design and Drawings to the Authority's Engineer for review as aforesaid, the Authority's Engineer may cause the payment for the affected works to be withheld under the provisions of Clause 20.5 [Stage Payment for Works]. If the Contractor disputes any decision, direction or determination of the Authority's Engineer hereunder, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure;

- e) no review and/or observation of the Authority's Engineer and/or its failure to review and/or convey its observations on any Design and Drawings shall not relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority's Engineer or the Authority be liable for the same in any manner; and the Contractor shall be responsible for correction of all errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects in the Design and Drawings, along with the correction of affected Works, at the Contractor's cost and risk, notwithstanding any review under this Section 13 [Initiation of Works, Design and Construction]. Provided that the Contractor shall not be responsible if errors, omissions, ambiguities, inconsistencies, inadequacies or other Defects are because of inaccurate information furnished in writing to the Contractor by or on behalf of the Authority. This clause shall mutatis mutandis apply to the Delivery Schedule submitted by the Contractor in accordance with Sub-Clause 13.1.3.
- f) the Contractor shall be responsible for delays in submitting the Design and Drawings, as set forth in **Schedule-G**, , and shall not be entitled to seek any relief in respect thereof from the Authority; and
- g) the Contractor warrants that its designers, including any third parties engaged by it, shall have the required experience and capability in accordance with Good Industry Practice and it shall indemnify the Authority against any damage, expense, liability, loss or claim, which the Authority might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty as set out in this Clause.

13.2.5 Works shall be executed in accordance with the Design and Drawings provided by the Contractor in accordance with the provisions of this Clause 13.2 and the observations of the Authority's Engineer thereon as communicated pursuant to the provisions of Paragraph 13.2.4(d). Such Drawings shall not be

amended or altered without prior written notice to the Authority's Engineer. If a Party becomes aware of an error or Defect of a technical nature in the Design or Drawings, that Party shall promptly give notice to the other Party of such error or defect.

13.2.6 The Contractor shall give notice to the Authority's Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a reasonable time. The notice shall include details of the necessary drawing or instruction, details of requirement of the drawings and instructions and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late. If the Contractor suffers delay and/or incurs cost as a result of a failure of the Authority's Engineer to issue the notified drawing or instruction within a reasonable time specified in the notice with supporting details, the Contractor shall give a further notice to the Authority's Engineer and shall be entitled to (a) an extension of time for any such delay, if completion is or will be delayed, under Clause 13.4 [Extension of Time for Completion], and payment of reasonable damages. However, if and to the extent that the failure of the Authority's Engineer was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time and damages.

13.2.7 In accordance with Clause 15.10 [Acceptance Certificate], at the time of making the request for issuance of the Acceptance Certificate, the Contractor shall furnish to the Authority and the Authority's Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in editable digital format or in such other medium or manner as may be acceptable to the Authority, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of project facilities, and shall hand them over to the Authority against receipt thereof.

### 13.3 Delivery of the Project

13.3.1 The Contractor shall deliver the Project as specified in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works. The day **as specified in the SCC** from the Appointed Date shall be the scheduled delivery date (the "**Scheduled Delivery Date**") and the Contractor agrees and undertakes that the delivery and incidental services, if any, shall be completed on or before the Scheduled Delivery Date, including any extension thereof.

Pre-Construction activities like utility shifting, or any other such activity, may be commenced immediately after signing of the contract by the Parties. The Parties agree that these works may

be taken up and completed to the extent feasible by the Contractor, before declaration of the Appointed Date (the “**Development Period**”), but no claim against the Authority for delay shall survive during this period and that the undertaking of these works by the Contractor shall not count towards the Scheduled Delivery Period of the project which starts counting only from the Appointed Date.

13.3.2 The Contractor shall commence delivery of goods in accordance with the Delivery Schedule set forth in **Annex-II of Schedule-H**. In the event that the Contractor fails to achieve any Project Milestone or the Scheduled Delivery Date within a period of 30 (thirty) days from the date set forth in **Schedule-H**, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate **as specified in the SCC** for delay of each day reckoned from the date specified in **Schedule-H** and until such Project Milestone is achieved or the Works are completed; provided that if the period for any or all Project Milestones or the Scheduled Delivery Date is extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule-H** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule-H** has been amended as above; provided further that in the event the Works are completed within or before the Scheduled Delivery Date including any Time Extension, the Damages paid under this Sub-Clause 13.3.2 shall be refunded by the Authority to the Contractor, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Sub-Clause 13.3.2 shall be without prejudice to the rights of the Authority under this Agreement including the right of Termination thereof. The Parties further agree that Time Extension hereunder shall only be reckoned for and in respect of the affected Works as specified in Sub-Clause 13.4.2.

13.3.3 The Authority’s Engineer shall notify the Contractor of its decision to impose Damages in pursuance of the provisions of this Clause 13.3. Provided, however, that no deduction on account of Damages shall be effected by the Authority’s Engineer without taking into consideration the representation, if any, made by the Contractor within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Sub-Clause 13.3.2 shall not exceed 5% (five percent) of the Contract Price in accordance with the IDEAS Guidelines.

#### **13.4 Extension of Time for Completion**

13.4.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Contractor shall be entitled to extension of time in the Delivery Schedule (the “**Time Extension**”) to the extent that completion of any Project Milestone is or will be delayed by any of the following, namely:

- a) delay in providing Handing Over of Site, or approval of authorities, specified in Sub-Clause 9.1.4 and Clause 9.3

[Obligations relating to Environmental and Forest Clearances];

- b) Change of Scope, unless an adjustment to the Scheduled Delivery Date has been agreed;
- c) occurrence of a Force Majeure Event;
- d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other Contractors on the Site; and
- e) any other cause or delay which entitles the Contractor to Time Extension in accordance with the provisions of this Agreement.

13.4.2 The Contractor shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Sub-Clause 13.4.1, inform the Authority's Engineer by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement:

Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Contractor became aware, or should have become aware, of the occurrence of such an event or circumstance:

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Works which are affected by the aforesaid events or circumstances and shall not in any manner affect the Project Delivery Schedule for and in respect of the Works which are not affected thereby.

13.4.3 In the event of the failure of the Contractor to issue to the Authority's Engineer a notice in accordance with the provisions of Sub-Clause 13.4.2 above within the time specified therein, the Contractor shall not be entitled to any Time Extension and shall forfeit its right to any such claims in future. For the avoidance of doubt, in the event of failure of the Contractor to issue notice as specified in this Sub-Clause 13.4.3, the Authority shall be discharged from all liability in connection therewith.

13.4.4 The Authority's Engineer shall, on receipt of a claim in accordance with the provisions of Sub-Clause 13.4.2, examine the claim within the time frame specified herein. In the event the Authority's Engineer requires any clarifications to examine the claim, the Authority's Engineer shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Contractor shall, on the receipt of the communication of the Authority's Engineer requesting for clarification, furnish the same to the Authority's Engineer within 10 (ten) days thereof. The Authority's Engineer shall, within a period of 30 (thirty) days from the date

of receipt of such clarifications, forward in writing to the Contractor its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority's Engineer shall, in accordance with the provisions of this Agreement, notify the Contractor of the aforesaid Time Extension no later than 60 (sixty) days from the date of receipt of the Contractor's claim for Time Extension.

Provided that when determining each extension of time under this Clause 13.4 [Extension of Time for Completion], the Authority's Engineer shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

13.4.5 If the event or circumstance giving rise to the notice has a continuing effect:

- (a) the detailed claim shall be considered as interim;
- (b) the Contractor shall, no later than 10 (ten) days after the close of each month, send further interim claims specifying the accumulated delay, the extension of time claimed, and such further particulars as the Authority's Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 30 (thirty) days after the effect of the event or the circumstance ceases.

Upon receipt of the claim hereunder, the Authority's Engineer shall examine and determine the same in accordance with the provisions of Sub-Clause 13.4.4 within a period of 60 (sixty) days of the receipt thereof.

### **13.5 Incomplete Works**

13.5.1 In the event the Contractor fails to complete the Works in accordance with the Project Delivery Schedule, including any Time Extension granted under this Agreement, the Contractor shall endeavour to complete the balance Supply expeditiously and shall pay Damages to the Authority in accordance with the provisions of Sub-Clause 13.3.2 for delay of each day until the Works are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to termination under Clause 24.1 [Termination for Contractor's Default].

**SECTION-14 QUALITY ASSURANCE AND SUPERVISION****14.1 Quality of Materials and Workmanship**

14.1.1 The Contractor shall ensure that the Materials and Workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

14.1.2 The Contractor warrants that all Materials shall be new, unused, not reconditioned and in conformity with Specifications and Standards, Applicable Laws and Good Industry Practice, and that the Contractor shall not use any materials which are generally recognised as being deleterious under Good Industry Practice.

**14.2 Quality Control System**

14.2.1 The Contractor shall establish a quality control mechanism to ensure compliance with the provisions of this Agreement (the “**Quality Assurance Plan**” or “**QAP**”).

14.2.2 The Contractor shall, within 30 (thirty) days of the Appointed Date, submit to the Authority’s Engineer its Quality Assurance Plan which shall include the following:

- a) organisation, duties and responsibilities, procedures, inspections and documentation;
- b) procedure for Request for Inspection (RFI), procedure for submission and approval of Method Statements, Non-Conformity Reports (NCR) etc.
- c) quality control mechanism including sampling and testing of Materials, test frequencies, standards, acceptance criteria, testing facilities, reporting, recording and interpretation of test results, approvals, check list for site activities, and proforma for testing and calibration in accordance with the Specifications and Standards and Good Industry Practice; and
- d) internal quality audit system.

14.2.3 The Authority’s Engineer shall convey its comments to the Contractor within a period of 21 (twenty-one) days of receipt of the QAP stating the modifications, if any, required, and the Contractor shall incorporate those in the QAP to the extent required for conforming with the provisions of this Clause 14.2.

14.2.4 The Contractor shall procure all Contractor’s Documents, apparatus and instruments, fuel, consumables, water, electricity, labour, Materials, samples, and qualified personnel as are necessary for examining and testing the Works, Materials and Workmanship within the Contractor or sub-contractor’s premises in accordance with the Quality Assurance Plan



14.2.5 The cost of testing of Goods, Materials and Workmanship under this Section-14 [Quality Assurance and Supervision] shall be borne by the Contractor.

#### **14.3 Methodology**

The Contractor shall, at least 15 (fifteen) days prior to the commencement of Works, submit to the Authority's Engineer for review and consent the methodology proposed to be adopted for executing the Works and measures for ensuring safety. The Authority's Engineer shall complete the review and convey its consent or its comments, if any, to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

#### **14.4 Inspection and Review by the Authority**

The Authority or any representative authorised by the Authority in this behalf may inspect and/or test the ordered goods and incidental works/services to confirm their conformity to the requirements as specified in the agreement and other quality assurance details incorporated in the Agreement. If such inspections and tests are conducted in the premises of the Contractor or its subcontractor(s), all reasonable facilities and assistance, including access to relevant Drawings, design details and production data, shall be furnished by the Contractor to the Authority or its authorized representative at no charge to the Authority.

#### **14.5 External Technical Audit**

At any time during delivery or the Defects Liability period, the Authority may appoint an external technical auditor to conduct an audit of the quality of the Works. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Contractor and the Authority's Engineer for taking remedial action in accordance with this Agreement. The Contractor shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder.

#### **14.6 Inspection of Records**

The Authority, Government of India, Exim Bank or any representative authorised by the Authority shall have the right to inspect the records and accounts and other documents relating to the submission of the bid of the Contractor and Contractor's performance relating to the Works.

#### **14.7 Inspection of Works**

14.7.1 The Authority's Engineer and its authorised representative shall at all times:

- a) during production, manufacture and construction at the Site and at the place of production, be entitled to examine, inspect, measure and test the Materials and workmanship; check the progress of manufacture of Materials; carry out other inspections and obligations in accordance with this Agreement.

14.7.2 The Contractor shall give the Authority's Engineer and its authorised representatives access, facilities and safety

equipment for carrying out their obligations under this Agreement.

14.7.3 The Authority's Engineer shall submit a monthly inspection report (the "**Inspection Report**") to the Authority and the Contractor bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. For the avoidance of doubt, such inspection or submission of Inspection Report by the Authority's Engineer shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

#### **14.8 Pre-Dispatch Inspection at Contractor's/ Manufacturer's premises**

If specified in the SCC, before dispatch, the goods will be inspected by the inspection agency nominated by the Authority (independently or jointly with the Authority as decided by the Authority) at Contractor's/manufacturer's premises for their compliance to the contract specifications. Fees/Charges taken by inspection agency shall be borne by the Contractor. For in-house testing, the Contractor will provide necessary facilities free of cost. The Contractor shall notify the Authority about readiness of goods for pre-dispatch inspection and the Authority will notify the Contractor about the Authorized Representative/ Nominated External inspection agency and the date for testing. The goods would be dispatched to the Authority only after clearance in pre-dispatch inspection'. The Authority's right of rejection in respect of the goods finally received at his location shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by the Authority or its Nominated inspection agency prior to the goods shipment. While bidding, the Contractor should take into account (15) days for inspection from the date of notifying the Authority offering the goods for inspection. Any delay in inspection beyond 15 days shall be on the part of the Authority and shall be regularized without Liquidated Damages. Cost of inspection / testing shall be factored in by the Contractor in the cost of the product itself while submitting bid. The inspection agency will conduct the inspection and submit the certificate to the Contractor as well as the Authority. The Contractor will be solely responsible for pre-inspected material for Quality Assurance including pre-dispatch inspection/ testing at manufacturers site.

#### **14.9 Monthly Progress Reports**

14.9.1 During the Delivery Period, the Contractor shall, no later than 10 (ten) days after the close of each month, furnish to the Authority's Engineer a monthly report on the progress of Works and shall promptly give such other relevant information as may be required by the Authority's Engineer. The Contractor agrees that reporting under this Clause shall continue till the date of the Warranty/Guarantee Period

Each report shall, inter-alia, include the following:



- a) An executive summary;
- b) Charts showing the Status of Contractor's Documents, manufacturing and other incidental works;
- c) details of Works sub-contracted and the performance of Sub-contractors;
- d) the extent of progress (both quantity and percentage of the whole), the actual or expected dates of commencement, anticipated completion date of the activity, Contractor's inspections and tests;
- e) records of manpower and Contractor's equipment on the Site;
- f) copies for that month of quality assurance documents, test results and certificates, safety statistics, accident data collection including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- g) comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion in accordance with this Agreement, likely consequences and the measures being (or to be) adopted to overcome such aspects;
- h) details of any unresolved disputes or claims, in relation to the Project;
- i) Site Photographs clearly depicting the physical progress under the Project with electronic time-stamping and geo-tagging of the coordinates (latitude and longitude);
- j) status of various Applicable Permits, and compliance of conditions therein;
- k) details of various royalty payment and insurances required to be taken by the Contractor;

- l) such other reports as may be required by the Authority for enabling the Authority to comply with its obligations under the other Project contracts; and
- m) declaration towards compliance with Applicable Laws and Applicable Laws including but not limited to environmental and labor legislations.

The Authority's Engineer may suitably modify the format and the details required in the Monthly Progress Reports. However, the format shall substantially include the details required, as above.

#### **14.10 Samples**

14.10.1 If specified in the SCC, the Contractor shall, before proceeding with bulk manufacture or delivery of the Goods, submit to the Authority's Engineer /authorized representative of the Authority for inspection samples of the specified raw-material used in the manufacture and/ or the Goods as stipulated in the Contract or by the Authority's Engineer/authorized representative of the Authority. However, the Contractor shall not be entitled to be shown any consideration or give any extension of time or claim to be exonerated from completing the delivery within the stipulated period only on the ground of delay in the approval of any such sample.14.10.2 Unless otherwise provided for in the Contract, if the test proves satisfactory and the stores or any instalment thereof is accepted, the quantity of the stores or materials expended in the test shall be deemed to have been taken delivery of by the Authority and be paid for as such.

#### **14.11 Tests**

14.11.1 For determining that the Works conform to the Specifications and Standards, the agreement shall specify inspections and tests (including raw materials and/ or stage inspections, if so specified) to be carried out and where and how they are to be conducted, and in accordance with QAP & Good Industry Practice for quality assurance.

As soon as a consignment is getting ready, the Contractor shall submit a request for inspection to the Authority's Engineer. The Authority's Engineer shall inform the Contractor in writing of its programme for such inspection and the officials' identity to be deputed for this purpose.

Unless otherwise stipulated, in the SCC, all costs of tests and inspections (including any special or third-party tests), whether at the Contractor's premises, shall be borne by the Contractor. However, in case of stipulation for type testing/ prototype

testing of machinery and plant involving special tests, the Agreement shall indicate the apportionment of test and expended material costs among the parties.

14.11.2 The Contractor shall, with due diligence, carry out all the tests in accordance with this Agreement and furnish the results thereof to the Authority's Engineer.

14.11.3 Under no circumstances does the Authority's Engineer have the authority to modify the governing specifications, approved Drawings, or samples during inspection without the Authority's approval.

14.11.4 The Contractor agrees that neither the execution of a test and/or inspection of Plant or any part of the facilities, nor the attendance by the Authority or the Project Manager, nor the issue of any test certificate pursuant to this Clause 14.10, shall release the Contractor from any other responsibilities under the Agreement.

#### **14.12 Examination of Work before Covering up**

14.12.1 In respect of the work which the Authority's Engineer is entitled to examine, inspect, measure or test before it is covered up or put out of view or any part of the work is placed thereon, the Contractor shall give notice to the Authority's Engineer whenever any such work is ready and before it is covered up by way of a **Request for Inspection (RFI)**. The Authority's Engineer shall then either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the Contractor that the Authority's Engineer does not require to do so. Provided, however, that if any work is of a continuous nature where it is not possible or prudent to keep it uncovered or incomplete, the Contractor shall notify the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice, to the Authority's Engineer to conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Contractor receives no response from the Authority's Engineer within a period of 3 (three) business days from the date on which the Contractor's notice hereunder is delivered to the Authority's Engineer, the Contractor shall be entitled to assume that the Authority's Engineer would not undertake the said inspection.

#### **14.13 Inspections at the last moment**

14.13.1 If the Agreement stipulates pre-dispatch inspection of the ordered Goods at Contractors premises, the Contractor shall put up the Goods for inspection well ahead of the delivery period to complete the inspection within that period.

14.13.2. In cases where only a portion of the Goods ordered is tendered for inspection at the last moments of the delivery period and also in cases where inspection is not completed in respect of the portion of the Goods tendered for inspection during the delivery period, the inspector shall carry out the inspection and complete the formality beyond the contractual

delivery period at the specific written request by and at the risk and expense of the Contractor. The fact that the Goods have been inspected after the contractual delivery period shall not amount to keeping the Contract alive, and this shall be without any prejudice to the legal rights and remedies available to the Authority under the terms & conditions of the Contract.

14.13.3. If the Goods tendered for inspection during or at the last moments of the delivery period are not found acceptable after carrying out the inspection, the Authority is entitled to cancel the Contract in respect of the same at the risk and expense of the Contractor. If the Goods tendered for inspection are found acceptable, the Authority may grant an extension of the delivery period subject to conditions mentioned in Clause 13.4.

#### 14.14 Rejection

14.14.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Material, design or workmanship is found to be defective or otherwise not in accordance with the provisions of this Agreement, the Authority's Engineer may reject such Plant, Material, design or workmanship by giving notice to the Contractor, with reasons, by way of issuance of **Non-Conformity Reports (NCR)**. The Contractor shall then promptly make good the Defect and ensure that the rejected item complies with the requirements of this Agreement.

14.14.2 If the Authority's Engineer requires a Plant, Material, Goods, Design or Workmanship to be retested, the tests shall be repeated on the same terms and conditions, as applicable in each case. If the rejection and retesting cause the Authority to incur any additional costs, such costs shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

14.14.3 The Contractor shall not be entitled to any extension of time on account of rectifying any Defect or retesting as specified in this Clause 14.14 [Rejection].

14.14.4 No examination, inspection, measurement or testing of any Plant, Material, Goods, design or workmanship by the Authority's Engineer or its failure to convey its observations or to examine, inspect, measure or test shall relieve the Contractor of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner.

14.15.5 In case of issuance of any NCR, the payments to the Contractor shall be withheld for the particular item for which the examination, inspection, measurement or testing pertains till the Contractor makes good the Defect and ensure that the

rejected item complies with the requirements of this Agreement, and to the satisfaction to the Authority's Engineer.

#### **14.15. Consequence of Rejection**

14.15.1 Upon the Goods being rejected by the Authority's Engineer or Interim Consignee or Consignee at a place other than the premises of the Contractor, the Authority shall be at liberty to:

- i. Demand that such stores shall be removed by the Contractor at his cost subject as hereinafter stipulated, within 21 days of the date of intimation of such rejection. Provided that the Authority's Engineer may call upon the Contractor to remove dangerous, or infected, stores within 48 hours of the receipt of such communication and the decision of the Authority's Engineer in this regard shall be final in all respects. Provided further that where the price or part thereof has been paid, the consignee is entitled without prejudice to his other rights to retain the rejected stores till the price paid for such stores is refunded by the Contractor or dispose off such rejected Goods as per clause below save that such retention shall not in any circumstances be deemed to be acceptance of the stores or waiver of rejection thereon. The Contractor shall bear all cost of such replacement, freight and related cost without being entitled to any extra payment on that or any other account.
- ii. All rejected Goods shall, in any event, and circumstances remain and always be at the Contractor's risk immediately on such rejection. If the Contractor does not remove such Goods within the periods aforementioned, the Authority's Engineer, as the case may be as per the place of rejection, may remove the rejected Goods. The Authority's Engineer may either return the same to the Contractor at his risk and cost by such mode of transport as it may decide or dispose off such goods at the Contractor's risk and on his account and retain such portion of the proceeds from such disposal, as may be necessary to recover any expense incurred in connection with such disposals (or any price refundable as a consequence of such rejection). The Authority shall, in addition, be entitled to recover from the Contractor ground rent/ demurrage charges on the rejected Goods after the expiry of the time-limit mentioned above.
- iii. Disposal of rejected goods in an aforesaid manner shall not exonerate Contractor but still hold him liable to pay to the Authority, the dues as may arise as per the terms of Agreement besides the cost of goods if already paid to the Contractor and any inspection charges. The Authority can take action as per the terms of the Agreement if the Contractor fails to pay the amount due to him.
- iv. Where under the Contract the price payable is fixed FOB port of shipment in India and CIP or DAP named place of destination, the Contractor shall, if the Goods are rejected at destination by the consignee, be liable, in addition to his

other liabilities, including a refund of price recoverable in respect of the Goods so rejected, to reimburse to the Authority the freight and all other expenses, if any, incurred by it in this regard. The Contractor shall be allowed to take back rejected Goods only after such refunds are received by the Authority.

#### **14.16. Consignee's right of Rejection of Inspected Goods**

14.16.1. Goods accepted by the Authority's Engineer/or its Authorised Representative at the initial inspection and final inspection in terms of the Agreement shall in no way dilute the Authority's right to reject the same later if found deficient in accordance with the. Notwithstanding any approval which the Authority's Engineer/or its Authorised Representative may have given in respect of the Goods or any materials or other particulars or the work or workmanship involved in the performance of the Contract (whether with or without any test carried out by the Contractor or the Authority's Engineer/or its Authorised Representative or under the direction of the Authority's Engineer/or its Authorised Representative) and notwithstanding delivery of the Goods where so provided to the interim consignee, it shall be lawful for the consignee, on behalf of the Authority, to inspect, test and, if necessary, reject the Goods or any part, portion or consignment thereof, after the Goods' arrival at the final destination within a reasonable time after actual delivery thereof to him at the place of destination stipulated in the Contract, if such Goods or part, portion or consignment thereof is not in all respects in conformity with the terms and conditions of the Contract whether on account of any loss, deterioration or damage before despatch or delivery or during transit or otherwise howsoever.

Note: Regarding materials pre-inspected at the firm's premises during manufacture or before delivery or dispatch, the consignee shall issue rejection advice within 90 days from the date of receipt.

#### **14.17 Remedial Work**

14.17.1 Notwithstanding any previous test or certification, the Authority's Engineer may instruct the Contractor to:

- a) remove from the Site and replace any Goods or any materials which are not in accordance with the provisions of this Agreement;
- b) remove and re-execute any work which is not in accordance with the provisions of this Agreement and the Specifications and Standards; and
- c) execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work which is required on account of a Force

Majeure Event, the provisions of Clause 22.6 [Effect of Force Majeure Event on the Agreement] shall apply.

14.17.2 If the Contractor fails to comply with the instructions issued by the Authority's Engineer under Sub-Clause 14.17.1 above, within the time specified in the Authority's Engineer's notice or as mutually agreed, the Authority's Engineer shall promptly inform the Authority. The Authority, as deemed fit by it, may get the work executed by another agency. The cost so incurred by the Authority for undertaking such work shall, without prejudice to the rights of the Authority to recover Damages in accordance with the provisions of this Agreement, be recoverable from the Contractor and may be deducted by the Authority from any monies due to be paid to the Contractor.

**14.18 Delays during Delivery**

14.18.1. Without prejudice to the provisions of Sub-Clause 12.3.2, in the event the Contractor does not achieve any of the Project Milestones within the time period stipulated in Schedule-H or the Authority's Engineer shall have reasonably determined that the rate of progress of Works is such that Completion of the Project is not likely to be achieved by the end of the Scheduled Delivery Date, it may notify the same to the Contractor, and the Contractor shall, within 15 (fifteen) days of such notice, by a communication inform the Authority's Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

**14.19 Quality Control Records and Documents**

14.19.1 The Contractor shall hand over to the Authority's Engineer a copy of all its quality control records and documents before the Acceptance Certificate is issued pursuant to Clause 15.8 [Final Acceptance Certificate].

**14.20 Suspension of Unsafe Works**

14.20.1 In cases of emergency or urgency arising in connection with and during execution of works, the Contractor shall undertake any protective measures to prevent damages to the facilities.

14.20.2 The Authority, on its own volition or on the recommendation of the Authority's Engineer, may by notice require the Contractor to suspend forthwith the whole or any part of the Works if, in the reasonable opinion of the Authority's Engineer or the Authority, as the case may be, such work threatens the safety of the Users and/or other persons on or about the Project.

14.20.3 The Contractor shall, pursuant to the notice under Sub-Clause 14.17.1, suspend the 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 Users, other persons and vehicles on



or about the Project. The Contractor may by notice require the Authority's Engineer 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 Authority's Engineer, the Authority shall either revoke such suspension or instruct the Contractor to carry out such other and further remedial measures as may be necessary and reasonable, and the procedure set forth in this Clause 14.17 [Suspension of unsafe Works] shall be repeated until the suspension hereunder is revoked.

14.20.4 Subject to the provisions of Clause 22.6 [Effect of Force Majeure Event on the Agreement], all reasonable costs incurred for maintaining and protecting the Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Contractor. 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.

14.20.5 If suspension of Works is for reasons not attributable to the Contractor, the Authority's Engineer shall determine any Time Extension to which the Contractor is reasonably entitled in accordance with the provisions of Clause 13.4 [Extension of time for completion].



**SECTION-15 ACCEPTANCE CERTIFICATE****15.1 Packing Specifications and Quality**

15.1.1. The marking of the Goods must comply with the laws relating to merchandise marks for the time being in force in the Country of the Authority.

15.1.2. The packing for the Goods to be provided by the Contractor should be strong and durable enough to withstand, without limitation, the entire journey during transit, including transshipment (if any), rough handling, open storage, etc., without any damage, deterioration etc. If necessary, the size, weights, and volumes of the packing cases, the 'remoteness of the goods' final destination, and availability or otherwise of transport and handling facilities at all points during transit upto the final destination shall also be considered.

15.1.3. The quality of packing, the manner of marking within & outside the packages, and accompanying documentation shall strictly comply with the Specifications and Standards and in the Agreement. If the packing requirements are amended due to any amendment to the Agreement, the Contractor shall comply accordingly.

15.1.4. Unless otherwise provided in the Agreement, all containers (including packing cases, boxes, tins, drums, and wrappings) in which the Contractor supplies the Goods shall be considered non-returnable and their cost included in the contract price.

15.1.5. If the Agreement provides that the containers shall be returnable, they must be marked 'returnable'. Unless otherwise specified, the cost of reverse transportation shall be borne by the Contractor.

15.1.6. If the Agreement provides that returnable containers shall be separately charged, they shall be invoiced by the Contractor at a price stipulated in the Agreement. In such cases, the Contractor shall give full credit for the invoiced amount if the containers are returned to the Contractor. Return of containers shall be made within a reasonable time, and in the event of any dispute or difference arising as to whether the containers were so returned, the decision of the Authority thereon shall be final and binding. In his discretion, the Authority may award such compensations as may, in his opinion, be proper for any undue delay in returning the containers.

**15.2. Packing Instructions**

15.2.1. Unless otherwise mentioned in the Specifications and Standards in Schedule D of the Agreement, the Contractor shall make separate packages for each consignee (in case there is more than one consignee mentioned in the Contract) and mark each package on three sides with the following with indelible paint of

proper quality: i. An iconic graphical mark to visually identify a particular consignment.

- i. Name of the Procuring Entity;
- ii. contract number and date
- iii. brief description of Goods including quantity.
- iv. the gross weight of the package
- v. Serial number of this package and the total number of packages in the consignment
- vi. packing list reference number
- vii. country of origin of goods
- viii. consignee's name and full address and
- ix. Contractor's name and address

### **15.3. Receipt of Consignment**

#### **15.2.1. Preliminary Acknowledgement**

At the time of the delivery at the destination, the consignee shall receive the Goods on a "subject to inspection and acceptance in terms of Agreement" basis and shall issue the preliminary receipt to acknowledge having received the claimed quantity (not the quality) of consignment. The delivery of the Goods shall not be construed to mean acceptance of the Goods by the Authority.

#### **15.2.2 Goods Receipt and Inspection Report**

If the received consignment successfully passes the quantity and quality checks, the Authority shall issue a Goods Receipt or a similar voucher by any other name. The Contractor may claim payment based on this document inter-alia other specified documents.

#### **15.2.3. Rejection of Consignment by the Consignee**

If the received consignment or part thereof fails to pass quantity and quality checks, the Authority shall issue a Rejection Note, noting the reasons for rejection. The Authority shall recover any part payment or freight charges paid for the rejected consignment. The Contractor shall take back the rejected consignment as per provisions of clause 14.15 above within 21 days unless otherwise stipulated in the contract.

#### **15.2.4. Short Receipt Certificate**

If the quantity received is less than claimed/ invoiced, Receipt /Rejection Note shall be issued only for the received quantity. In such cases, a short receipt certificate shall also be issued by the consignee.

### **15.3. Terms of Delivery**

#### **15.3.1. Destination Places**

The destination(s) where the Goods are to be delivered shall be as stipulated in the Agreement under Schedule A.

15.3.2 Terms of delivery shall determine the point at which the responsibilities and property in goods passes over from the Contractor to the Authority. These terms also determine the time of delivery.

15.3.3 The Contractor shall either deliver free or CIP/ DAP/ FOB at the place/ places or otherwise as detailed in the Contract, the quantities of the Goods detailed therein, and the Goods shall be delivered or dispatched not later than the dates stipulated in the Agreement. The delivery shall not be complete unless the Goods are inspected and accepted by the Consignee as provided in the Contract. No Goods shall be deliverable to the consignee on Sundays and public holidays or outside designated working hours without the written permission of the consignee.

15.3.4 The Contractor shall not dispatch the Goods after the expiry of the delivery period. The Contractor must apply to the Authority to extend the delivery period and obtain the same before dispatch. If the Contractor dispatches the Goods without obtaining an extension, it would be doing so at its own risk, and no claim for payment for such supply and/ or any other expense related to such supply shall lie against the Authority

**15.4. Part supplies**

The Contractor shall not arrange part-shipments and/ or transshipment if not stipulated in the Contract without the express/ prior written consent of the Authority

**15.5. Progressing of Deliveries**

The Contractor shall allow reasonable facilities and free access to his Works/ records to the Authority's Engineer, or such other Representative as may be nominated by the Authority to ascertain the progress of the deliveries under the Contract. The Contractor shall, from time- to-time, render such reports concerning the progress of the Contract and/ or supply of the Goods in such form as may be required by the Authority. The submission, receipt and acceptance of such reports shall not prejudice the rights of the Authority under the Contract, nor shall operate as an estoppel against the Authority merely because he has not taken notice of/ or subjected to test any information contained in such report.

**15. 6. Notification of delivery**

Notification of delivery or dispatch regarding every instalment shall be made to the consignee and to the Authority immediately on dispatch or delivery. The Contractor shall further supply to the consignee, or the interim consignee, as the case may be, packing list of the consignment and the Contract references. All packages, containers, bundles, and loose materials part of every instalment shall be fully described in the packing list, and complete details of the contents of the packages and quantity of materials shall be given to enable the consignee to check the Goods on arrival at destination. The Railway Receipt/ Consignment Note or Bill of Lading shall be forwarded to the consignee by registered post/ Courier/ by hand immediately on the dispatch of Goods. The Contractor shall bear and reimburse the Authority demurrage/ wharfage or other charges, if any, paid because of delay on the Contractor's part in forwarding the Railway Receipt, Consignment Note or Bill of Lading.

**15. 7. Dispatches at the last moment or after the expiry of the delivery**

15.7.1. If the Contractor locally supplies a consignment after the expiry of the delivery date, the Consignee may either refuse to receive it or receive it without prejudice to the rights of the Authority under the terms and conditions of the Contract. Such consignments shall lie at the risk and responsibility of the Contractor. Such a receipt by the consignee shall not acquiesce or condone the late delivery and shall not intend or amount to an extension of the delivery period or keeping the contract alive. The Contractor must obtain an extension of the delivery date/period from the Authority.

15.7.2. If the Contractor dispatches the Goods after the expiry of the delivery period, it shall be at his own risk and responsibility, and that the Consignee is not liable for any demurrage, wharfage, and deterioration of Goods at the destination station and, in his interest, the Contractor shall get an extension of the delivery period from the contracting Entities.

15.7.3. In the case of exports, the Contractor must not dispatch the consignment after the expiry of the delivery period without taking a prior extension of the delivery period. Otherwise, payment against the LC shall be denied. If dispatched, it shall be at the risk and responsibility of the Contractor and the Authority shall not take any responsibility for such consignments.

**15.8 Provisional Acceptance Certificate**

15.8.1 Subject to the provisions of Sub-Clause 15.8.2, upon completion of all Works forming part of the Project or each Section thereof and Tests in respect of the completed Works or section thereof are successful, save and except in case of rescheduling of tests in accordance with Clause 15.12 [Rescheduling of Tests], the Authority's Engineer shall, at the request of the Contractor, issue a Provisional Acceptance Certificate of completion substantially in the form set forth in **Appendix-X** (the "**Provisional Acceptance Certificate**"). The Provisional Acceptance Certificate shall have appended thereto a list of outstanding items of work (the "**Punch List**") that need to be completed in accordance with the provisions of this Agreement. The Contractor undertakes to complete such outstanding items of works, within a period of 30 days of issuance of Provisional Acceptance Certificate or any other period as specified in the Punch List, but in any case before the completion of Warranty/Guarantee Period in accordance with Clause 18.1 [Warranty/Guarantee Period]. The Authority may at the request of the Contractor issue Provisional Acceptance Certificate for a Section or Sections of the Works which has been completed in accordance with this clause.

The Parties further agree that Provisional Acceptance Certificate shall not be issued if the completed Works or the Section(s) cannot be safely and reliably placed in service of the Users thereof. For the avoidance of doubt, the Parties agree that the Punch List shall include all Works for which Time Extension has been granted and

shall also include any minor outstanding items of work forming part of the completed Sections if such works do not materially affect the use of the completed Sections for their intended purpose.

For the avoidance of doubt, failure to include all pending works for completion of the project as per the agreement shall not relieve or absolve the Contractor of its obligations and liabilities under this Agreement in any manner whatsoever.

15.8.2 Without prejudice to the obligations of the Contractor specified in Section-17 [Maintenance Obligations] and Section-18 [Warranty/Guarantee Period], the property and ownership of all the completed Works forming part of the Project shall vest in the Authority.

15.8.3 If the Authority's Engineer determines that the Project or any completed part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Contractor and withhold issuance of the Provisional Acceptance Certificate until the Defects or deficiencies are rectified or replaced by the Contractor and Tests are successful in accordance with this Section-15 [Completion Certificate].

15.8.4 Notwithstanding anything to the contrary contained in Sub-Clause 15.8.3 above, the Authority may, at any time after receiving a report from the Authority's Engineer, direct the Authority's Engineer to issue a Provisional Acceptance Certificate under Sub-Clause 15.8.1 and such direction shall be complied forthwith.

15.8.5 No Provisional Acceptance Certificate shall be issued under the provisions of this Clause 15. [Provisional Acceptance Certificate] until the Contractor has submitted valid claims for payment of at least 90% (ninety per cent) of the amount arrived at after reducing the lump sum price specified in Sub-Clause 20.1.1 by the amount attributable to works which have been withdrawn under the provisions of Clause 12.3 [Delay in Handing over the site]. It is further agreed that all price adjustments made in pursuance of Clause 20.10 [Final Payment Statement] shall not be reckoned for computation of the claims for payments referred to in this Sub-Clause 15.8.5. It is also agreed that any Change of Scope effected within 30 (thirty) days of the Appointed Date shall be reckoned for the purposes of determining the Contract Price hereunder.

#### **15.9 Completion of Remaining Works / Punch List**

All items in the Punch List shall be completed by the Contractor in accordance with the provisions of this Agreement. For any delay in their completion other than for the reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled

to recover Damages from the Contractor in accordance with the provisions of Sub-Clause 13.3.2 of this Agreement.

#### **15.10 Final Acceptance Certificate**

15.10.1 The Authority's Engineer, at the request of the Contractor (the "**Notice for Issuance of Final Acceptance Certificate**") shall issue to the Contractor and the Authority a certificate substantially in the form set forth in **Appendix-X** (the "**Final Acceptance Certificate**"), upon:

- a) receipt of Contractor's request specifying the value of work done in accordance with this Agreement up to the Completion Date of Works and any further sums which the Contractor considers to be due in relation to the Works and under this Agreement;
- b) completion of all Works, including the items specified in the Punch List;
- c) the Authority's Engineer determining the Tests to be successful;
- d) Finalisation of the Maintenance Manual in accordance with Clause 17.1 [Maintenance Manual];
- e) handing over of the as-built drawings and other related documents by the Contractor in accordance with Sub-Clause 13.2.7; and
- f) Clearance of Site in accordance with Sub-Clause 8.24 [Clearance of Site].

After fulfilment of the conditions specified above and issuance of Notice for Issuance of Acceptance Certificate, the Authority's Engineer shall issue the Acceptance Certificate or seek clarification on the Notice, as may be required by the Authority's Engineer, within 28 days from submission of the last clarification by the Contractor, the Authority's Engineer shall issue the Acceptance Certificate or provide reasons for non-issuance of the Acceptance certificate. If the Authority's Engineer fails to issue the Project Acceptance Certificate or reject the Contractor's request within this period of 28 days, and if the conditions described in subparagraphs (a) to (f) above have been fulfilled, the Works or Section shall be deemed to have been completed in accordance with the Conditions of Contract on the day which is 28 (twenty eighth) days after the Authority's Engineer receives the Notice for Issuance of Acceptance Certificate or the last clarification, and the Final Acceptance Certificate shall be deemed to have been issued.

15.8.2 Without prejudice to the obligations of the Contractor specified in Section-17 [Maintenance Obligations] and Section-18 [Warranty/ Guarantee], the property and ownership of all the completed Works forming part of the Project shall vest in the Authority.

#### **15.11. Transfer of Title of Goods**

Unless otherwise stated in the Agreement, notwithstanding any inspection and approval by the Authority's Engineer on the Contractor's premises, or any payments made to the Contractor, property in the Goods (and resultant rights and liabilities) shall not pass on to the Authority until the Goods have been received,



inspected, and accepted by the consignee. The Goods and every constituent part thereof, whether in the possession or control of the Contractor, his agents or servants or a carrier, or the joint possession of the Contractor, his agents or servants and the Authority, his agents, or servants, shall remain in every respect at the risk of the Contractor, until their actual delivery to a person stipulated in the Agreement as the interim consignee for dispatch to the consignee. The Contractor shall be responsible for all loss, destruction, damage, or deterioration of or to the Goods from any cause whatsoever while the Goods after approval by the Authority's Engineer are awaiting dispatch or delivery or are in the course of transit from the Contractor to the consignee or, as the case may be, interim consignee. The Contractor shall alone be entitled and responsible for making claims against any carrier in respect of non-delivery, short delivery, mis-delivery, loss, destruction, damage, or deterioration of the Goods entrusted to such carrier by the Contractor for transmission to the consignee or the interim consignee as the case may be.

Provided that where, under the terms of the Agreement, the Goods are required to be delivered to an interim consignee for dispatch to the consignee, the Goods shall be 't the Authority's risk after their delivery to the interim consignee

#### **15.12 Rescheduling of Tests**

If the Authority's Engineer certifies to the Authority and the Contractor that it is unable to issue the Final Acceptance Certificate or Provisional Acceptance 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 Contractor shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

#### **15.13 Interference on Tests for Completion**

15.6.1 If the Contractor is prevented, for more than 14 days (either a continuous period, or multiple periods which total more than 14 days), from carrying out the Tests on Completion by the Authority's Personnel or by a cause for which the Authority is responsible (including any performance test that is not possible due to available operating conditions during trial operation), the Contractor shall give a Notice to the Authority's Engineer describing such prevention. The Contractor shall carry out the Tests on Completion as soon as practicable and, in any case, before the expiry date of the Warranty/Guarantee Period. The Authority's Engineer shall give a Notice to the Contractor, of not less than 14 days, of the date after which the Contractor may carry out each of the Tests on Completion. Thereafter, Clause 9.1 [Contractor's Obligations] shall apply.

If the Contractor suffers delay and/or incurs Cost as a result of being prevented from carrying out the Tests on Completion, the Contractor shall be entitled to Extension of Time in accordance

with Clause 13.4 [Extension of Time] and/or payment of Cost as maybe determined by Authority's Engineer.



## SECTION-16 CHANGE OF SCOPE

### 16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the Contractor to make modifications or alterations to the Works (the "Change of Scope") before the issue of the Final Acceptance Certificate either by giving an instruction or by requesting the Contractor to submit a proposal for Change of Scope involving additional cost or reduction in cost. Any such Change of Scope shall be made and valued in accordance with the provisions of this Section-16 [Change of Scope].

16.1.2 Change of Scope shall mean:

a) change in drawings, designs, or specifications, where Goods to be furnished under the Agreement are to be specifically manufactured for the Purchaser;

b) addition or omission of any Works from the Scope of the Project except under Sub-Clause 12.3; provided that, subject to Clause 18.5 [Contractor to search Cause]; or

c) the method of shipment or packing;

d) any additional work, Plant, Materials or services which are not included in the Scope of the Project, including any associated Tests on completion of construction

d) the place of delivery; and

subject to the variation on account of change in scope being upto percentage of the Contract Price **as specified in the SCC.**

16.1.3 If the Contractor determines at any time that a Change of Scope will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Authority of executing, maintaining or operating the Project, (iii) improve the efficiency or value to the Authority of the completed Project, or (iv) otherwise be of benefit to the Authority, it shall prepare a proposal with relevant details as stated in Sub-Clause 16.2.2 at its own cost. The Contractor shall submit such proposal, supported with the relevant details including the amount of variation in the Contract Price, if any, to the Authority to consider such Change of Scope.

The Authority shall, within 15 (fifteen) days of receipt of such proposal, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Section-16 [Change of Scope] or reject the proposal and inform the Contractor of its decision.

For the avoidance of doubt, the Parties agree that the Contractor shall not undertake any Change of Scope without a Change of Scope Order being issued by the Authority, save and except any Works necessary for meeting any Emergency.

If invoked explicitly in the Contract, the Authority shall reserve the

## 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 may issue or direct the Authority's Engineer to issue to the Contractor 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 Contractor shall, with due diligence, provide to the Authority and the Authority's Engineer such information as is necessary, together with preliminary documentation in support of:

- a) the impact, if any, which the Change of Scope is likely to have on the Project Delivery Schedule if the works or services are required to be carried out during the Delivery Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:
  - i) break down of the quantities, unit rates and cost for different items of work;
  - ii) proposed design for the Change of Scope; and
  - iii) proposed modifications, if any, to the Project Delivery Schedule of the Project.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Sub-Clause 16.4.2, the Contract Price shall be increased or decreased, as the case may be, on account of Change of Scope.

16.2.3 The Contractor's quotation of costs for the Change of Scope shall be determined on the following principles:

- a) For works of similar nature compared to the Works being executed, the quotation shall be based on the rate for the work inclusive of all labour, Materials, equipment, incidentals, overheads and profit derived in accordance with the provisions of Clause 20.3 [Procedure for Estimating the Payment for the Works].
- b) If Contract provides for some inputs to be supplied by Authority free or at a fixed rate, cost of such inputs shall be excluded from the value of the Goods supplied in accordance with the provisions of Clause 20.3 [Procedure for Estimating the Payment for the Works].
- c) For works not similar in nature to the Works being executed, the cost of work shall be derived on the basis of prevailing market rates as determined by the Authority's Engineer in accordance with Good Industry Practice, in consultation with the Contractor.
- d)

16.2.4 Upon reaching an agreement, the Authority shall issue an order (the **"Change of Scope Order"**) requiring the Contractor to

proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may:

- a) issue a Change of Scope Order requiring the Contractor to proceed with the performance thereof at the rates and conditions approved by the Authority till the matter is resolved in accordance with Section-27 [Dispute Resolution]; or
- b) proceed in accordance with Clause 16.5 [Power of the Authority to undertake works].

16.2.5 The provisions of this Agreement, insofar as they relate to Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Contractor under this Section-16 [Change of Scope].

### **16.3 Payment for Change of Scope**

Payment for Change of Scope shall be made in accordance with the payment schedule specified in the Change of Scope Order.

### **16.4 Restrictions on Change of Scope**

16.4.1 No Change of Scope shall be executed unless the Authority has issued the Change of Scope Order, with the approval of the Exim Bank / Government of India, save and except any Works necessary for meeting any Emergency.

16.4.2 Unless the Parties mutually agree to the contrary, the total value of all Change of Scope Orders shall not exceed percentage of the Contract Price **as specified in the SCC**.

16.4.3 Notwithstanding anything to the contrary in this Section-16 [Change of Scope], no payment against change of scope shall be made by Exim Bank unless approved by Exim Bank.

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

16.5.1 In the event the Parties are unable to agree to the proposed Change of Scope Orders in accordance with Clause 16.2 [Procedure for Change of Scope], the Authority may, after giving notice to the Contractor and considering its reply thereto, award such works or services to any person as the Authority may deem fit. It is agreed that the Contractor shall provide assistance and cooperation to the person who undertakes the works or services hereunder, but shall not be responsible for rectification of any Defects in works carried out by other agencies. The Authority may award such works or services to any person at the discretion of the Authority under written information to Exim Bank. The Authority further acknowledges and agrees that it shall not undertake any works or services under this Sub-Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Contractor.

16.5.2 The works undertaken in accordance with this Sub-Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption to the Project. The provisions of this Agreement, insofar as they relate to Works and

Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

## SECTION-17 MAINTENANCE OBLIGATIONS

### 17.1 Maintenance Manual

17.1.1 No later than 60 (sixty) days prior to the Project Delivery Date, the Contractor shall, in consultation with the Authority's Engineer, evolve a maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, safety requirements and Good Industry Practice, and shall provide 3 (three) copies thereof to the Authority's Engineer.

17.1.2 The Maintenance Manual shall be in sufficient details for the Authority to:

- (a) operate and maintain the Goods to ensure that the performance of the Goods or part thereof as the case may be, continues to comply with the performance criteria of the Project;
- (b) carry out operations, maintenance, dismantling, reassembling, repair the Goods, as the case may be;
- (c) inventory of spare parts required for maintenance of the Project; and
- (d) List of spare parts required for as mutually agreed between the Authority and the Contractor.

17.1.3 The Maintenance Manual shall Identify the spare parts (including specifications and quantities) and the terms and conditions relating to the supply thereof, along with the price of such spare parts as mutually decided between the Contractor and the Authority before commencement of the Maintenance Period, which shall be separately paid to the Contractor by the Authority. The price of such spare parts shall include the purchase price therefor and other costs and expenses (including the Contractor's fees) relating to the supply of spare parts.

17.1.4 The Authority's Engineer shall review the Maintenance Manual within 15 (fifteen) days of its receipt and communicate its comments to the Contractor for necessary modifications, if any.

17.1.5 The provisions of the Agreement pertaining to Works shall apply mutatis mutandis to undertaking the maintenance obligations.

### 17.2 Maintenance Obligations of the Contractor

17.2.1 The Contractor shall maintain the Project for a period as **specified in the SCC**, commencing from the date of the Project Completion Certificate (the "**Maintenance Period**"). For the performance of its Maintenance Obligations, the Contractor shall be paid in accordance with the Payment Milestones outlines in **Schedule-F**. The amount for the performance of the Contractor's Maintenance Obligations shall be inclusive of all taxes.

17.2.2 During the Maintenance Period, the Authority shall facilitate the Contractor access to the Site for Maintenance in accordance with this Agreement. The obligations of the Contractor hereunder shall include:

- a) undertaking routine maintenance;
- b) undertaking repairs;
- c) informing the Authority of any unauthorised use of the Project;
- d) operation and maintenance of all communication, patrolling, and administrative systems necessary for the efficient maintenance of the Project in accordance with the provisions of this Agreement; and
- e) maintain requisite staff and materials as may be required for successfully undertaking the maintenance in conformity with the Maintenance Manual.

17.2.3 In respect of any Defect or deficiency not specified in this Agreement, the Contractor shall, at its own cost, undertake repair or rectification in accordance with Good Industry Practice, save and except to the extent that such Defect or deficiency shall have arisen on account of any wilful default or neglect of the Authority or third party or a Force Majeure Event.

17.2.4 The Contractor shall remove promptly from the Project Site any waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2.5 The Contractor shall ensure that at all times during the Maintenance Period, the Project conforms to the maintenance requirements set forth in **Schedule-M** (the “**Maintenance Requirements**”).

17.2.6 The Contractor shall make its claim for maintenance payment at the at the intervals **as specified in the SCC**, during the Maintenance Period, with the entity so identified by the Authority for this purpose, and as informed by the Authority from time-to-time, supported with necessary particulars and documents in accordance with this Agreement.

17.2.7 Within 15 (fifteen) days of the receipt of the claim, the Authority’s Engineer shall determine and shall deliver to the Authority and the Contractor, an IPC certifying the amount due and payable to the Contractor, after adjusting any dues from the Contractor for the maintenance obligations, including any amount to be claimed under Clause 17.6 [Breach of Maintenance]. The amount so certified shall be released to the Contractor in a reasonable period of time.

### 17.3 Maintenance Programme

17.3.1 The Contractor shall prepare a monthly maintenance programme (the “**Maintenance Programme**”) in consultation with the Authority’s Engineer/Authority. The Maintenance Programme shall contain the following (i) the proposed maintenance Works; and (ii) deployment of resources for maintenance Works.

- 17.4 Safety** 17.4.1 The Contractor shall ensure safe conditions for the Users, and in the event of unsafe conditions and accidents, it shall follow the relevant operating procedures for removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.5 Closure** 17.5.1 The Contractor shall not close Project for undertaking maintenance works except with the prior written approval of the Authority.
- 17.6 Breach of Maintenance** 17.6.1 In the event that the Contractor fails to repair or rectify any Defect or deficiency set forth in **Schedule-M** within the period specified therein, it shall be deemed as failure of performance of maintenance obligations by the Contractor and the Authority shall be entitled to reduce the amount payable towards maintenance without prejudice to the rights of the Authority under this Agreement, including Termination thereof.
- 17.6.2 If the nature and extent of any Defect justifies more time for its repair or rectification than the time specified in Schedule-M, the Contractor shall be entitled to additional time. Such additional time shall be determined by the Authority / Authority's Engineer and conveyed to the Contractor with reasons thereof.
- 17.6.3 Any reduction made on account of non-compliance by the Contractor in accordance with Sub-Clause 17.6.1, will not be paid subsequently even after establishing the compliance thereof.
- 17.7 The Authority's Right to take Remedial Measures** 17.7.1 In the event the Contractor does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the Maintenance Inspection Report or a notice in this behalf from the Authority or the Authority's Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the cost of the Contractor, and to recover its cost from the Contractor. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Contractor to the Authority as Damages.
- 17.8 Restoration of Loss or Damage to Project** 17.8.1 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 Maintenance from any cause attributable to the Contractor, the Contractor 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.

#### **17.9 Overriding Powers of the Authority**

17.9.1 (a) If in the reasonable opinion of the Authority, the Contractor is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Contractor to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

(b) In the event that the Contractor, upon notice under the clause above fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Agreement and take over the performance of any or all the obligations of the Contractor to the extent deemed necessary by it for rectifying or 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 hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be recovered by the Authority from the Contractor, and the Authority shall be entitled to deduct any such costs and expenses incurred from the payments due to the Contractor for Maintenance.

#### **17.10 Report of Unusual Occurrence**

17.10.1 The Contractor shall, during the Maintenance Period, prior to the close of each day, send to the Authority and the Authority's Engineer, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the users and worthiness of the Project. A monthly summary of such reports shall also be sent within 3 (three) business days of the closing of the month. For the purposes of this Clause 17.10, accidents and unusual occurrences shall include: (a) accident, death or severe injury to any person; (b) damaged or dislodged fixed equipment; (c) flooding; and (d) any other unusual occurrence.

#### **17.11 Maintenance Completion Certificate**

17.11.1 The Maintenance Requirements set forth in **Schedule-M** having been duly carried out, Maintenance Period as set forth in Section-17 [Maintenance Obligations] having been expired the Authority's Engineer determining the Tests on completion of Maintenance to be successful and upon clearance of Site by the Contractor in accordance with Clause 8.22 [Clearance of Site], the Authority will issue Maintenance Completion Certificate to the Contractor substantially in the format set forth in **Appendix-XI**.



**SECTION-18 WARRANTY/GUARANTEE****18.1 Warranty Period**

If so stipulated in the SCC of the Agreement, the following warranty/ Guarantee clause shall apply

18.1.1 The Contractor hereby covenants that it is a condition of the Contract that all Goods supplied to the Authority under this Contract shall be free of all defects and faults arising from design, materials (except when the design adopted and/ or the material used are as per the Procuring Entity's specifications) or workmanship or from any act or omission of the Contractor, that may develop under regular use of the supplied Goods under the local conditions of the host country.

18.1.2 Unless otherwise indicated in the Contract, the Contractor also guarantees that the said Goods would continue to conform to the description and quality as aforesaid, for the period stipulated in the SCC

18.1.3 Obligations of the contractor under the warranty clause shall survive even though:

(a) The Goods may have been inspected, accepted, installed/ commissioned and paid for by the Procuring Entity.

(b) The Contract is terminated for any reason whatsoever.

18.1.3 The Procuring Entity shall promptly notify in writing to the Contractor, if during the period above, the said goods/ stores/ articles are discovered not to conform to the description and quality or have deteriorated, otherwise than by fair wear and tear (the decision of the Procuring Entity in that behalf being final and conclusive).

**18.2 Remedy and Rectification of Defects and Deficiencies**

18.2.1 Upon receipt of such notice, the Contractor shall, within 14 days (or within any other period, if stipulated in the Contract), expeditiously repair or replace the defective Goods or parts thereof, free of cost, at the ultimate destination. The Contractor shall take over the replaced parts/ Goods after providing their replacements, and no claim shall lie on the Procuring Entity for such replaced parts/ Goods after that.

**18.3 Cost of Remedying Defects**

18.3.1 For the avoidance of doubt, any repair or rectification or replacement undertaken in accordance with the provisions of Clause 18.2 [Remedy and rectification of Defects and deficiencies], including any additional tests, shall be carried out by the Contractor at its own risk and cost, to the extent that such rectification or repair is attributable to:

- a) the design of the Works, other than the part of design for which the Authority is responsible;

- b) Works, Plant, Materials or workmanship not being in accordance with this Agreement and the Specifications and Standards;
- c) improper maintenance during the delivery period by the Contractor; or
- d) failure by the Contractor to comply with any other obligation under this Agreement.

#### **18.4 Contractor's Failure to Rectify Defects**

18.4.1 In the event that the Contractor fails to repair or rectify or replace such Defect or deficiency within the period specified in Clause 18.2 [Remedy and rectification of Defects and deficiencies], the Authority shall be entitled to get the same repaired, rectified or remedied at the Contractor's cost so as to make the Project conform to the Specifications and Standards and the provisions of this Agreement. All costs consequent thereon shall, after due consultation with the Authority and the Contractor, be determined by the Authority's Engineer. The cost so determined, and an amount equal to the percentage **as specified in the SCC** of such cost as Damages, shall be recoverable by the Authority from the Contractor and may be deducted by the Authority from any monies due to the Contractor.

#### **18.5 Contractor to Search Cause**

18.5.1 The Authority's Engineer may instruct the Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Warranty/Guarantee Period.

18.5.2 In the event any Defect identified under Sub-Clause 18.5.1 above is attributable to the Contractor, the Contractor shall repair or rectify or replace such Defective Goods or parts thereof within the period specified by the Authority's Engineer, and shall bear the cost of the examination and rectification of such Defect.

18.5.3 In the event such Defect is not attributable to the Contractor, the Contractor shall notify this to the Authority's Engineer and the Authority's Engineer shall, after due consultation with the Authority and the Contractor, determine the costs incurred by the Contractor on such examination and notify the same to the Contractor, with a copy to the Authority, and the Contractor shall be entitled to payment of such costs by the Authority.

#### **18.6 Extension of Warranty/Guarantee Period**

18.6.1 The Warranty/Guarantee Period shall be deemed to be extended till the identified Defects under Clause 18.2 [Remedy and rectification of Defects and

deficiencies] have been remedied. The parties agree that the Warranty/Guarantee shall not be extended for a period of more than 1 year after the end of Warranty/Guarantee Period in accordance with Clause 18.1 [Defects Liability Period] above. Provided however that if Works were suspended by the Authority in accordance with Clause 14.17 [Suspension of unsafe Works] (except where the suspension is on account of failure by the Contractor), the Contractor's obligation under this Section-18 [Defects Liability] shall not apply to any defects or damages occurring more than 1 year after the Warranty Period for the Works, of which the Works would otherwise have expired.

18.6.2 In case of any rectification of a defect or replacement of any defective Goods during the warranty period, the warranty for the rectified/ replaced Goods shall remain till the original warranty period.

18.6.3 The Contractor shall, upon termination or expiry of this Agreement, or upon expiry of the Warranty/Guarantee Period, assign any outstanding benefit in respect of any sub-contract or any warranty from any Sub-contractor, to the Authority or to such other person as the Authority may direct.

**SECTION-19 AUTHORITY'S ENGINEER****19.1 Appointment of the Authority's Engineer**

19.1.1 The Authority shall appoint an Authority's representative, who, except otherwise stated in this Agreement, shall be deemed to act on behalf of the Authority under this Agreement (the "**Authority's Engineer**"). The Authority's Engineer can be a legal entity or a natural person.

19.1.2 The appointment of the Authority's Engineer shall be made no later than 15 (fifteen) days from the date of this Agreement. The Authority shall notify the appointment or replacement of the Authority's Engineer to the Contractor forthwith.

19.1.3 The staff of the Authority's Engineer shall include suitably qualified engineers and other professionals who are competent to assist the Authority's Engineer to carry out its duties.

19.1.4 The Authority's Engineer shall, except in cases otherwise stated in this Agreement, deemed to have full authority of the Authority under this Agreement.

19.1.5 The appointment of the Authority's Engineer does not in any manner derogate / diminish the power vested in the Authority as per the Applicable Laws to issue necessary instructions in relation to the project. The Contractor shall promptly and strictly comply with all such instructions given by the Authority for the project.

**19.2 Duties and Functions of the Authority's Engineer**

19.2.1 The Authority's Engineer shall perform its duties and discharge its functions in accordance with the provisions of this Agreement, and substantially in accordance with the terms of reference ("**Terms of Reference**" or "**TOR**") set forth in Annex-I of **Schedule-J**, but subject to obtaining prior written approval of the Authority before determining the following:

- a) any Time Extension;
- b) any additional cost to be paid by the Authority to the Contractor;
- c) Grant of Handing Over of Site;
- d) the Termination Payment;
- e) Change of Scope.
- f) Issuance of Final Acceptance Certificate / Provisional Acceptance Certificate; or
- g) Any other matter which is not specified in (a), (b) or (c) above and which creates a financial obligation or liability on either Party;

19.2.2 No decision or communication of the Authority's Engineer shall be effective or valid unless it is accompanied by an attested true copy of the approval of the Authority for and in respect of any matter specified in Sub-Clause 19.2.1.

19.2.3 The Authority's Engineer shall submit regular periodic reports, at least once every month, to the Authority in respect of

its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month. For the avoidance of doubt, the Authority's Engineer shall include in its report compliance of the recommendations of the Safety Consultant.

19.2.4 After fulfilment of the conditions prescribed for achieving the Appointed Date, the Authority's Engineer shall issue notice to the Contractor for commencement of Works.

19.2.5 The Authority's Engineer, in consultation with the Authority, shall examine the particulars of the Sub-contractor and no later than 15 (fifteen) business days from the date of receiving the communication from the Contractor or 15 (fifteen) business days from the date of receipt of last material information in this regard, whichever is later, shall convey its decision on appointment of the Sub-contractor. The Authority's Engineer shall provide reasons in case it decides not to proceed with the sub-contract.

19.2.6 Such decision given under Sub-Clause 19.2.5 above by the Authority's Engineer shall be in accordance with the qualifications of the Sub-contractor as **specified in the SCC** and followed by the Contractor as given under Sub-Clause 8.2.5. Such approval shall be required for appointment of all the Sub-contractors, irrespective of the Sub-contractor being an equipment supplier, labour or material supplier or any other Sub-contractor.

### **19.3 Authorised Signatories**

19.3.1 In case the Authority's Engineer is a Legal entity, the Authority shall require the Authority's Engineer to designate and notify to the Authority and the Contractor up to 2 (two) persons employed in its firm to sign for and on behalf of the Authority's Engineer, and any communication or document required to be signed by the Authority's Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Authority's Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

### **19.4 Instructions of the Authority's Engineer**

19.4.1 The Authority's Engineer may issue to the Contractor instructions under this agreement, including any instructions for remedying any Defect. The Contractor shall take such instructions from the Authority's Engineer only.

19.4.2 All instructions issued by the Authority's Engineer shall be in writing.

### **19.5 Determination by the Authority's Engineer**

19.5.1 The Authority's Engineer shall consult with each Party in an endeavour to reach agreement wherever this Agreement provides for the determination of any matter by the Authority's Engineer. If such agreement is not achieved, the Authority's Engineer shall make a fair determination in accordance with this Agreement having due regard to all relevant circumstances. The Authority's

Engineer shall give notice to both the Parties of each such agreement or determination, with supporting particulars.

19.5.2 Each Party shall give effect to each agreement or determination made by the Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that if any Party disputes any instruction, decision, direction or determination of the Authority's Engineer, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out under this Agreement.

**19.6  
Remuneration of  
the Authority's  
Engineer**

19.6.1 The remuneration, cost and expenses of the Authority's Engineer shall be paid by the Authority.

**19.7 Termination  
of appointment of  
the Authority's  
Engineer**

19.7.1 The Authority at its discretion, replace the Authority's Engineer at any time. The Authority shall notify the Contractor about such replacement along with the details of the appointed Authority's Engineer along with the date of appointment.

19.7.2 If the Contractor has reasons to believe that the Authority's Engineer is not discharging its duties and functions in accordance with the provisions of this Agreement, it may make a written representation to the Authority and seek termination of the appointment of the Authority's Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Contractor and Authority's Engineer and make best efforts for an amicable resolution of the Dispute. In the event that the appointment of the Authority's Engineer is terminated hereunder, the Authority shall appoint forthwith another Authority's Engineer in accordance with Clause 19.1 [Appointment of the Authority's Engineer].

**19.8 Arrangement**

19.8.1 In the event that the Authority has not appointed an Authority's Engineer, or the Authority's Engineer 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 Authority's Engineer in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 19.8 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

## Financial Covenants

## SECTION-20 PAYMENTS

### 20.1 Contract Price

20.1.1 The Authority shall make payments to the Contractor for the Works on the basis of the lump sum price accepted by the Authority in consideration of the obligations specified in this Agreement for an amount **as specified in the SCC** (the “**Contract Price**”), which shall be subject to adjustments in accordance with the provisions of this Agreement. The Parties further agree that save and except as provided in this Agreement, the Contract Price shall be valid and effective until issue of Maintenance Completion Certificate.

20.1.2 The Contract Price includes all duties, taxes, royalty and fees that may be levied in accordance with the laws and regulations in force, on the Contractor's equipment, Plant, Materials and supplies acquired for the purpose of this Agreement, on the Works undertaken under this Agreement. Nothing in this Agreement shall relieve the Contractor from its responsibility to pay any tax outside the Authority's Country.

20.1.3 In accordance with the IDEAS Guidelines, the goods and services provided under this Agreement shall be free from all kinds of taxes and duties of any nature whatsoever levied in the Authority's Country including corporate/ personal/ value added taxes, Import/Custom Duties, Special levies and social security contributions for temporary employees deputed by Contractor in relation to the contract execution in the Authority's country, including tax exemptions if applicable for eligible services to be rendered locally. If the domestic laws/rules of the Authority's Country prohibit exemption of any taxes to bilateral partner/multilateral institution extending development assistance to it, the same have to be paid by the Contractor from its own resources and shall be reimbursed by the Authority to the Contractor. No tax is liable to be paid from the LOC proceeds. Exemption from taxes by way of upfront exemption or by way of reimbursement shall be **as specified in the SCC**.

20.1.4 In case of upfront exemption of taxes and duties, the Authority shall ensure that no demurrage & detention charges are levied on the Goods being imported for the Project by the Contractor due to delay / non-availability of the tax exemption for such imports. The Authority shall pay / reimburse such demurrage & detention charges to the Contractor if the demurrage & detention is levied for reasons solely attributable to the Authority. The reimbursement of demurrage and detention shall be dealt in accordance with 20.1.5.

20.1.5 In case of reimbursement of taxes in accordance with Sub-Clause 20.1.3 and Clause 20.1.4, the Contractor can issue a notice to Authority to claim the reimbursement of actual amount paid as taxes, after making such payment to the Government Instrumentalities (the “**Notice for Tax Reimbursement**”). The Notice for Tax Reimbursement shall include the following:



- a) details of the claim including the nature of tax and the amount of reimbursement, which shall be the actual amount paid by the Contractor towards the applicable taxes and duties levied in the Authority's Country; and
- b) documents evidencing the actual amount paid and any other document in support of the claim as may be reasonably required by the Authority.

Upon receipt of the Notice for Tax Reimbursement, the Authority shall promptly but no later than 90 days from the receipt of such notice shall make the payment to the Contractor against the Notice for Tax Reimbursement. In case the payments are not made by the Authority against the Notice for Tax Reimbursement, the Contractor shall be entitled to damages **as specified in the SCC**.

20.1.6 The Contract Price shall not be adjusted for any change in duties, taxes, etc. specified in Sub-Clause 20.1.2 above, save and except as specified in Clause 20.13 [Change in Law]. The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs, unless otherwise provided for in this Agreement.

20.1.7 Unless otherwise specified in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this Agreement and all things necessary for the delivery thereof and for the rectification of any Defects in the Project and all things necessary for performing its Maintenance Obligations for the Maintenance Period under this Agreement.

20.1.8 Subject to Applicable Law, the Contractor shall open and maintain a Project specific bank account in India. The bank account shall be used only for the purpose of maintaining the Project cashflows. All payments under this Agreement shall be made in the currency **as specified in the SCC**. The Contractor shall submit a monthly account statement and a detailed report on utilization of funds transferred to this project related bank account to Authority's Engineer. Notwithstanding anything contrary to this agreement, the Authority, in the interest and to ensure timely completion of the work, reserves the right to audit such bank accounts to ensure that there is no diversion of funds from this project specific account to any other project being implemented by the Contractor.

20.1.9 The Contractor shall have satisfied itself as to the correctness and sufficiency of the Contract Price. The Contract Price shall cover all its obligations under this Agreement, in addition to all risks the Contractor has agreed to undertake under this Agreement, including those associated with the performance of its obligations including maintenance obligations under this Agreement and all things necessary for the provision of the Works in a manner satisfactory to the Authority and in accordance with this Agreement. Unless otherwise stated in this Agreement, the Contract Price covers all the Contractor's obligations for the Works under this

Agreement and all things necessary for the Construction and the remedying of any Defects in the Project and all things necessary for performing its Maintenance Obligations for the Maintenance Period under this Agreement.

#### 20.1.10

In case of a JV, all the payments to be made under this Agreement shall be made to the account of the JV.

### 20.2 Advance Payment

Payments for supplies made or incidental works/ services rendered shall be released after supplies have been made and only after such incidental works/ services have also been rendered. If expressly provided for in the contract in SCC, partial payments against dispatch documents shall not be considered as advance payment for this clause.

### 20.3 Procedure for Estimating the Payment for the Works

20.3.1 The Authority shall make interim payments to the Contractor, as certified by the Authority's Engineer on completion of a stage, or as specified, and valued in accordance with the proportion of the Contract Price assigned to each item and its stage and payment procedure in **Schedule-F**.

20.3.2 The Contractor shall make its claim for interim payment for the shipments completed till the end of the month for which the payment is claimed, valued in accordance with Sub-Clause 20.3.1, and supported with necessary particulars and documents in accordance with this Agreement.

20.3.3 Any reduction in the Contract Price arising out of Change of Scope or the Works withdrawn under Clause 12.3 [Delay in Handing over the site], as the case may be, shall not affect the amounts payable for the items or stage payments thereof which are not affected by such Change of Scope or withdrawal. The Parties further agree that the adjustments arising out of the aforesaid modifications shall be carried out in a manner that the impact of such modifications is restricted to the said Change of Scope or withdrawal, as the case may be, and does not alter the payments due for and in respect of items or stage payments which do not form part of such Change of Scope or withdrawal.

### 20.4 Retention Money

20.6.1. From every payment for Works due to the Contractor in accordance with the SCC of the Agreement, The retention money shall be recovered through proportionate deductions to be made in the Interim Payments Certificates based on shipments issued in accordance with the provisions of Sub-Clause 20.3 [Procedure for Estimating the Payment for the Works]. The retention money in each Interim Payment Certificates based on shipments shall not exceed an amount **as specified in the SCC**

**20.6.2** Upon occurrence of a Contractor's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Retention Money as Damages for such Contractor's Default.

20.6.3 As specified in SCC, the Contractor may, upon furnishing an irrevocable and unconditional bank guarantee substantially in the form provided at Annex-II of Schedule-F, require the Authority to refund the Retention Money deducted by the Authority under the provisions of Clause 20.6.3. Provided that the refund hereunder shall be made in tranches of not less than 1% (one per cent) of the Contract Price.

20.6.4. Within 15 (fifteen) days of the date of issue of the Final Acceptance Certificate, the Authority shall discharge the bank guarantees, if any, furnished by the Contractor under the provisions of Clause 20.6.3 and refund the balance of Retention Money remaining with the Authority after adjusting the amounts appropriated under the provisions of Clause 20.6.2 and the amounts refunded under the provisions of Clause 20.6.3.

20.6.5. The Parties agree that in the event of Termination of this Agreement, the Retention Money and the bank guarantees specified in this Clause 20.6 shall be treated as if they are Performance Security and shall be reckoned as such for the purposes of Termination Payment under Clause 21.6.

## **20.5 Procedure for Payments to Contractor**

20.5.1 To the extent that the payment to be made to the Contractor by the Authority in accordance with the Contract Inclusion Letter, the Authority shall submit to Exim Bank the Payment Authorisation Letter (the "**Payment Authorisation**") issued by the Borrower, for making payment to the account of the Contractor in India, on behalf of the Authority. Exim Bank shall make the payment to the Contractor to the extent of the amounts and works approved by Exim Bank in accordance with the Contract Inclusion Letter. Payments outside the scope of the Contract Inclusion Letter, including any damages and interest on delayed payments, shall be made by the Authority directly to the account of the Contractor. The Authority agrees that forwarding the Payment Authorisation to Exim Bank does not relieve the Authority from its obligation to make the payment to the Contractor in accordance with this Agreement. The Contractor agrees and acknowledges that such Payment Authorisation from the Authority to Exim Bank is solely a matter inter se the Authority and Exim Bank, and does not create any obligation for Exim Bank towards the Contractor in any manner whatsoever.

20.5.2 The Contractor acknowledges that such payments made in accordance with this Clause 20.6 shall be construed as payment made by the Authority to the Contractor for the purpose of this agreement.

20.5.3 The payments in accordance with Sub-Clause 20.6.1 and the documents submitted pursuant to shall be made to the account of the Contractor **as specified in the SCC**. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

20.5.4 The Contractor agrees and acknowledges that Exim Bank's obligation to act basis the Payment Authorisation issued by the Authority is a bilateral arrangement between the Authority and Exim Bank and that the Contractor does not have any privity with Exim Bank in relation to, or in connection with, this Agreement or the subject matter hereto. The Contractor waives any rights, including as a third party beneficiary , to claim any rights, liabilities against Exim Bank for any matter whatsoever.

20.5.5. The Authority may instruct its bank to issue an irrevocable confirmed documentary credit made available to the Contractor in a bank in the country of the Contractor, as specified in SCC. In case of the amount covered under the LOC, the negotiating and paying bank, based on payment authorization, shall be the Exim Bank.

20.5.6. The Eligible Goods and Services shall be inspected before shipment on behalf of the Authority and the documents to be furnished by the Contractor to the Negotiating Bank viz. the Exim Bank under the letter of credit arrangement herein and shall include an inspection certificate

20.5.7. All letters of credit shall be opened by the Issuing Bank in favour of the Contractor within such period prior to the relevant Terminal Disbursement Date as may be agreed by Exim Bank after contract inclusion. The letters of credit shall be advised and negotiated through the Negotiating Bank i.e. Exim Bank. The letters of credit shall be subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) published by the International Chamber of Commerce, (Publication No.600), and shall be irrevocable. The letter of credit shall provide for payment to be made to the Contractor against presentation of documents as specified in the letter of credit, an inspection certificate and Payment Authorisation.

20.5.8. The Borrower shall send payment authorisation favouring the Supplier to Exim Bank for the amount of the Eligible Value apportionable to the relevant invoice/request on receipt of  
i. an invoice from the Contractor duly certified by the Authority representing the amount for supplies made / services rendered by the Contractor as per the milestone under an Eligible Contract in the Borrower's Country, or,

- x. a request from the Authority to release advance payment to the Supplier

20.5.9. Upon presentation of documents by the Contractor to the Negotiating Bank, the Negotiating Bank shall pay to the Contractor, an amount being not more than ninety per cent (90%) of contract value apportionable to the relative milestone as reduced by the amount of advance payment in equivalent amount, provided the documents presented are in order and are compliant with the relevant letter of credit.

20.5.10. Bank charges, expenses, commission or stamp duty payable outside the Borrower's Country shall be to the account of the Contractor and those payable in the Borrower's Country shall be to the account of the Authority.

## **20.6 Payment of Damages**

The Contractor may claim Damages due and payable to it in accordance with the provisions of this Agreement. The Authority's Engineer shall issue the IPC within 15 (fifteen) days of the receipt of the claim under this Clause 20.7, after making adjustments in accordance with the provisions of this Agreement. The Authority shall pay to the Contractor the amount due under such IPC electronically.

## **20.7 Time of payment**

The Authority shall pay to the Contractor any amount due under any payment certificate issued by the Authority's Engineer in accordance with the provisions of this Agreement as follows:

(a) Payment Authorisation shall be submitted to Exim Bank no later than 30 (thirty) days from the date of submission of the Stage Payment Statement / Clarification on the Stage Payment Statement by the Contractor to the Authority's Engineer for certification in accordance with the provisions of Clause 20.4 [Stage Payment Statement for Works]; provided, however, that in the event the IPC is not issued by the Authority's Engineer within the aforesaid period of 30 (thirty) days in accordance with Clause 20.5 [Stage Payment for Works] the Authority may pay the amount shown in the Contractor's Stage Payment Statement and any discrepancy therein shall be adjusted in the next IPC; and

(b) Payment Authorisation shall be delivered in accordance with Sub-clause 20.12 [Final Payment Certificate].

## **20.8 Restrictions on Price Adjustment**

20.8.1 The Contract Price shall not be adjusted for any change in the exchange rate or cost of inputs.

20.8.2 The Contract Price shall not be adjusted for any change in the duties, taxes etc. specified in Sub-Clause 20.1.2 above, save and except as specified in Clause 20.13 [Change in Law].

**20.9 Final Payment Statement**

20.9.1 Within 60 (sixty) days of receiving the Final Acceptance Certificate under Clause 17.11 [Maintenance Completion Certificate], the Contractor shall submit to the Authority's Engineer six copies of a final payment statement (the "**Final Payment Statement**"), with supporting documents, in the form prescribed by the Authority's Engineer in respect of:

- (a) the summary of the Contractor's Stage Payment Statements as submitted in accordance with Clause 20.4 [Stage Payment Statement for Works];
- (b) the amounts received from the Authority against each claim; and
- (c) any further sums which the Contractor considers due to it from the Authority.

20.9.2 If the Authority's Engineer disagrees with or cannot verify any part of the Final Payment Statement, the Contractor shall submit such further information as the Authority's Engineer may reasonably require.

20.10.3 The Authority's Engineer shall deliver to the Authority:

- (i) an IPC for those parts of the Final Payment Statement which are not in dispute, along with a list of disputed items which shall then be settled in accordance with the provisions of Section-27 [Dispute Resolution]; or
- (ii) a Final Payment Certificate in accordance with Clause 20.12 [Final Payment Certificate], if there are no disputed items.

**20.10 Discharge**

Upon submission of the Final Payment Statement under Clause 20.10 [Final Payment Statement], the Contractor shall give to the Authority, with a copy to the Authority's Engineer, a written discharge confirming that the total of the Final Payment Statement represents full and final settlement of all monies due to the Contractor in respect of this Agreement for all the Works arising out of this Agreement, except for any monies due to either Party on account of any Defect. Provided that such discharge shall become effective only after the payment due has been made in accordance with the Final Payment Certificate issued pursuant to Sub-Clause 20.12 [Final Payment Certificate].

**20.11 Final Payment Certificate**

20.12.1 Within 30 (thirty) days after receipt of the Final Payment Statement under Clause 20.10 [Final Payment Statement], and the written discharge under Clause 20.11 [Discharge], and there being no disputed items of claim, the Authority's Engineer shall deliver to the Authority, with a copy to the Contractor, a final payment certificate (the "**Final Payment Certificate**") stating the amount which, in the opinion of the Authority's Engineer, is finally due under this Agreement or otherwise. For the avoidance of doubt, before issuing the Final Payment Certificate, the Authority's Engineer shall ascertain from the Authority all amounts previously paid by the



Authority, all sums due to the Authority, and the balance, if any, due from the Authority to the Contractor or from the Contractor to the Authority, as the case may be.

20.12.2 The Authority shall, pay to the Contractor the amount which is specified as being finally due in the Final Payment Certificate in accordance with Clause 20.6 [Procedure for Payment to Contractor].

#### **20.13 Change in Law**

20.13.1 If as a result of Change in Law, the Contractor suffers any additional costs and / or delay in the execution of the Works or in relation to the performance of its other obligations under this Agreement, the Contractor shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs and / or delay, notify the Authority with a copy to the Authority's Engineer of such additional costs and / or delay due to Change in Law.

20.13.2 If as a result of Change in Law, the Contractor benefits from any reduction in costs and / or time for the execution of this Agreement or in accordance with the provisions of this Agreement, either Party shall, within 15 (fifteen) days from the date it becomes reasonably aware of such reduction in costs, notify the other Party with a copy to the Authority's Engineer of such reduction in costs due to Change in Law.

20.13.3 The Authority's Engineer shall, within 15 (fifteen) days from the date of receipt of notice from the Contractor or the Authority, as the case may be, determine any addition or reduction to the Contract Price, as the case may be, due to the Change in Law.

#### **20.14 Correction of Interim Payment Certificates**

20.14 The Authority's Engineer may by an Interim Payment Certificate make any correction or modification in any previous Interim Payment Certificate issued by it.

#### **20.15 The Authority's Claims**

20.15.1 If the Authority considers itself to be entitled to any payment from the Contractor under any Clause of this Agreement, it shall give notice and particulars to the Contractor, 20 (twenty) days before making the recovery from any amount due to the Contractor, and the Authority shall take into consideration the representation, if any, made by the Contractor in this behalf, before making such recovery, save and except without prejudice to the Contractor's right to raise a Dispute. The recovery by the Authority shall be subject to determination by the Authority's Engineer in accordance with Clause 19.5 Determination by the Authority's Engineer].

**SECTION 21 PACKING****21.1 PACKING**

21.1.1. Unless otherwise mentioned in the Specifications and Standards in Schedule D of the Agreement, the Contractor shall make separate packages for each consignee (in case there is more than one consignee mentioned in the Contract) and mark each package on three sides with the following with indelible paint of proper quality:

i. An iconic graphical mark to visually identify a particular consignment.

- xi. Name of the Procuring Entity;
- xii. contract number and date
- xiii. brief description of Goods including quantity.
- xiv. the gross weight of the package
- xv. Serial number of this package and the total number of packages in the consignment
- xvi. packing list reference number
- xvii. country of origin of goods
- xviii. consignee's name and full address and
- xix. Contractor's name and address



## SECTION-22 INSURANCE

### 21.1 Insurance for Works

21.1.1 Without limiting either party's obligations or responsibilities, the Contractor shall effect and maintain at its own cost the insurances specified in **Schedule-L** and as per the requirements under Applicable Law and Good Industry Practices. The Contractor shall ensure that its Sub-contractors also effect and maintain similar insurances as per the requirements under Applicable Laws.

21.1.2 Subject to the provisions of Clause 22.6 [Effect of Force Majeure Event on the Agreement], the Contractor shall, in accordance with the provisions of this Agreement, be liable to bear the cost of any loss or damage that does not fall within the scope of this Section-21 [Insurance] or cannot be recovered from the insurers.

21.1.3 Save and except as provided in Sub-Clause 21.1.4, the Contractor shall fully indemnify, hold harmless and defend the Authority from and against any and all losses, damages, costs, charges and/or claims with respect to:

(a) the death of or injury to any person; or

(b) the loss of or damage to any property,

that may arise out of or in consequence of any breach by the Contractor of this Agreement during the execution of the Works or the remedying of any Defects therein, and during the performance of the maintenance obligations during Warranty/ Guarantee Period.

21.1.4 Notwithstanding anything in Sub-Clause 21.1.3, the Authority shall fully indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims arising out of or with respect to the damage to property which is the unavoidable result of the execution and completion of the Works, or the remedying of any Defects therein, in accordance with this Agreement.

Provided, however, that in the event of any injury or damage as a result of the contributory negligence of the Contractor, the Authority shall be liable to indemnify the Contractor from and against any and all losses, damages, costs, charges, proceedings and/or claims only to the extent such injury or damage as is attributable solely to the Authority.

21.1.5 Without prejudice to the provisions of Sub-Clauses 21.1.3 and 21.1.4, the Contractor shall maintain or effect such third party insurances as may be required under Applicable Laws and Good Industry Practice.

21.1.6 The Contractor shall provide to the Authority, within 30 days of the Appointed Date, Unless otherwise instructed in the Contract, the Contractor shall arrange for insuring the Goods against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the following manner:

- (iii) In case of supply on CIP destination basis, the Contractor shall be responsible until the entire Goods contracted arrive in good condition at destination. The contractor shall cover the transit risk in this respect by getting the Goods duly insured at its own cost. The Contractor shall obtain the insurance cover in its name and not in the name of the Authority or its Consignee.
- (iv) In FOB and CFR, the insurance shall be arranged by the Authority. However, the Contractor must give sufficient notice to the Authority before the date of shipment so that the insurance cover for the shipment can be activated. The Contractor must co-ordinate to ensure that the shipment sails only with Insurance cover in place.

## **21.2 Notice to the Authority's Engineer**

No later than 15 (fifteen) days after the date of this Agreement, the Contractor shall by notice furnish to the Authority's Engineer, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Section-21 [Insurance]. Within 15 (fifteen) days of receipt of such notice, the Authority's Engineer may require the Contractor 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 accordance with Section-27 [Dispute Resolution] shall apply.

## **21.3 Evidence of Insurance Cover**

21.3.1 All insurances obtained by the Contractor in accordance with this Section-21 [Insurance] shall be maintained with insurers on terms consistent with Good Industry Practice. Within 10 (ten) days from the Appointed Date, the Contractor shall furnish to the Authority 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 Contractor to the Authority.

21.3.2 The Contractor shall procure and ensure the adequacy of the insurances at all times in accordance with the provisions of this Agreement and shall provide evidence of the Insurance Cover along with the details of premium paid for such insurance cover, as and when required by the Authority / Authority's Engineer.

<b>21.4 Remedy for Failure to Insure</b>	If the Contractor fails to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Contractor, 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 Contractor.
<b>21.5 Waiver of Subrogation</b>	All insurance policies in respect of the insurance obtained by the Contractor pursuant to this Section-21 [Insurance] 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.
<b>21.6 Contractor's Waiver</b>	The Contractor 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 Contractor 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 Contractor 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.
<b>21.7 Cross Liabilities</b>	Any such insurance maintained or effected in pursuance of this Section-21 [Insurance] shall include a cross liability clause such that the insurance shall apply to the Contractor and to the Authority as separately insured.
<b>21.8 Accident or Injury to Workmen</b>	Notwithstanding anything contained in this Agreement, it is hereby expressly agreed between the Parties that the Authority shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of the Contractor or Sub-contractor save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Contractor shall indemnify and keep indemnified the Authority from and against all such claims, proceedings, damages, costs, charges, and expenses whatsoever in respect of the above save and except for those acts, omissions or defaults for which the Authority shall be liable.
<b>21.9 Insurance against accident to Workmen</b>	The Contractor shall effect and maintain during this Agreement such insurances as may be required to insure the Contractor's Personnel and any other persons employed by it on the Project from and against any liability incurred in pursuance of this Section-

21 [Insurance]. Provided that for the purposes of this Sub-Clause 21.9, the Contractor's Personnel/any person employed by the Contractor shall include the Sub-contractor and its personnel. Provided further that in respect of any persons employed by any Sub-contractor, the Contractor's obligations to insure as aforesaid under this Sub-Clause 21.9 shall be discharged if the Sub-contractor shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Contractor shall require such Sub-contractor to produce before the Authority, when required, such policy of insurance and the receipt for payment of the current premium within 10 (ten) days of such demand being made by the Authority.

**21.10  
Application of  
Insurance  
proceeds**

The proceeds from all insurance claims, except for life and injury, shall be applied by the Contractor for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the provisions of this Agreement in respect of construction of Works shall apply *mutatis mutandis* to the Works undertaken out of the proceeds of insurance.

**21.11  
Compliance with  
Policy Conditions**

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

## SECTION-22 FORCE MAJEURE AND TERMINATION

### 22.1 Force Majeure

As used in this Agreement, the expression **“Force Majeure”** or **“Force Majeure Event”** shall mean an event / any occurrence in the Authority’s Country that directly or indirectly affects the execution of the Works due to any or all of the Non-Political Events, Indirect Political Events and Political Events, as defined in Clause 22.2 [Non-Political Event], Clause 22.3 [Indirect Political Event] and Clause 22.4 [Indirect Political Event], respectively, provided it has a materially adverse impact on 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 avoided, prevented or overcome by exercise of due diligence and following Good Industry Practice.
- (c) the Affected Party could not have reasonably predicted or provided against before entering into the Agreement
- (d) is not substantially attributable to the other Party

### 22.2 Non-Political Event

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

- (a) act of God, pandemic, epidemic, endemic outbreak, unprecedented extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, tsunami, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site). However, it shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Contractor;
- (b) any material disruption of supply chain caused by events included in but not restricted to Sub-Clause 22.2 (a), having effect on transportation, manufacturing and distribution of Goods, Works, services and manpower in Authority’s country or India by way of any restrictions placed by Applicable laws and causing severe impairment to fulfilment of contractual obligations for supply of Goods, Works, services and manpower;
- (c) strikes or boycotts (other than those involving the Contractor, Sub-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 10 (ten) days in a Calendar Year and not being an Indirect Political Event;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Non-Political Event;

(e) any judgment or order of any court of competent jurisdiction or statutory authority made against the Contractor in any proceedings restraining the performance of the contract for reasons other than

- (i) failure of the Contractor to comply with any Applicable Law, Applicable Permits, or
- (ii) on account of breach of any Applicable Law, Applicable Permits or of any contract, or
- (iii) enforcement of this Agreement, or
- (iv) exercise of any of its rights under this Agreement by the Authority; or
- (v) breach of its obligations by the Contractor under its sub-contracts;

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

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

### **22.3 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, mutiny, rebellion, revolution, insurrection, usurpation of military government or civil government or politically motivated sabotage

(b) any civil commotion, boycott or political agitation which prevents construction of the Project by the Contractor for an aggregate period exceeding 10 (ten) days in an Calendar Year; or

(c) industry-wide or Country-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 10 (ten) days in a Calendar Year;

(d) any failure or delay of a Sub-contractor to the extent caused by any Indirect Political Event

(e) failure of the Authority to permit the Contractor to continue with its Works, with or without modifications, in the event of stoppage of such work after discovery of any geological or archaeological find;

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

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

**22.4 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 Clause 20.13 [Change in Law];
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Contractor or of the Sub-contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Contractor or any of the Sub-contractors to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Contractor's or any Sub-contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Sub-contractor but only to the extent caused by another Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing;

**22.5 Duty to report Force Majeure Event**

22.5.1 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 Section-22 [Force Majeure and Termination] with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

22.5.2 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 21



(twenty one) days after the Affected Party knew, or ought to have reasonably known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.3 For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 22.5 [Duty to report Force Majeure Event], and such other information as the other Party may reasonably request the Affected Party to provide.

## 22.6 Effect of Force Majeure Event on the Agreement

22.6.1 Upon the occurrence of any Force Majeure

- (a) prior to the Appointed Date, both Parties shall bear their respective Force Majeure costs.
- (b) after the Appointed Date, the costs incurred and attributable to such event and directly relating to this Agreement (the “**Force Majeure costs**”) shall be allocated and paid as follows:
  - (i) 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;
  - (ii) 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 Contractor, 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 Contractor for the Force Majeure events; and
  - (iii) upon occurrence of a Political Event, all Force Majeure costs attributable to such Political Event shall be reimbursed by the Authority to the Contractor.

For the avoidance of doubt, Force Majeure costs may include costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, if any, of the Contractor.

22.6.2 Save and except as expressly provided in this Section-22 [Force Majeure and Termination], 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.

22.6.3 Upon the occurrence of any Force Majeure Event during the Delivery Period, the Project Delivery Schedule for and in respect of



the affected Works shall be extended on a day for day basis for such period as performance of the Contractor's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Authority's Engineer.

22.6.4 Force Majeure costs for any event which results in any offsetting compensation being payable to the Contractor by or on behalf of its Sub-contractors shall be reduced by such amounts that are payable to the Contractor by its Sub-contractors.

22.6.5 Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Agreement as a result of a Force Majeure Event

**22.7 Termination  
Notice for Force  
Majeure Event**

If a Force Majeure Event subsists for a period of 120 (one hundred and twenty) days or more, the Parties may attempt to develop a mutually satisfactory solution, failing which either Party may in its discretion terminate this Agreement by issuing a notice of termination ("Termination Notice") to the other Party without being liable in any manner whatsoever, save as provided in this Section-22 [Force Majeure and Termination], and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice

**22.8 Termination  
Payment for  
Force Majeure  
Event**

22.8.1 In the event of this Agreement being terminated on account of a Non-Political Event, the Termination Payment shall be an amount equal to the sum payable under Clause 24.5 [Valuation of Unpaid Works].

22.8.2 If Termination is on account of an Indirect Political Event, the Termination Payment shall include: (a) any sums due and payable under Clause 24.5 [Valuation of Unpaid Works]; and (b) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for use in the Project and only if such Plant and Materials are in conformity with the Specifications and Standards.

22.8.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Contractor in an amount that would be payable under Sub-Clause 24.6.2 as if it were an Authority Default.

22.8.4 After the date of termination the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Authority) of the value of the work done, which shall include:

- a) the amounts payable for any work carried out for which a price is stated in the Agreement;
- b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery. This Plant and Materials shall become the property of (and be at the risk of) the Authority when paid for by the Authority, and the Contractor shall place the same at the Authority's disposal;
- c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's place of business in the Contractor's country (or to any other destination(s) at no greater cost); and
- e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

## 22.9 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 Section-27 [Dispute Resolution]; 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.

**22.10 Excuse  
from  
Performance of  
Obligations**

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

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

b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

However, the obligations of either Party to make payments due to the other Party under the Agreement shall not be excused in terms of this Clause 22.10.

**SECTION-23 SUSPENSION OF CONTRACTOR'S RIGHTS**

- 23.1 Suspension upon Contractor's Default** Upon occurrence of a Contractor's Default and failure by Contractor to remedy such default within the Cure Period or any other period as may be agreed with the Authority, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend carrying out of the Works or any part thereof, and (b) carry out such Works itself or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority's Engineer to the Contractor and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.
- 23.2 Authority to act on behalf of Contractor** During the period of Suspension hereunder, all rights and liabilities vested in the Contractor in accordance with the provisions of this Agreement shall continue to vest in the Contractor and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Contractor under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Contractor and the Contractor undertakes to indemnify the Authority for all costs incurred during such period. The Contractor hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 23.1 [Suspension upon Contractor's Default] to use during Suspension, all Intellectual Property belonging to or licenced to the Contractor with respect to the Project and its design, engineering, construction, and which is used or created by the Contractor in performing its obligations under this Agreement.
- 23.3 Revocation of Suspension** 23.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 23.3.2 Upon the Contractor having cured the Contractor's Default within a period not exceeding 60 (sixty) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Contractor under this Agreement.
- 23.4 Termination** 23.4.1 At any time during the period of Suspension under this Section-23 [Suspension of Contractor's Rights] the Contractor may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, terminate this Agreement under and in accordance with Section-24 [Termination] as if it is a Contractor's Default under Clause 24.1 [Termination for Contractor's Default].

23.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder, 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 a Contractor's Default.

**SECTION-24 TERMINATION****24.1 Termination  
due to  
Contractor's  
Default**

24.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Contractor fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Contractor shall be deemed to be in default of this Agreement (the "**Contractor's Default**"), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure in accordance with Section-22 [Force Majeure and Termination] . The defaults referred to herein shall include the following:

- a) The Contractor fails to provide, extend or replenish, as the case may be, the Performance Security in accordance with this Agreement;
- b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 11.3 [Appropriation of Performance Security], the Contractor fails to cure, within 30 (thirty) days, the Contractor's Default for which the whole or part of the Performance Security was appropriated;
- c) the Contractor does not achieve the latest outstanding Project Milestone due in accordance with the provisions of **Schedule-H**, subject to any Time Extension, and continues to be in default for 45 (forty five) days for the reasons attributable to the Contractor;
- d) the Contractor repudiates or abandons or manifests intention to abandon the delivery of the Project without the prior written consent of the Authority;
- e) the Contractor fails to proceed with the Works in accordance with the provisions of Clause 13.1 [Obligations prior to commencement of Works] or stops Works for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority's Engineer;
- f) the Project Completion Date does not occur within the period specified in **Annex-II of Schedule-H** for the Scheduled Delivery Date, or any extension thereof;
- g) failure to complete the Punch List items within the periods stipulated therefor in Clause 15.3 [Completion of Remaining Works / Punch List];
- h) the Contractor fails to rectify or repair or replace any Defective item, the non-rectification of which shall have a Material Adverse Effect on the Project, within the time specified in this Agreement or as directed by the Authority's

Engineer;

- i) the Contractor fails to undertake Maintenance of the Project in accordance with Section-17 [Maintenance Obligations] within the time specified in this Agreement or as directed by the Authority's Engineer;
- j) the Contractor sub-contracts the Works or any part thereof in violation of this Agreement or assigns any part of the Works or transfers or any right or interest therein without the prior approval of the Authority;
- k) the Contractor creates any Encumbrance in breach of this Agreement;
- l) an execution levied on any of the assets of the Contractor has caused a Material Adverse Effect;
- m) the Contractor is adjudged bankrupt or insolvent, or if a trustee or receiver or interim resolution professional is appointed for the Contractor or for the whole or material part of its assets, or any other analogous event that has a material bearing on the Project; Provided that the if the Contractor has formed a Joint Venture of two or more persons for implementing the Project, and one of such persons is adjudged bankrupt or insolvent, or if a trustee or receiver or interim resolution professional is appointed for such person(s) or for the whole or material part of their assets, the Authority shall have the right to substitute such person(s) subject to Paragraph 6.5.1 (b) and upon such substitution to the satisfaction of the Authority, the Contractor's Default in this Sub Clause will be treated as cured.
- n) the Contractor has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- o) a resolution for winding up of the Contractor is passed, or any petition for winding up of the Contractor is admitted by a court of competent jurisdiction and a provisional liquidator or receiver or interim resolution professional, as the case may be, is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or such extended date as approved by any judicial order, or Contractor is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Contractor are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally

assumed the obligations of the Contractor under this Agreement; and provided that:

- i) the amalgamated or reconstructed entity has the capability and experience necessary for the performance of its obligations under this Agreement; and
- ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Contractor as at the Appointed Date;
- p) any representation or warranty of the Contractor herein contained which is, as of the date hereof, found to be materially false or the Contractor is at any time hereafter found to be in breach thereof;
- q) the Contractor 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;
- r) the Contractor has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement; or
- s) the Contractor has failed to make any payment to the Authority as may be recoverable from the Contractor by the Authority under this Agreement, within the period specified in this Agreement;
- t) the Contractor issues a Termination Notice in violation of this Agreement;
- u) the Contractor commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project or on the Authority;
- v) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward: (i) for doing or forbearing to do any action in relation to the Agreement, or (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or if any of the Contractor's Personnel, agents or Sub-contractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (u). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.
- w) The Contractor, in the judgment of the Authority has engaged in corrupt, collusive, coercive, fraudulent or obstructive practices, in competing for or in executing the Agreement.



- x) The Contractor fails to comply with the Applicable Guidelines including but not limited to the commitment to achieve the Indian Content declared by the Contractor at the commencement of the Project and selection of the Sub-contractors in accordance with the Public Procurement Orders in accordance with the Applicable Guidelines.

24.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Contractor's Default, the Authority may by giving a notice to the Contractor, require the Contractor to make good the failure and to remedy it within a time specified in the Notice ("Notice to Correct Contractor's Default"). The time specified in the Notice to Correct shall not imply any extension of the Time for Completion. The Notice to Correct shall:

- (a) describe the Contractor's failure;
- (b) specify the time within which the Contractor shall remedy the failure, which shall be reasonable, taking due regard of the nature of the failure and the work and/or other action required to remedy it.

The Contractor shall upon receipt of the Notice to Correct Contractor's Default respond to the Authority within 15 (fifteen) days describing the measures the Contractor will take to remedy the failure and state the date on which such measures will be commenced in order to comply with the time specified in the Notice. The Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Contractor if the Contractor fails to respond to the Notice to Correct Contractor's Default within 15 (fifteen) days.

24.1.3 After termination of this Agreement for Contractor's Default, the Authority may complete the Works and/or procure its completion through any other entity. The Authority and such entity may, for this purpose, use any Materials, Plant and equipment, Contractor's Documents and other design documents made by or on behalf of the Contractor.

## 24.2 Termination due to Authority's Default

24.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within 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 Contractor or due to Force Majeure in accordance with Section-22 [Force Majeure and Termination]. The defaults referred to herein shall include the following:

- (a) the Authority commits a material default and such default has a proven Material Adverse Effect on the Contractor;

(b) the Authority has failed to provide, within a period of 90 (ninety) days from the Appointed Date, the environmental clearances and forest clearances required for construction of the Project;

(c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or

(d) The whole work is suspended by Authority beyond 180 days for any reason which is not attributed to the Contractor.

(e) The Borrower fails to issue the Payment Authorisation in accordance with this agreement.

(f) the Authority is under substantial and proven financial duress likely to have an impact on payments to be made to the Contractor

(g) the Authority is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Agreement.

(h) the Authority fails to provide reasonable evidence of its financial arrangements pursuant to notice submitted by the Contractor pursuant to the provisions of Clause 9.5.

24.2.2 Without prejudice to any other right or remedy which the Contractor may have under this Agreement, upon occurrence of an Authority Default, the Contractor may by giving a notice to the Authority, require the Authority to make good the failure and to remedy ("Notice to Correct Authority's Default"). The Authority shall upon receipt of the Notice to Correct respond to the Contractor within 15 (fifteen) days describing the measures the Authority will take to remedy the failure. The Contractor shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority if the Authority fails to respond to the Notice to Correct Authority's Default within 15 (fifteen) days.

### **24.3 Termination for Authority's convenience and failure to achieve Appointed Date**

24.3.1 Notwithstanding anything hereinabove, the Authority may terminate this Agreement any time for the Authority's convenience, or in case of failure to achieve the Appointed Date within the days specified in the SCC from the date of signing of the Agreement, for reasons attributable to the Authority. The Authority may issue a notice of such termination to the Contractor under this Clause 24.3. The termination shall take effect 30 (thirty) days from the date of notice provided to the Contractor and shall be deemed to be termination on account of Authority Default.

24.3.2 After giving a Notice to terminate under this Sub-Clause,

the Authority shall:

(a) have no right to further use any of the Contractor's Documents, which shall be returned to the Contractor, except those for which the Contractor has received payment or for which payment is due;

(b) no right to allow the continued use (if any) of any Contractor's Equipment, Temporary Works, access arrangements and/or other of the Contractor's facilities or services; and (c) make arrangements to return the Performance Security to the Contractor and release of Retention Money.

#### **24.4 Requirements after Termination**

24.4.1 Upon Termination of this Agreement in accordance with the provisions of this Section-24 [Termination], the Contractor shall comply with and conform to the following:

(a) deliver to the Authority all Plant, Works and Materials which shall have become the property of the Authority under this Section-24 [Termination] and in accordance with this Agreement;

(b) deliver all relevant records, reports, Intellectual Property and other licences pertaining to the Works, relevant Contractor's Documents and other design documents and in case of Termination occurring after the Provisional Acceptance Certificate has been issued, the "as-built" Drawings for the Works;

(c) transfer and/or deliver all Applicable Permits to the Authority (or to any person nominated by the Authority) to the extent permissible under Applicable Laws; and

(d) vacate the Site within 15 (fifteen) days in a clean and safe condition.

#### **24.5 Valuation of Unpaid Works**

24.5.1 Within a period of 45 (forty-five) days after Termination under Clause 24.1 [Termination for Contractor's Default], Clause 24.2 [Termination for the Authority Default] or Clause 19.3 [Termination for Authority's convenience and failure to achieve Appointed Date], as the case may be, has taken effect, the Authority's Engineer shall proceed in accordance with Clause 19.5 [Determination by the Authority's Engineer] to determine as follows the valuation of unpaid Works (the "**Valuation of Unpaid Works**"):

(a) value of the completed stage of the Works, less payments already made; and

(b) reasonable value of the partially completed stages of works as on the date of Termination, only if such works conform with the Specifications and Standards.

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

24.5.2 The Valuation of Unpaid Works shall be communicated to the Authority, with a copy to the Contractor, within a period of 45 (forty five) days from the date of Termination.

## **24.6 Termination Payment**

24.6.1 Upon Termination on account of Contractor's Default under Clause 24.1 [Termination for Contractor's Default], the Authority shall:

(a) encash and appropriate the Performance Security and in the event the Contractor has failed to replenish or extend the Performance Security, claim the amount stipulated in Clause 11.1 [Performance Security], as agreed pre-determined Damages, if any;

(b) encash and appropriate the Bank Guarantee, if any, to the extent of the outstanding Advance Payment and interest thereon; and

(c) encash and appropriate the Retention Money Guarantee or appropriate the Retention Money, if any, towards amounts recoverable from the Contractor; and

(d) pay to the Contractor, by way of a payment for termination ("Termination Payment"), an amount equivalent to the Valuation of Unpaid Works after adjusting any other sums payable or recoverable, as the case may be, in accordance with the provisions of this Agreement,

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

24.6.2 Upon Termination on account of an Authority Default, the Authority shall:

(a) return the Performance Security forthwith;

(b) encash and appropriate the Bank Guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon; and

(c) pay to the Contractor, by way of Termination Payment, an amount equal to:

(i) Valuation of Unpaid Works;

(ii) the reasonable cost, as determined by the Authority's Engineer, of the Plant and Materials procured by the Contractor and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards;

(iii) the reasonable cost of incidental services, as determined by the Authority's Engineer; and

(iv) 10% (ten per cent) of the cost of the Works that are not commenced or not completed.

and shall adjust from the sum thereof any other amounts payable or recoverable, as the case may be, in accordance with the provisions of this Agreement.

24.6.3 Termination Payment shall become due and payable to the Contractor within 60 (Sixty) days of a demand being made by the Contractor to the Authority with the necessary particulars, after the Valuation of Unpaid Works has been communicated by the Authority's Engineer. For the avoidance of doubt, it is expressly stated that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder

24.6.4 The Contractor expressly agrees that Termination Payment under this Section-24 [Termination] shall constitute a full and final settlement of all claims of the Contractor on account of Termination of this Agreement and that it shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

#### **24.7 Other Rights and Obligations of the Parties**

Upon Termination for any reason whatsoever

(a) the property and ownership in all Materials, Plant and Works and the Project shall, as between the Contractor and the Authority, vest in the Authority in whole, free from any and all Encumbrances; provided that the foregoing shall be without prejudice to Clause 24.6 [Termination Payment];

(b) the risk of loss or damage to any Materials, Plant or Works and the care and custody thereof shall pass from the Contractor to the Authority; and

(c) the Authority shall be entitled to restrain the Contractor and any person claiming through or under this Agreement from entering upon the Site or any part of the Project except for taking possession of Materials, stores, implements, construction Plants and equipment of the Contractor, which have not been vested in the Authority in accordance with the provisions of this Agreement.

#### **24.8 Survival of Rights**

Notwithstanding anything to the contrary contained in this Agreement any Termination pursuant to the provisions of this Agreement shall be without prejudice to 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 Agreement. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.



## Other Provisions





**SECTION-25 ASSIGNMENT AND CHARGES****25.1 Restrictions on assignment and Charges**

This Agreement shall not be sublet, transferred or assigned by the Contractor to any person other than in exceptional and unavoidable circumstances and with the prior written consent of the Authority and Exim Bank. The Authority / Exim Bank shall be entitled to decline such consent without assigning any reason. The Contractor acknowledges that assignment shall not relieve the Contractor from any obligations, duty, responsibility or liabilities under this Agreement prior to such consent being granted. In the event of non fulfilment of any obligations, duty or responsibility or incurring of any liability which occurred prior to such assignment and the discovery of which was made after such assignment, the Contractor shall be held responsible for the same in accordance with the provisions of this Agreement.

**25.2 Hypothecation of Materials or Plant**

Notwithstanding the provisions of Clause [General indemnity], the Contractor may pledge or hypothecate to its lenders, any Materials or Plant prior to their incorporation in the Works. The Contractor acknowledges that this shall not relieve the Contractor from any obligations, duty or responsibility under this Agreement. For the avoidance of doubt, all Materials and Plants shall, upon their incorporation into Works, be free from any and all Encumbrances without the Authority being required to make any payment to any person on account of any costs, compensation, expenses and charges for such Materials, Plants and Works

**SECTION-26 LIABILITY AND INDEMNITY****26.1 General Indemnity**

26.1.1 The Contractor shall indemnify, defend, save and hold harmless the Authority and its employees, officers, servants, agents (the **"Authority Indemnified Persons"**) against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, including attorney's fees and expense, whether arising out of any breach by the Contractor of any of its obligations under this Agreement or from any negligence under this Agreement, including any errors or deficiencies in the design documents, or other Contractor's Documents, or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

26.1.2 The Authority shall indemnify, defend, and hold harmless the Contractor and its employees, officers, servants, agents against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature, including attorney's fees and expense incurred by or imposed upon the Authority or any of its instrumentalities in connection with any third party claims, suits, actions, demands or judgments arising out of any event the occurrence of which was before the execution of this Agreement.

**26.2 Indemnity by the Contractor**

26.2.1 Without limiting the generality of Clause 26.1 [General indemnity], the Contractor 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 Contractor to comply with Applicable Laws, Applicable Permits;

(b) payment of taxes required to be made by the Contractor in respect of the income or other taxes of the Sub-contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of Materials or services furnished to the Contractor or any of its Sub-contractors which are payable by the Contractor or any of its Sub-contractors.

26.2.2 Without limiting the generality of the provisions of this Section-26 [Liability and Indemnity], the Contractor 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 or alleged 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 Contractor or by the Sub-contractors in performing the Contractor'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 Contractor 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 Contractor shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Contractor is unable to secure such licence within a reasonable time, the Contractor 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.

### 26.3 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 Agreement (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.

### 26.4 Defence of Claims

26.4.1 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 Agreement, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided It gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the

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

26.4.2 If the Indemnifying Party has exercised its rights under Clause 26.3 [Notice and Contest of Claims], 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).

26.4.3 If the Indemnifying Party exercises its rights under Clause 26.3 [Notice and Contest of Claims], 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 if Paragraph (b), (c) or (d) of this Sub-Clause 26.4.3 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.

## **26.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Section-26 [Liability and Indemnity], 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.

**26.6 Survival on Termination** The provisions of this Section-26 [Liability and Indemnity] shall survive Termination.

## SECTION-27 DISPUTE RESOLUTION

**27.1 Amicable Settlement** 27.1.1 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.

27.1.2 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.

27.1.3 In the event that the Contractor and the Authority cannot agree on amicable settlement within 30 days of being notified of the Dispute or any matter relating to a claim, either Party may refer the matter to the Dispute Board in accordance with Sub-Clause 27.2 [Resolution by Dispute Board].

**27.2 Resolution by Dispute Board** 27.2.1 Disputes shall be referred to a Dispute Resolution Board (“**DB**”) for decision in accordance with Sub-Clause 27.1.3. The Parties shall appoint a DB by the date **as specified in the SCC**.

27.2.2 The DB shall comprise, **as specified in the SCC**, either 1 (one) or 3 (three) suitably qualified persons (the “**members**”), each of whom shall be fluent in the language for communication defined in the Agreement and shall be a professional experienced in the type of activities involved in the performance of the Agreement and with the interpretation of contractual documents. If the Parties do not agree otherwise, the DB shall comprise three persons, one of whom shall serve as chairman.

27.2.3 If the Parties have not jointly appointed the DB 21 (twenty one) days before the date in accordance with Sub-Clause 27.2.1, each Party shall nominate one member. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman. The terms of the remuneration of the DB member(s), including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment of the member or such expert (as the case may be). Each Party shall be responsible for paying one-half of this remuneration.

27.2.4 If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed

upon, as described in this Clause.

27.2.5 The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Authority or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire upon resolution of the Dispute or upon the Dispute being referred for Arbitration.

27.2.6 Failure to Agree on the Composition of the Dispute Board shall have meant to have occurred in any of the following circumstances:

- (a) the Parties fail to agree upon the appointment of the member(s) of the DB by the date stated; or
- (b) the Parties fail to agree upon the appointment of a replacement person within 28 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

then the appointing entity or official shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

#### Obtaining Dispute Board's Decision

27.2.7 If a dispute (of any kind whatsoever) arises between the Parties in connection with the performance of the Agreement, including any dispute as to any certificate, determination, instruction, opinion or valuation of Authority's Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Authority's Engineer. Such reference shall state that it is given under this Clause. For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

27.2.8 Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

27.2.9 Within 60 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision along with the reasoning for the decision. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an arbitral award in accordance with Clause 27.3 [Arbitration].

Unless the Agreement has already been abandoned, repudiated or terminated, the Contractor shall continue with the performance of the Facilities in accordance with the Agreement.

27.2.10 If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 60 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction and intention to commence arbitration.

27.2.11 In either event, this notice of dissatisfaction shall state that it is given under this Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clauses 27.2.13 and Sub-Clause 27.2.14, neither Party shall be entitled to commence arbitration of a dispute unless a notice of dissatisfaction has been given in accordance with this Clause.

27.2.12 If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

#### **Failure to Comply with Dispute Board's Decision**

27.2.13 In the event that a Party fails to comply with a DB decision which has become final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration in accordance with Clause 22.3 [Arbitration].

27.2.14 If a dispute arises between the Parties in connection with the performance of the Agreement, and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise then the dispute may be referred directly to arbitration in accordance with Clause 27.3 [Arbitration].

### **27.3 Arbitration**

27.3.1 Any dispute which remains unresolved between the parties through the mechanisms available / prescribed under Clause 27.1 [Amicable Settlement] and Clause 22.2 [Resolution by Dispute Board], irrespective of any claim value or which has not been agreed upon / reached settlement by the parties, will be referred for Arbitration to the Arbitral Tribunal.

- (i) Such arbitration shall be held in accordance with the UNCITRAL Arbitration Rules (the "Rules"), The place and seat of such arbitration shall be **as specified in the SCC**, and the language of arbitration proceedings shall be **English**.
- (ii) The Arbitral Tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Section-27 [Dispute Resolution] shall be final and



binding on the Parties as from the date it is made, and the Contractor and the Authority agree and undertake to carry out such Award without delay. Unless specifically provided in terms of this Agreement, Contractor waives its right to claim an interest on any disputed amounts, finally granted by the Arbitral Tribunal.]

## SECTION-28 MISCELLANEOUS

### 28.1 Governing Law and Jurisdiction

28.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of Authority's Country.

### 28.2 Waiver of Immunity

28.2.1 The Contractor 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 Contractor 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).

### 28.3 Delayed Payments

28.3.1 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 such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three percent) p.a., save and except as otherwise specified in this Agreement. Such payment shall not be governed by Clause 20.6 [Procedure for Payments to Contractor] and shall be paid directly by the Authority to the Contractor.

28.3.2 All interest payment under this Agreement shall, save and except as otherwise specified, be calculated at quarterly rests, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.



**28.4 Waiver**

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

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

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

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

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

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

28.5.1 Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Authority's Engineer or Government Instrumentality of any Document or Drawing submitted by the Contractor nor any observation or inspection of the construction of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Contractor from its obligations, duties and liabilities under this Agreement, Applicable Laws, Applicable Permits; and

(b) the Authority shall not be liable to the Contractor by reason of any review, comment, approval, observation or inspection referred to in Sub-Clause (a) above.

**28.6 Exclusion of Implied Warranties etc.**

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

**28.7 Survival**

28.7.1 Termination shall:

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

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

omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

28.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination unless otherwise stated in this Agreement.

#### **28.8 Entire Agreement**

28.8.1 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 Contractor arising from the Request for Proposal and bid submissions, as the case may be, shall be deemed to form part of this Agreement and treated as such.

#### **28.9 Severability**

28.9.1 If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other Government instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under Section-27 [Dispute Resolution] of this Agreement or otherwise.

#### **28.10 No partnership**

28.10.1 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.

#### **28.11 Third Parties**

28.11.1 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.

#### **28.12 Successors and Assigns**

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

- 28.13 Notices**
- 28.13.1 a) 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 be given by letter delivered by hand to the address and person **as specified in the SCC** or to such other person as the Parties may from time to time designate by notice; provided that notices or other communications to be given to an address outside the city **as specified in the SCC** may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by e-mail to the person as the Parties may from time to time designate by notice.
- b) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.
- 28.14 Counterparts**
- 28.14. This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.
- 28.15 Confidentiality**
- The Parties shall treat the details of this Agreement as private and confidential, except to the extent necessary to carry out obligations under it or to comply with Applicable Laws. The Contractor shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous consent of the Authority.
- 28.16 Copyright and Intellectual Property Rights**
- 28.16.1 As between the Parties, the Contractor shall retain the copyright and other Intellectual Property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor. The Contractor shall be deemed (by signing this Agreement) to give to the Authority a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:
- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
  - (b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
  - (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by this Agreement, including replacements of any computers supplied by the Contractor:

28.16.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Authority for purposes other than those permitted under this Clause.

28.16.3 As between the Parties, the Authority shall retain the copyright and other Intellectual Property rights in this Agreement and other documents made by (or on behalf of) the Authority. The Contractor may, at its cost, copy, use, and obtain communication of these documents for the purposes of this Agreement. They shall not, without the Authority's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Agreement.

28.16.4 The Contractor shall ensure and take all steps promptly to protect the copyright and other Intellectual Property Rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

#### **28.17 Limitation of Liability**

28.17.1 save and except as provided in Section-24 [Termination] and Section-26 [Liability and Indemnity], neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement. It is hereby clarified that interest will not be payable on any amounts that may be payable by the Authority, other than as may be specifically provided in terms of this Agreement.

28.17.2 The total liability of one Party to the other Party under and in accordance with the provisions of this Agreement, save and except as provided in Section-24 [Termination] and Section-26 [Liability and Indemnity], shall not exceed the amount equal to Contract Price. For the avoidance of doubt, this Clause shall not limit the liability in any case of gross negligence, criminal or willful action, fraud, deliberate default or reckless misconduct by the defaulting Party.

## PART-VI: SPECIAL CONDITIONS OF CONTRACT

29. The following Special Conditions of Contract (SCC) shall supplement the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Conditions	Clause	Data												
Definitions	6.1.1	<p><b>“Appointed Date”</b> means the date on which the following conditions (preceding the commencement of work) have been fulfilled:</p> <p>(a) Contractor has delivered to the Authority the Performance Security for supply in accordance with Section-11 [Performance Security];</p> <p>(b) Issuance of Contract Inclusion Letter by Exim Bank;</p> <p>(c) In case of exemption of taxes in accordance with Sub-Clause 20.1.3, letter from the concerned Government Instrumentality notifying the exemption of all the taxes for the Agreement. In case of reimbursement of taxes, letter from the Project Authority, along with the confirmation from the concerned Government Instrumentality if required, confirming that all the applicable taxes in the Authority’s Country shall be reimbursed within a period of 90 days from the Notice for Tax Reimbursement.</p> <p>The Agreement shall be terminated in case of failure to achieve the Appointed Date in accordance with Sub-Clause 24.3.1, on account of the Authority. Such termination shall be on account of the Authority’s Convenience.</p>												
Scope of Supply	7.1	<p>The items and quantity along with</p> <table><tr><td>Inspection Type</td><td></td></tr><tr><td>Item details</td><td></td></tr><tr><td>Indicative HSN Code</td><td></td></tr><tr><td>Inspection Agency</td><td></td></tr><tr><td>Qty and Units</td><td></td></tr><tr><td>Terms of Delivery</td><td></td></tr></table>	Inspection Type		Item details		Indicative HSN Code		Inspection Agency		Qty and Units		Terms of Delivery	
Inspection Type														
Item details														
Indicative HSN Code														
Inspection Agency														
Qty and Units														
Terms of Delivery														

Conditions	Clause	Data
Value of Indian Content to be procured by the Contractor	8.1.10	At least 75% (seventy five percent) of the Contract Price
Limit for Sub-contract Works	8.2.1	Not more than 15% (fifteen percent) of the Contract Price
Work to be discharged solely by the Lead Member	8.2.2	At least 40% (forty percent)
Work to be discharged solely by the JV Member	8.2.2	At least 15% (fifteen percent)
Works for which sub-contracting is not permitted	8.2.3	<i>[To be updated for each project, if required based on necessity of the Project]</i>
Qualification Criteria for Sub-contractor	8.2.5 and 19.2.6	<p>a) The appointment of the Sub-contractor shall be in compliance with the Applicable Guidelines.</p> <p>b) For the work awarded to the Sub-contractor, the Sub-contractor should have undertaken at least one work of a similar nature with a contract value exceeding 40% (forty per cent) of the value of the sub-contract to be awarded hereunder.</p> <p>[Any other project specific condition to be added]</p>
Labour Laws	8.5	Applicable/Not applicable depending upon the scope of supply of goods and services
Handing Over of Site by the Authority with no less than the percentage of the total land required for the Project to be provided	9.1.5	<p>90% (ninety per cent)</p> <p><i>[To be decided on case to case basis for each Contract with a minimum of 80% (eighty per cent)]</i></p>
Bank issuing irrevocable and unconditional bank guarantee	11.1.1	The Contractor shall submit irrevocable and unconditional Bank Guarantee acceptable to the Authority, obtained through a scheduled public sector or private sector bank in India or financial institution in India or local bank of the Authority's Country or through local correspondent bank in case of foreign bank
Validity of Performance Security for supply	11.1.1	Until 60 (sixty) days of the expiry of the Warranty/Guarantee period specified in Sub-Clause 18.1.1. or the extended Warranty/Guarantee period under this agreement.

Conditions	Clause	Data
Validity of Maintenance Performance Security	11.1.3	Until 60 (sixty) days of the expiry of the Maintenance Period in accordance with Sub-Clause 17.2.1.
Release of Performance Security for supply	11.4.1	After 60 (sixty) days of the expiry of the Defects Liability Period or the extended defects liability period under this agreement.
Release of Maintenance Performance Security	11.4.2	After 60 (sixty) days of completion of the Maintenance Period.
Release of Retention Money	11.5.3	Within 15 (fifteen) days of the date of issue of the Final Acceptance Certificate
Handing over of Site and utilities management	12	Applicable/Not applicable depending upon the scope of work (Supply/ Supply plus incidental services)
Time Limit prescribed to Authority for providing Handing Over of Site for those parts of the Site for which no time has been specified in Schedule-A	12.2.3	180 (One Hundred and Eighty days) of the Appointed Date.
Damages for Non Handing over of Site	12.3.1	
Time period for Handing Over Site	12.3.2	90 days
Long Stop Date	12.3.3	240 days
Reduction of Contract Price for the Works withdrawn before commencement of Work	12.3.4	90% of the value of Works withdrawn
The Authority shall pay to the Contractor if any Works are withdrawn after commencement of supply or incidental services	12.3.4	110% (one hundred and ten per cent) of the fair value of the work done, as assessed by the Authority's Engineer
Scheduled Completion Date	13.3.1	_____ days from the Appointed Date <i>[To be specified for each project]</i>
Rate of Damages for Delay	13.3.2	@ 0.05% (zero point zero five per cent) of the Contract Price for delay for each day
Samples	14.9.1	<i>Inspection samples to be submitted</i>



Conditions	Clause	Data
Total value of all Change of Scope Orders	16.4.2	Shall not exceed 10% (ten per cent) of the Contract Price
Maintenance Period	17.2.1	<i>[To be decided for each project. 3-5 years as per IDEAS Guidelines.]</i>
Interval of payment for Maintenance Obligations	17.2.6	<i>[Quarterly or Biannually]</i>
Warranty/Guarantee Period	18.1.1	<i>[To be decided for each project]</i>
Rate of Damages for Contractor's failure to rectify Defects	18.4	<i>20% (twenty per cent)</i>
The Contract Price	20.1.1	USD _____ (United States Dollar _____ only) (in figures and words)
Exemption / Reimbursement of Taxes	20.1.3	<i>To be decided for each project if the taxes are to be exempted upfront or taxes will be reimbursed</i>
Damages for non reimbursement of taxes within the timeframe	20.1.5	<i>[To be specified]</i>
Currency of payment	20.1.8	<i>[United States Dollars]</i>
Amount of Advance Payment	20.2.1	<i>Nil</i>
Minimum Amount of Stage Payment Statement	20.4.1	<i>Minimum Value of Such Statement shall be 5% (five per cent) of the Contract Price.</i>
Documents to be submitted for payments	20.6.	
Letter of Credit	20.6.	
Account of the Contractor for Payment	20.6.3	<i>Account Details of the Contractor to be specified</i>
Limit of Insurance / Professional Liability Cover	21.1.6	
Maximum deductible in the policy	21.1.6	USD _____ (United States Dollar _____ only) (in figures and words)
Termination of Contract for failure to achieve Appointed Date within number of days.	24.3.1	<i>240 days</i>
Date of appointment of Dispute Resolution Board (DB)	27.2.1	
Composition of DB	27.2.2	
Place and Seat of Arbitration	27.3	



Conditions	Clause	Data
Notices to Parties	27.13	<p><i>a) In case of Contractor,</i>  <i>Attention:</i>  <i>Designation:</i>  <i>Address:</i>  <i>Email:</i></p> <p><i>b) In the case of the Authority,</i>  <i>Attention:</i>  <i>Designation:</i>  <i>Address:</i>  <i>Email:</i></p> <p><i>(c) In the case of the Authority's Engineer.</i>  <i>{Designation:</i>  <i>Address:</i>  <i>Fax No:</i>  <i>Email:</i></p> <p><i>In case the Authority's Engineer does not have an office in the same city as the Contractor, it may send such notice by registered acknowledgement due, air mail or by courier</i></p>

## **PART-VII: SCHEDULES AND APPENDICES**

[Content of the Scheduled is indicative and should be updated for each Project]

**SCHEDULE-A: SITE OF THE PROJECT**

(Refer Sub-Clause 7.1.1)

**1 The Site**

- 1.1 Site of the Project shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 The dates of providing the Handing Over of Site to the Contractor are specified in Annex-II of this Schedule-A.
- 1.3 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority 's Engineer and the Contractor, and such inventory shall form part of the memorandum referred to in Sub-Clause 12.2 [Procurement of Site] of this Agreement.
- 1.4 The alignment plans of the Project are specified in Annex-III of this Schedule-A. In the case of sections where no modification in the existing alignment of the Project is contemplated, the alignment plan has not been provided. Alignment plans have only been given for sections where the existing alignment is proposed to be modified.
- 1.5 The list of environment clearances to be obtained by the Contractor is given in Annex-IV.

### Annex-I: Details of Site for Project (Schedule-A)

[Note: Through suitable drawings and description in words, the land, buildings, structures and works comprising the Site shall be specified briefly but precisely in this Annex-I.]

#### 1. Site

The Site of the Project comprises:

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#### 2. Land

The Site of the Project comprises the land described below:

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***[\*\*DETAILS TO BE ADDED EXHAUSTIVELY AS PER THE PROJECT DPR. THIS IS AN INDICATIVE SCHEDULE]***

**Annex-II: Dates for providing Handing Over of Site  
(Schedule-A)**

The dates on which the Authority shall provide Handing Over of Site to the Contractor on the Project Site or different Sections of the Site, if applicable, are specified below:

**Annex-III: Alignment Plans<sup>12</sup>**  
(Schedule-A)

The existing alignment of the Project shall be modified in the following sections as per the alignment plan indicated below:

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<sup>12</sup> May be omitted or substituted to reflect Project -specific requirements.

**Annex-IV: Environmental and Forest Clearances**  
(Schedule-A)

The following environment clearances have been obtained / shall be obtained by the Contractor:

[The list of environmental clearances required as per the Detailed Project Report (DPR) along with the status thereof.]

## **SCHEDULE-B: EXECUTION OF THE PROJECT**

(Refer Sub-Clause 7.1.1)

### **1 Execution of the Project**

Execution of the Project shall include drawings, design, calculation, manufacture, supply of goods and specific small work or some services that are incidental or consequential to the completion of the Project as described in this Schedule-B and in Schedule-C.

### **2 Specifications and Standards**

The Project shall be designed and delivered in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.



## Annex – I Description of the Project (Schedule-B)

*[Note:*

### 1. List of Goods and Delivery Schedule

Price Schedule No. 1: Goods Manufactured in India, to be Imported

Amount in USD					Date: _____ _____		
					Tend. No: _____		
					Alternative No: _____		
					Page N° _____ of _____		
1	2	3	4	5	6	7	8
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price FOB/CIP/DAP [insert port of shipment or place of destination] in accordance with ITB 2.11.2	FOB/CIP/DAP Price per line item (Col. 4x5)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the Goods to their final destination specified in AITB	Total Price per Line item (Col. 6+7)
[insert number of the item]	[insert name of good]	[insert quoted Delivery Date]	[insert number of units to be supplied and name of the physical unit]	[insert unit price FOB/CIP/DAP per unit] [In case of FOB, insert freight charges separately]	[insert total FOB/CIP/DAP price per line item]	[insert the corresponding price per line item]	[insert total price of the line item]

Price Schedule No. 1: Goods Manufactured in India, to  
be Imported

						Total Price	

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

**Price Schedule No. 1: Goods Manufactured in India, to be Imported**

Amount in USD						Date: _____ _____	
						Tend. No: _____	
						Alternative No: _____	
						Page N° _____ of _____	

1	2	3	4	5	6	7	8
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price FOB/CIP/DAP [insert port of shipment or place of destination] in accordance with ITB 2.11.2	FOB/CIP/DAP Price per line item (Col. 4x5)	Price per line item for inland transportation and other services required in the Purchaser's country to convey the Goods to their final destination specified in AITB	Total Price per Line item (Col. 6+7)
<i>[insert number of the item]</i>	<i>[insert name of good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price FOB/CIP/DAP per unit]  [In case of FOB, insert freight charges separately]</i>	<i>[insert total FOB/CIP/DAP price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[insert total price of the line item]</i>
						Total Price	

Name of Bidder *[insert complete name of Bidder]* Signature of Bidder *[signature of person signing the Bid]* Date *[Insert Date]*

**Price Schedule No. 3: Goods Manufactured in the Host Country**

Procuring Entity's Country  			Amount in USD  			Date: _____  Tend. No: _____  Alternative No: _____  Page N° _____ of _____		
1	2	3	4	5	6	7	8	9
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW	Total EXW price per line item (Col. 4×5)	Price per line item for inland transportation and other services required in the Purchaser's Country to convey the Goods to their final destination	Cost of local labor, raw materials and components from within the Purchaser's Country % of Col. 5	Total Price per line item (Col. 6+7)
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert EXW unit price]</i>	<i>[insert total EXW price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[Insert cost of local labor, raw material and components from within the Purchaser's country as a % of the EXW price per line item]</i>	<i>[insert total price per item]</i>

Price Schedule No. 3: Goods Manufactured in the Host Country

Total Price								

**SCHEDULE-C: RELATED SERVICES**

(Refer Sub-Clause 7.1.1)

**Price Schedule No. 3: Goods Manufactured in the Host Country**

Procuring Entity's Country _____			Amount in USD _____			Date: _____ _____ Tend. No: _____ Alternative No: _____ Page N° _____ of _____		
1	2	3	4	5	6	7	8	9
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW	Total EXW price per line item (Col. 4×5)	Price per line item for inland transportation and other services required in the Purchaser's Country to convey the Goods to their final destination	Cost of local labor, raw materials and components from within the Purchaser's Country % of Col. 5	Total Price per line item (Col. 6+7)

<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert EXW unit price]</i>	<i>[insert total EXW price per line item]</i>	<i>[insert the corresponding price per line item]</i>	<i>[Insert cost of local labor, raw material and components from within the Purchase's country as a % of the EXW price per line item]</i>	<i>[insert total price per item]</i>
Total Price								

## Price Schedule No. 5. Grand Summary

Item No	Description	Total Price Amount in USD			
		Indian	Third Country	Local	Total
1.	Price Schedule No. 1: Goods Manufactured in India, to be Imported				
2.	Total Schedule No. 2: Goods Manufactured in Third Country, to be Imported				
3.	Price Schedule No. 3: Goods Manufactured in the Host Country				
4.	Price Schedule No. 4 - Related Services				
	Total :				
	Percentage:				100%





**SCHEDULE-D: SPECIFICATIONS AND STANDARDS**  
(Refer Sub-Clause 7.1.1)

**“Summary of Specifications and Standards:** The Goods and Related Services shall comply with following Technical Specifications and Standards:

<i>Item No</i>	<i>Name of Goods or Related Service</i>	<i>Technical Specifications and Standards</i>
<i>[insert item No]</i>	<i>[insert name]</i>	<i>[insert TS and Standards]</i>

*[insert whenever*

**Annex-I: Specifications and Standards for incidental services**  
(Schedule-D)

**1 Specifications and Standards**

All Materials, works and construction operations shall conform to the [ ]. Where the specification for a work is not given, Good Industry Practice shall be adopted to the satisfaction of the Authority's Engineer.

## **SCHEDULE-E: APPLICABLE PERMITS**

(Refer Sub-Clause 8.1.6)

### **1 Applicable Permits**

1.1 The Contractor shall obtain, as required under Applicable Laws, the following Applicable Permits from Local Government Instrumentalities in the Authority's Country:

- (a) Permission for \_\_\_\_\_;
- (b) Permission for \_\_\_\_\_;
- (c) Any other permits or clearances required under Applicable Laws, Applicable Laws of Authority's Country and Good Industry Practice.

1.2 Applicable Permits, as required, relating to environmental protection and conservation shall also be procured by the Contractor in accordance with the provisions of this Agreement. The Authority shall provide reasonable assistance to the Contractor to obtain such Applicable Permits to the extent feasible.

**SCHEDULE-F: PROJECT MILESTONE AND PRICE WEIGHTAGE**  
(Refer Sub-Clause 12.3.3)

1.1 The Contract Price for this Agreement is USD \_\_\_\_\_ (United States Dollar \_\_\_\_\_ only) (in figures and words)

1.2 Proportions of the Contract Price for different stages of Supply of the Project shall be as specified below:

Item	Weightage in percentage to the Contract Price	Stage for Payment	Percentage Weightage
1	2	3	4
	*****		

\* The above list is illustrative and may require modification as per the scope of the work.

## **SCHEDULE-G: DESIGN AND DRAWINGS**

*(See Clause 13.2 [Design and Drawings])*

### **1 Drawings**

In compliance of the obligations set forth in Clause 13.2 [Design and Drawings] of this Agreement, the Contractor shall furnish to the Authority's Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-G.

### **2 Additional Drawings**

If the Authority's Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Contractor to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Contractor shall promptly prepare and furnish such drawings to the Authority's Engineer, as if such drawings formed part of Annex-I of this Schedule-G.

**Annex-I: List of Drawings**  
(Schedule-G)

**[Note:** The Authority shall describe in this Annex-I, all the Drawings that the Contractor is required to furnish under Clause 13.2 [Design and Drawings].]

A typical list of drawings -

1. Drawings of the product, if required
2. General layout plan
3. Plan of existing features
4. Plan for the diversion of utilities
5. Any additional drawings

## **SCHEDULE-H: WORKS PROGRAMME**

(See Clause 13.1 [Obligations prior to commencement of Works])

### **Part I**

- a. Contractor's Organization and Arrangements for the Project
- b. Method Statement as set forth in Annex-I to Schedule-H
- c. General methods and arrangements for manufacturing and supply
- d. Quality Assurance Plan including design quality plan and safety plan covering safety of users and workers during construction, Contractor's key personnel, and equipment

### **Part II**

- a. Project Completion Schedule as set forth in Annex-II to Schedule-H
- b. Shipment schedule
- c. Periods for reviews under Clause 13.2 [Design and Drawings]; and
- d. The sequence and timing of inspections and tests specified in this Agreement.

### **Part III**

- a. The order in which the Contractor intends to carry out the Works, including the anticipated timing of design and stages of delivery;
- b. The sequence and timing of inspections and tests specified in this Agreement;
- d. Monthly cash flow forecast for the Project along with plan to finance the Project Cash Flow Deficit, if any.

**Annex-I: Method Statement**  
(Schedule-H)

The Contractor shall set out details of the Method Statement for the supply to demonstrate how it will meet the Authority's objective and requirements. As a minimum, the Method Statement shall address the following:

(a) Details of the arrangements and methods which the Contractor proposes to implement for the delivery of goods, in sufficient detail to demonstrate their adequacy to achieve the requirements of the Contract including completion within the Time for Completion as specified in the Agreement.

(b) Outline of the arrangements to manage coordination of Site access.

(c) [Insert other information, as may be appropriate.]



## **Annex-II: Project Completion Schedule (Schedule-H)**

### **1. Project Completion Schedule**

**1.a Details of the proposed schedule for obtaining permits that may be necessary in order to commence the Works, including the preparation of required studies, supporting information, and applications.**

#### **1.b (1) Project Milestone-I**

- 2.1 Project Milestone-I shall occur on the date falling on the 180<sup>th</sup> (one hundred and eightieth) day from the Appointed Date (the “**Project Milestone-I**”).
- 2.2 Prior to the occurrence of Project Milestone-I, the Contractor shall have commenced construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 10% (ten per cent) of the Contract Price.

#### **1.b (2) Project Milestone-II**

- 3.1 Project Milestone-II shall occur on the date falling on the 365<sup>th</sup> (three hundred and sixtyfifth) day from the Appointed Date (the “**Project Milestone-II**”).
- 3.2 Prior to the occurrence of Project Milestone-II, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 30% (thirty per cent) of the Contract Price.

#### **1.b (3) Project Milestone-III**

- 4.1 Project Milestone-III shall occur on the date falling on the [550<sup>th</sup> (five hundred and fiftieth)] day from the Appointed Date (the “**Project Milestone-III**”).
- 4.2 Prior to the occurrence of Project Milestone-III, the Contractor shall have continued with construction of the Project and submitted to the Authority duly and validly prepared Stage Payment Statements for an amount not less than 60% (sixty per cent) of the Contract Price.

**1.b (4) Details of the proposed timeline for the installation, testing, commissioning and any other activity.**

#### **1.b (5) Scheduled Completion Date**

- 5.1 The Scheduled Completion Date shall be the [] day from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Contractor shall have completed construction in accordance with this Agreement.

## **2. Extension of time**

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.

**Annex-III: Mobilization Schedule**  
(Schedule-H)

*[insert any details required]*


**Annex-IV:****SCSCHEDULE-I: TESTS ON COMPLETION**

(See Clause 15.1 [Tests on Completion])

**1 Schedule for Tests**

The Contractor shall, no later than 30 (thirty) days prior to the likely completion of construction, notify the Authority's Engineer and the Authority of its intent to subject the Project to Tests, and no later than 10 (ten) days prior to the actual date of Tests, furnish to the Authority's Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Works.

The Contractor shall notify the Authority's Engineer of its readiness to subject the Project to Tests at any time after 10 (ten) days from the date of such notice, and upon receipt of such notice, the Authority's Engineer shall, in consultation with the Contractor, 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 Authority's Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Sub-Clause 15 and this Schedule-I.

**2 Tests**

**Visual and physical test:** The Authority's Engineer shall conduct a visual and physical check of construction to determine that all works and equipment forming part thereof conform to the provisions of this Agreement. The physical tests shall include [\*\*\*].

**Other tests:** For avoidance of doubt, the Parties expressly agree that the Authority or the Authority's Engineer may require the Contractor to carry out additional tests which are not provided in this Agreement but are reasonably required for determination of compliance of Project or Section thereof with the Specification and Standards or in accordance with Good Industry Practice. The costs and expense for carrying out such additional tests shall be borne by the Authority.

**Environmental Audit:** The Authority's Engineer shall carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

**Safety Audit:** The Authority's Engineer shall carry out, or cause to be carried out, a safety audit to determine conformity of the Project with the safety requirements and Good Industry Practice.

The Authority's Engineer may require the Contractor to carry out, or cause to be carried out, at Contractor's Cost, third-party tests.

**3 Agency for conducting Tests**

All Tests set forth in this Schedule-I shall be conducted by the Authority's Engineer or such other agency or person as it may specify in consultation

with the Authority.

**4 Project Completion Certificate**

Upon successful completion of Tests, the Authority's Engineer shall issue the Project Completion Certificate in accordance with the provisions of Clause 15.

**SCHEDULE-J: SELECTION OF AUTHORITY'S ENGINEER**

(See Clause 19.1 [Appointment of Authority's Engineer])

**[THE CONTENTS OF THIS SCHEDULE ARE FOR ILLUSTRATION ONLY AND SHOULD BE UPDATED BASED ON THE AGREEMENT / SCOPE OF THE AUTHORITY'S ENGINEER\*\*]**

**1 Selection of Authority's Engineer**

1.1 The selection of Authority's Engineer shall be in accordance with Applicable Guidelines ) for selection of an experienced firm to discharge the functions and duties of an Authority's Engineer or any other appropriate method as opted by the Authority.

1.2 In the event of termination of the appointee appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another forthwith.

**2 Terms of Reference**

The Terms of Reference for the Authority's Engineer (the "TOR") shall substantially conform with Annex-I to this Schedule-J.

## Annex-I: Terms of reference for Authority's Engineer (Schedule-J)

### 1 Scope

- 1.1 These Terms of Reference (the "**TOR**") for the Authority's Engineer are being specified pursuant to the Conditions of Contract dated (the "**Agreement**"), which has been entered into between the (insert name and address of the Authority) (the "**Authority**") and ..... (the "**Contractor**") for \_\_\_\_\_ on Engineering, Procurement, Construction (EPC) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 The TOR shall apply to construction of the Project.

### 2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation contained in Clause 6 [Definitions and Interpretation] of the Agreement shall apply, *mutatis mutandis*, to this TOR.

### 3. General

- 3.1 The Authority's Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
- 3.2 The Authority's Engineer shall perform the duties and exercise the authority in accordance with the provisions of this Agreement, but subject to obtaining prior written approval of the Authority before determining:
  - (a) any Time Extension;
  - (b) any additional cost to be paid by the Authority to the Contractor;
  - (c) the Termination Payment; or
  - (d) any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party.

- 3.3 The Authority's Engineer shall submit regular periodic reports, h, to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Authority's Engineer within 10 (ten) days of the beginning of every month.
- 3.4 The Authority's Engineer shall inform the Contractor of any delegation of its duties and responsibilities to its suitably qualified and experienced personnel; provided, however, that it shall not delegate the authority to refer any matter for the Authority's prior approval in accordance with the provisions of Clause 23.2 [Authority to act on behalf of Contractor].
- 3.5 The Authority's Engineer shall aid and advise the Authority on any proposal for Change of Scope under Clause 16 [Change of Scope].
- 3.6 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 Authority's Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

#### **4 Construction Period**

- 4.1 During the Construction Period, the Authority's Engineer shall review the Drawings furnished by the Contractor along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Consultant. The Authority's Engineer shall complete such review and send its observations to the Authority and the Contractor within 15 (fifteen) days of receipt of such Drawings, provided, however, that in case of a Major Bridge or Structure, the aforesaid period of 15 (fifteen) days may be extended upto 30 (thirty) days. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Authority's Engineer shall review any revised Drawings sent to it by the Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.
- 4.3 The Authority's Engineer shall review the Quality Assurance Plan submitted by the Contractor and shall convey its comments to the Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.
- 4.4 The Authority's Engineer shall complete the review of the methodology proposed to be adopted by the Contractor for executing the Works and



convey its comments to the Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the Contractor.

- 4.5 The Authority's Engineer shall grant written approval to the Contractor, where necessary, for interruption in public services due to the Project and for purposes of maintenance during the Maintenance Period.
- 4.6 The Authority's Engineer shall review the monthly progress report furnished by the Contractor and send its comments thereon to the Authority and the Contractor within 7 (seven) days of receipt of such report.
- 4.7 The Authority's Engineer shall inspect the Construction Works and the Project and shall submit a monthly Inspection Report bringing out the results of inspections and the remedial action taken by the Contractor in respect of Defects or deficiencies. In particular, the Authority's Engineer shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.
- 4.8 The Authority's Engineer shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Authority's Engineer may require.
- 4.9 For determining that the Works conform to Specifications and Standards, the Authority's Engineer shall require the Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Agreement and in accordance with Good Industry Practice for quality assurance.
- 4.10 The Authority's Engineer shall test check at least 50 (fifty) percent of the quantity or number of tests prescribed for each category or type of test for quality control by the Contractor.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Authority's Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Contractor for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that results of any tests conducted in accordance with Clause 14.10 [Tests] establish any Defects or deficiencies in the Works, the Authority's Engineer shall require the Contractor to carry out remedial measures.

- 4.13 The Authority's Engineer may instruct the Contractor to execute any work which is urgently required for the safety of the Project, whether because of an accident, unforeseeable event or otherwise; provided that in case of any work required on account of a Force Majeure Event, the provisions of Clause 24.6 [Termination Payment] shall apply.
- 4.14 In the event that the Contractor fails to achieve any of the Milestones, the Authority's Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Authority's Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Contractor to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Contractor, the Authority's Engineer shall review the same and send its comments to the Authority and the Contractor forthwith.
- 4.15 The Authority's Engineer shall obtain from the Contractor a copy of all the Contractor's quality control records and documents before the Project Completion Certificate is issued pursuant to Clause 15.4 [Project Completion Certificate].
- 4.16 Authority's Engineer may recommend to the Authority suspension of the whole or part of the Works if the work threatens the safety of the Users and pedestrians. After the Contractor has carried out remedial measures, the Authority's Engineer shall inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.
- 4.17 In the event that the Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires the Authority's Engineer to inspect such works, the Authority's Engineer shall inspect the suspended works within 3 (three) days of receiving such notice, and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.18 The Authority's Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Project Completion Certificate or Provisional Completion Certificate, as the case may be. For carrying out its functions under this Paragraph 4.18 and all matters incidental thereto, the Authority's Engineer shall act under and in accordance with the provisions of Clause 15 [Completion Certificate] and Schedule-I.

## **5 Determination of costs and time**

- 5.1 The Authority's Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the

Agreement.

- 5.2 The Authority's Engineer shall determine the period of Time Extension that is required to be determined by it under the Agreement.
- 5.3 The Authority's Engineer shall consult each Party in every case of determination in accordance with the provisions of Clause 19.4 [Instructions of the Authority's Engineer].

## **6. Payments**

- 6.1 The Authority's Engineer shall withhold payments for the affected works for which the Contractor fails to revise and resubmit the Drawings to the Authority's Engineer in accordance with the provisions of Paragraph 13.2.4 (d).

- 6.2 Authority's Engineer shall -

- (a) within 10 (ten) days of receipt of the Stage Payment Statement from the Contractor pursuant to Clause 20.4 [Stage Payment Statement for Works], determine the amount due to the Contractor and recommend the release of 90 (ninety) percent of the amount so determined as part payment, pending issue of the Interim Payment Certificate; and
- (b) within 15 (fifteen) days of the receipt of the Stage Payment Statement referred to in Clause 20.4 [Stage Payment for Works] deliver to the Authority and the Contractor an Interim Payment Certificate certifying the amount due and payable to the Contractor.

## **7. Other duties and functions**

The Authority's Engineer shall perform all other duties and functions as specified in the Agreement.

## **8 Miscellaneous**

- 8.1 A copy of all communications, comments, instructions, Drawings or Documents sent by the Authority's Engineer to the Contractor pursuant to this TOR, and a copy of all the test results with comments of the Authority's Engineer thereon, shall be furnished by the Authority's Engineer to the Authority forthwith.
- 8.2 The Authority's Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 8.3 Within 90 (ninety) days of the Project Completion Date, the Authority's Engineer shall obtain a complete set of as-built

Drawings, in 2 (two) hard copies and in micro film format or in such other medium or manner 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 Project Facilities; and shall hand them over to the Authority against receipt thereof.

- 8.4 The Authority's Engineer, if called upon by the Authority or the Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.
- 8.5 The Authority's Engineer shall inform the Authority and the Contractor of any event of Contractor's Default within one week of its occurrence.
- 8.6 The Authority's Engineer shall certify the Indian Content under the Project to the satisfaction of the Authority, and in a format as desired by the Authority.

**SCHEDULE-K: FORMS OF PAYMENT STATEMENTS**

(Refer Clause 20.4 [Stage Payment for Works])

**1. Stage Payment Statement for Works**

The Stage Payment Statement for Works shall state:

- (a) the estimated amount for the Works executed in accordance with Clause 20.3 [Procedure for Estimating the Payment for the Works] subsequent to the last claim;
- (b) amounts reflecting adjustments in price for the aforesaid claim;
- (c) the estimated amount of each Change of Scope Order executed subsequent to the last claim;
- (d) amounts reflecting adjustment in price, if any, for (c) above in accordance with the provisions of Sub-Clause 16.2.3 (a);
- (e) total of (a), (b), (c) and (d) above;
- (f) Deductions:
  - (i) Amounts to be deducted in accordance with the provisions of the Agreement except taxes;
  - (ii) any amount towards deduction of taxes; and
  - (iii) any amount towards deduction of taxes at source under Applicable Laws;
- (g) Net claim: (e) – (f);
- (h) the amounts received by the Contractor upto the last claim:
  - (i) for the Works executed (excluding Change of Scope orders);
  - (ii) for Change of Scope Orders, and
  - (iii) taxes deducted

**2. Contractor's claim for Damages****Note:** The Contractor shall submit its claims in a form acceptable to the Authority.

- 3. Certificate of Indian Origin issued by an agency authorized by the Government of India, for the exports from India.
- 4. Latest Monthly Progress Report in accordance with the terms of this Agreement
- 5. Details of Sub-contractors

Sr. No.	Name of Sub-contractor	Value of Works Sub-contracted	Value of Works done by the Sub-contractor	Amount Paid till date	Amount Payable / Due but not paid as on date

The information sought at point (5) above should be certified by an Independent Chartered Accountant.

**SCHEDULE-L: INSURANCE**

(See Section 21 [Insurance])

**1. Insurance during Construction Period**

1.1 The Contractor shall effect and maintain at its own cost, from the Appointed Date till the date of issue of the Project Completion Certificate, or completion of the Maintenance Period<sup>13</sup>, the following insurances for any loss or damage occurring on account of Non Political Event/Indirect Political Event of Force Majeure, malicious act, accidental damage, explosion, fire and terrorism:

- (a) A contractor's all risk (CAR) insurance policy which shall be for an amount not less than [●]<sup>14</sup>;
- (b) insurance of Works, Plant and Materials and an additional sum of 15% (fifteen per cent) of such replacement cost to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature; and
- (c) insurance for the Contractor's equipment brought onto the Site by the Contractor, for a sum sufficient to provide for their replacement at the Site.

1.2 The insurance under paragraph 1.1 (a) and (b) above shall cover the Authority and the Contractor against all loss or damage from any cause arising under paragraph 1.1 other than risks which are not insurable at commercial terms.

**2. Insurance for Contractor's Defects Liability**

The Contractor shall effect and maintain insurance cover for the Works from the date of issue of the Completion Certificate until the end of the Defects Liability Period for any loss or damage for which the Contractor is liable and which arises from a cause occurring prior to the issue of the Completion Certificate. The Contractor shall also maintain other insurances for maximum sums as may be required under Applicable Laws and in accordance with Good Industry Practice.

**3. Insurance against injury to persons and damage to property**

3.1 The Contractor shall insure against its liability for any loss, damage, death or bodily injury, or damage to any property (except things insured under Paragraphs 1 and 2 of this Schedule or to any person (except persons insured under Clause 21.9 [Insurance against accident to Workmen])), which may arise out of the Contractor's performance of

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<sup>13</sup> To be confirmed if any insurance is to stipulated during the Maintenance Period, before finalizing the tender document

<sup>14</sup> Amount to be specified before finalizing the tender document

this Agreement. This insurance shall be for a limit per occurrence of not less than the amount specified below with no limit on the number of occurrences.

The insurance cover shall be not less than: USD \_\_\_\_\_(United States Dollars\_\_\_\_\_ only) (in figures and words)

3.2 The insurance shall be extended to cover liability for all loss and damage to the Authority's property arising out of the Contractor's performance of this Agreement excluding:

- (a) the Authority's right to have the construction works executed on, over, under, in or through any land, and to occupy this land for the Works; and damage which is an unavoidable result of the Contractor's obligations to executethe Works.

#### **4. Professional Liability Insurance**

4.1 The Contractor shall effect and maintain professional indemnity insurance against liability arising out of any act , error or omission by the Contractor in carrying out the Contractor's design obligations in an amount not less than that stated in the SCC (if not stated, the amount agreed with the Authority); and

4.2 if stated in the SCC , such professional indemnity insurance shall also indemnify the Contractor against liability arising out of any act, error or omission by the Contractor in carrying out the Contractor's design obligations under the Agreement that results in the Works (or Section or major item of Plant, if any), when completed, not being fit for the purpose(s) for which they are intended.

#### **5. Insurance to be in joint names**

The insurance under paragraphs 1 to 4 above shall be in the joint names of the Contractor and the Authority.



**SCHEDULE-M: MAINTENANCE REQUIREMENTS**

(See Section 17 [Maintenance Obligations])

Repair/rectification of Defects and deficiencies The Contractor shall repair and rectify the Defects and deficiencies specified in this **Annex-I** of **Schedule-M** within the time limit set forth in the table below.

**Annex-I: Defects and Deficiencies**  
(Schedule-M)

## **SCHEDULE-N: ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY (ESHS) REQUIREMENTS**

(See Clause 8.19 [Environmental, Social, Health and Safety (ESHS) Officer])

[To be updated by the Authority based on the Specific Safety requirements of the Project<sup>15</sup>]

[The requirements be prepared by engaging services of a suitably qualified Environmental, Health and Social specialist/s]

In preparing detailed specifications for ESHS requirements the Authority should refer to and consider the applicable environmental, social, health and safety regulations and standards and other Good International Industry Practice (GIIP).

The ESHS requirements should be prepared in manner that does not conflict with the relevant General Conditions [in particular, the conditions related to language and law, subcontracting, other contractors, personnel and equipment, contractor's risks, protection of environment, Geological and archaeological finds, payments] along with the corresponding Particular Conditions, if any, and other parts of the Scope of Works.

1. The following is a non-exhaustive list of Sub-Clauses of the Conditions of Contract that make reference to ESHS matters. Wherever applicable, specify national, statutory, regulatory or sectoral requirements and standards and other necessary information.

<b>Sub-Clause/Clause</b>	<b>Applicable Provisions / Information</b>
Co-operation [Sub-Clause 8.1.6]	Indicate specific aspects (if any) that require contractor's cooperation.
Facilities for Staff and Labour [Clause 8.8]	Indicate requirements for the workers living condition and accommodation
Health and Safety [Clause 8.9]	Indicate requirements for the Health and Safety manual.
Training of Contractor's Personnel [Clause 8.9]	If applicable, specify details of any training to relevant Contractor's Personnel to be provided by the Contractor
Protection of the Environment [Clause 8.20]	Specify any requirements or values for emissions, surface discharges, effluent and any other pollutants from the Contractor's activities that shall not be exceeded.

<sup>15</sup> The detailed specification for ESHS should, to the extent possible, describe the intended outcome rather than the method of working.

Sub-Clause/Clause	Applicable Provisions / Information
Rate of Wages and Conditions of Labour [Clause 8.6]	State applicable requirements
Working Hours [Clause 8.7]	State applicable requirements in accordance with the labour management procedure.
Archaeological and Geological Findings [Clause 12.8]	Specify other requirements
Other Requirements [If applicable, indicate other ESHS matters]	<p>If required, specify applicable requirements, measures, guidelines or provisions for other ESHS matters which may include:</p> <ol style="list-style-type: none"> <li>1. Construction Zone Safety Management Plan and Boundary Marking</li> <li>2. Traffic and Transportation Management</li> <li>3. Gender and Diversity Policy</li> <li>4. Management and Safety of Hazardous Materials</li> <li>5. Resource Efficiency: [For improving efficient consumption of energy, water and raw materials, as well as other resources]</li> <li>6. Pollution Prevention and Management               <ol style="list-style-type: none"> <li>a. Management of air pollution</li> <li>b. Management of hazardous and non-hazardous wastes</li> <li>c. Management of chemicals and hazardous materials</li> <li>d. Emission Intensity and Reduction</li> </ol> </li> <li>7. Biodiversity Conservation and Sustainable Management of Living Natural Resources</li> <li>8. Road Safety</li> </ol>

**APPENDIX-IX: FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT**

Beneficiary: \_\_[Name of Authority]\_\_

Contractor: \_\_\_\_\_

RFP No: \_\_\_\_\_

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

Guarantee No.: \_\_\_\_\_

Guarantor: \_\_\_\_\_

We have been informed that \_\_\_\_\_ [Name of the Contractor] (hereinafter called the "**Contractor**") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ [Name of the Contractor] (hereinafter called the "**Contract**"), and the Contractor wishes to receive advance payment under the Contract, for which the Contractor has to be submit a bank guarantee in accordance with the terms and conditions of the Contract, for the amount as specified in the Contract.

At the request of the Contractor, we as Guarantor, hereby unconditionally and irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of USD \_\_\_\_\_ (United States Dollars \_\_\_\_\_)<sup>16</sup> (the "**Guaranteed Amount**") upon receipt by us of the Beneficiary's demand in writing supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand stating that the Bidder is in breach of such terms and conditions of the Bidding Document that entitle the Beneficiary to recover the advance payment and interest thereon by invocation of the Guarantee, along with identification of such terms and conditions. The beneficiary shall also identify the amount of advance payment to be recovered and interest thereon.

This guarantee shall become effective upon receipt of the first instalment of the advance payment by the Contractor. The amount of this guarantee shall be progressively reduced on a pro rata basis by the amount of the advance payment repaid by the Applicant as specified in copies of payment confirmation which shall be presented to us.

We agree that in accordance with the terms and conditions of the Contract if the Guaranteed Amount has to be adjusted, we shall promptly inform you that we have received such statement and have adjusted the Guaranteed Amount accordingly. In

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<sup>16</sup> *The Guarantor shall insert an amount representing the amount of the advance payment as specified in the Contract.*

the case of a request for a decrease of the amount of the Guarantee, the above statement shall be accompanied by your written consent to such decrease.

This guarantee shall expire, on [\_\_\_\_\_] (the “**Expiry Date**”), and any demand for payment under it must be received by us at the following office [*insert address of office and email for correspondence*] on or before the Expiry Date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

\_\_\_\_\_  
[signature(s)]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

**APPENDIX-X: PROVISIONAL AND COMPLETION CERTIFICATE**  
(See Clause 15.2 and 15.4)

**PROVISIONAL COMPLETION CERTIFICATE<sup>17</sup>**

- 1 I/We, \_\_\_\_\_ (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated \_\_\_\_\_ (the "**Agreement**"), for construction of the \_\_\_\_\_ (the "**Project**") on Engineering, Procurement and Construction (EPC) basis through \_\_\_\_\_ (Name of Contractor), hereby certify that the Tests in accordance with Clause 15 [Completion Certificate] of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.
- 2 The Contractor has agreed and accepted that as a condition of this Provisional Completion Certificate, it shall complete minor works within 30 (thirty) days hereof. These minor works have been specified in the Punch List.
- 3 In view of the foregoing, I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into operation on this the \_\_\_\_\_ day of \_\_\_\_\_. 20\_\_\_\_.

ACCEPTED, SIGNED, SEALED

SIGNED, SEALED AND DELIVERED

For and on behalf of  
CONTRACTOR by:

For and on behalf of  
AUTHORITY'S ENGINEER by:

(Signature)  
(Name and Designation)  
(Address)

(Signature)  
(Name and Designation)  
(Address)

SIGNED on behalf of  
the AUTHORITY by:  
(Signature)  
(Name)  
(Address)  
(Designation)

<sup>17</sup> The format set forth may be suitably modified to issue Provisional Completion Certificate for Section(s) of the Works.

## PROJECT COMPLETION CERTIFICATE

- 1 I/We, \_\_\_\_\_ (Name of the Authority's Engineer), acting as the Authority's Engineer, under and in accordance with the Agreement dated .....  
(the "**Agreement**"), for construction of the \_\_\_\_\_ (the "**Project**") on Engineering, Procurement and Construction (EPC) basis through \_\_\_\_\_ (Name of Contractor), hereby certify that the Tests in accordance with Clause 15 [Completion Certificate] of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I/We am/are satisfied that the Project can be safely and reliably placed in service of the Users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into operation on this the ..... day of ..... 20.....

ACCEPTED, SIGNED, SEALED  
DELIVERED

For and on behalf of  
CONTRACTOR by:

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

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
AUTHORITY's ENGINEER by:

(Signature)  
(Name and Designation)

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
the AUTHORITY by:

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



**APPENDIX-XI: MAINTENANCE COMPLETION CERTIFICATE**

(See Sub-Clause 17.11 [Maintenance Completion Certificate])

I, \_\_\_\_\_ (Name and designation of the Authority's Engineer) under and in accordance with the Agreement dated \_\_\_\_\_ (the "**Agreement**"), for [construction of the \_\_\_\_\_] (the "**Project**") on Engineering, Procurement and Construction (EPC) basis through \_\_\_\_\_ (Name of Contractor), hereby certify that the Tests on completion of Maintenance Period in accordance with Clause \_\_ of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement and I hereby certify that the Authority has taken over the Project from the Contractor on this day \_\_\_\_\_.

ACCEPTED, SIGNED, SEALED  
AND DELIVERED

For and on behalf of  
CONTRACTOR by:

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

SIGNED, SEALED  
DELIVERED

For and on behalf of  
AUTHORITY's ENGINEER by:

(Signature)  
(Name and Designation)

SIGNED on behalf of  
the Authority by:

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