

Ref: Exim Bank/Infra-Consultancy

Date: July 31, 2024

**Request for Inputs / Feedback on the Model Bidding Document for Consultancy**

1. This is in reference to the Model Bidding Document for Consultancy uploaded on our Website for which Inputs / Feedback from stakeholders, industry and members of the public is being sought.
2. The Request for Proposal (RFP) containing the provisions governing the eligibility and the Bidding Procedure for selection of a Consultant and the Model Contract Agreement, will constitute the “**Bidding Documents**”.
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. Amit Sahu 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 BIDDING DOCUMENT FOR CONSULTANCY**

<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 SELECTION OF CONSULTANT**

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

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



**Version: V1**  
**Date: XX 2024**

## Instructions for Project Authority / LOC Borrower

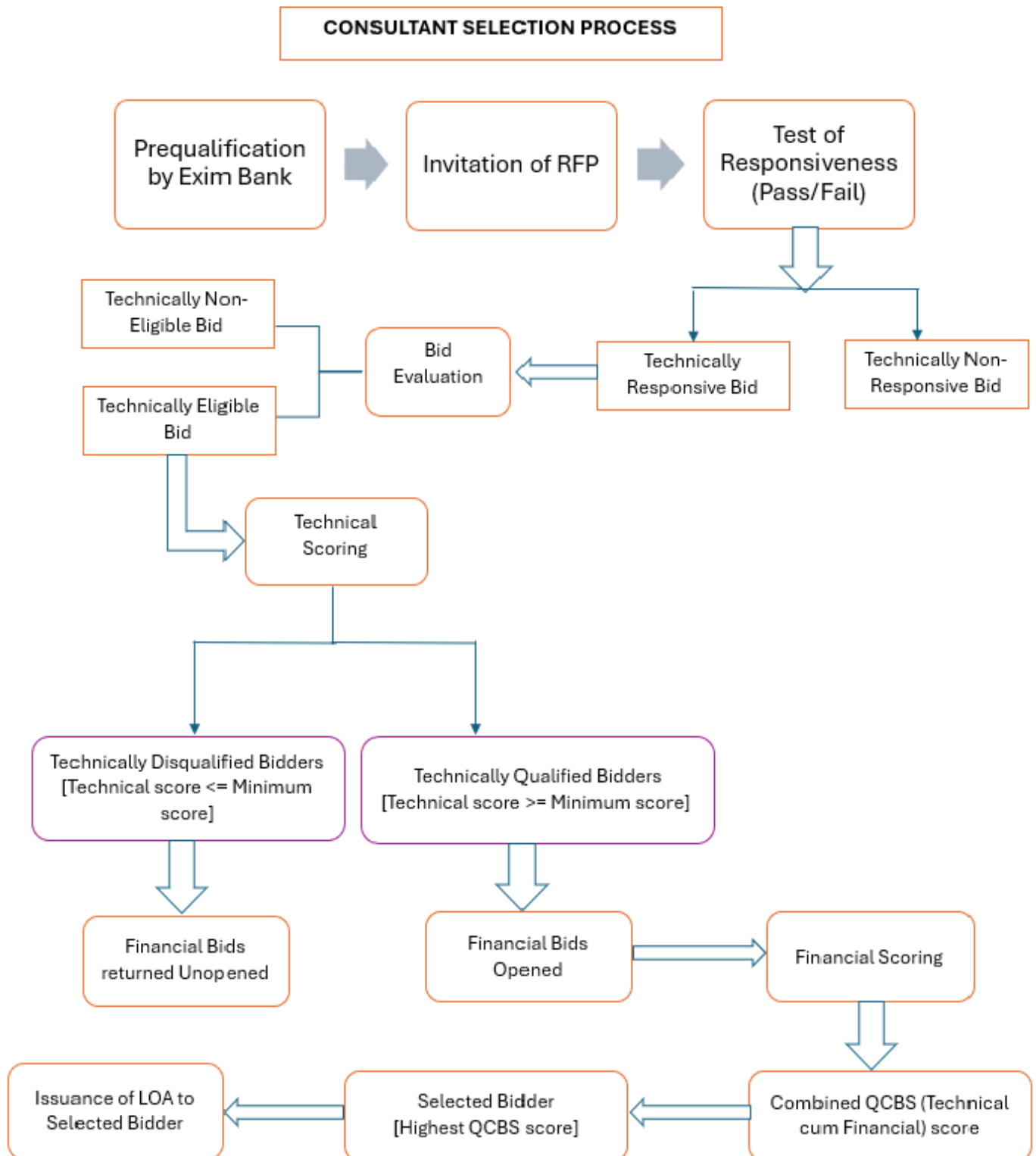
This Bidding Document comprising of Request for Proposal (“RFP”), Conditions of Contract, Annexures, Appendices, Enclosures and all other documents mentioned in the Agreement shall be used for selection of Consultants for all the projects approved by the Government of India (GOI) and funded through the Export-Import Bank of India (the “Exim Bank”) Line of Credit (the “LOC”) under the Indian Development and Economic Assistance Scheme (the “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 August 01, 2024.
- The Bidding Process shall be conducted in accordance with the Procurement Policy of Exim Bank.
- The selection of the Consultant shall be through ‘Quality and Cost Based Selection’ (“QCBS”), failing which the contract / Project may be disqualified for funding under the LOC. This RFP should be used only for the selection of the Consultant through competitive bidding using QCBS method, amongst the companies prequalified by Exim Bank and is not suited for selection through LCS Mode of selection.
- In case LCS method of selection is applicable, modifications can be undertaken at clause no.s 3.4, 3.7, 3.8 and AITB.
- 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 Instructions to Bidders and General Conditions of Contract, 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 the Services 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 selection of Consultants 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.
- No change should be made in the content of “General Conditions of Contract” (GCC). Changes to GCC must be made by way of changes in “Special Conditions of Contract” (SCC).
- The document is suitable for a Bidder applying as a single entity or a combination of Bidders 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\*\*]

SELECTION OF Detailed Project Report  
(DPR) Consultant/Project Management  
Consultant (PMC)\*\*  
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 calling for the Bids, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions specified at the time of sharing of such information.

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 Bidders, 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 Consultant, 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 pre-bid meeting, pre-bid site visit, 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: Appendices to the Agreement**

This Part contains the 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 Consultant 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**") intends to select Detailed Project Report (DPR) Consultant/Project Management Consultant (PMC)\*\* . The Authority now invites sealed Bids from prequalified Bidders for selection of the Consultant. 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]

## TABLE OF CONTENT

<b>DISCLAIMER.....</b>	<b>1</b>
<b>Summary of Content.....</b>	<b>3</b>
<b>NOTICE INVITING BIDS .....</b>	<b>4</b>
<b>TABLE OF CONTENT .....</b>	<b>5</b>
<b>PART-I: INSTRUCTIONS TO BIDDERS.....</b>	<b>13</b>
<b>SECTION-1 INTRODUCTION .....</b>	<b>13</b>
1.1 Background.....	13
1.2 Brief description of Bidding Process .....	14
1.3 Schedule of Bidding Process.....	16
1.4 Reporting Currency.....	16
1.5 Contents of the Bidding Document.....	17
<b>SECTION-2 BIDDING CRITERIA AND REQUIREMENTS .....</b>	<b>19</b>
2.1 Scope of Bid.....	19
<b>B. ELIGIBILITY AND CONDITIONS OF BIDDING.....</b>	<b>20</b>
2.2 Eligibility and Qualification of Bidders .....	20
2.3 Change in Composition of the Joint Venture .....	30
2.4 Multiple Bids and Alternative Bids .....	30
2.5 Proprietary Data .....	30
2.6 Cost of Bidding .....	31
2.7 Pre-Bid Meeting, Site visit and Verification of Information .....	31
2.8 Acknowledgement by Bidder .....	32
2.9 Rejection of Bids .....	33
2.10 Verification and Disqualification .....	33
2.11 Correspondence with the Authority .....	35
2.12 Clarifications.....	35
2.13 Amendment of RFP .....	36
2.14 Language.....	36
2.15 Preparation and Signing of Bid .....	36
2.16 Documents comprising Technical and Financial Bid .....	38
2.17 Bid Due Date .....	41
2.18 Late Bids.....	41
2.19 Procedure for Tendering .....	42
2.20 Opening of Technical Bids .....	42
2.21 Opening of Financial Bids .....	44
2.22 Validity of Bids.....	45
2.23 Confidentiality .....	45

2.24 Correspondence with the Bidder .....	45
2.25 Bid Security .....	46
2.26 Performance Security .....	47
3.1 Evaluation of Technical Bids .....	48
3.2 Tests of Responsiveness.....	50
3.3 Technical Eligibility .....	51
3.4 Technical Qualification.....	51
3.5 Evaluation of Financial Bids .....	52
3.6 Correction of Arithmetical Errors .....	53
3.7 Selected Bidder .....	53
3.8 Contract Negotiation and Letter of Award .....	53
3.9 Contacts during Bid Evaluation.....	55
SECTION-4 MISCELLANEOUS.....	56
4. Miscellaneous .....	56
5.1 Appendix to Instructions to Bidders.....	59
Evaluation of Financial Bids .....	65
The.....	66
<b>PART-III: BIDDING FORMS AND RFP APPENDICES .....</b>	<b>68</b>
RFP Appendix-I: Technical Bid.....	69
FORM-I: Details of the Bidder.....	75
FORM-I(A): Details of JV Members.....	77
FORM-II: Contract Non-Performance and Litigation .....	78
FORM-IV: Past Experience.....	85
FORM-V (A): Resume and Declaration .....	89
FORM-VI Statement of Legal Capacity .....	92
FORM-VII: Certified Management System .....	93
FORM-VIII: Additional Information for Technical Scoring.....	94
RFP Appendix-II: Financial Bid .....	96
FORM-IX: Breakup of Financial Bid.....	98
RFP Appendix-III: Bank Guarantee for Bid Security .....	101
RFP Appendix-V: Format for Power of Attorney for Lead Member of the JV .....	104
RFP Appendix-VI: Format for Joint Bidding Agreement for Joint Venture .....	107
RFP Appendix-VII: Form of Bank Guarantee.....	112
RFP Appendix-VIII: Format of LOA.....	114
RFP Appendix-IX: TERMS OF REFERENCE.....	115
<b>A. Project Information Memorandum (Include Project Description) .....</b>	<b>115</b>
<b>B. Background and Objectives of the Authority .....</b>	<b>115</b>
<b>C. Objectives of the Consultancy Services.....</b>	<b>115</b>

D.	Scope of Services: .....	115
E.	Data, Local Services, Personnel and Facilities to be provided by the Authority 115	
	CONDITIONS OF CONTRACT .....	121
	PART-IV: FORM OF THE CONTRACT AGREEMENT .....	122
	PART-V. GENERAL CONDITIONS OF CONTRACT (GCC) .....	125
	SECTION-6 DEFINITIONS AND INTERPRETATION .....	125
	6.1 Definitions.....	125
	6.2 Interpretation.....	132
	6.3 Measurements and Arithmetic Conventions .....	135
	6.4 Priority of Agreements and Errors/Discrepancies .....	135
	6.5 Joint and several liability.....	136
	6.6 Law and Language.....	136
	SECTION-7 SCOPE OF THE SERVICES.....	138
	7.1 Scope of the Services .....	138
	7.2 Site .....	138
	7.3 Reporting Requirements.....	138
	7.4 Standard of Performance.....	138
	7.5 Defects in Services .....	139
	7.6 Eligible Services.....	139
	7.7 Progress Reports.....	139
	SECTION-8 OBLIGATIONS OF THE CONSULTANT.....	140
	SECTION-8A OBLIGATIONS OF THE CONSULTANT [TO BE ADOPTED IN CASE OF CONSULTANCY SERVICES FOR CONSTRUCTION SUPERVISION].....	140
	8.1 Obligations of the Consultant .....	140
	8.2 Obligations relating to Sub-Contracts and any other agreements.....	142
	8.3 Obligations relating to Employment of Foreign Nationals .....	143
	8.4 Obligations relating to Consultant's Personnel and Representative .....	144
	8.5 Labor Laws.....	145
	8.6 Condition of Labor .....	145
	8.7 Working Hours .....	146
	8.8 Facilities for Staff and Labor .....	146
	8.9 Health and Safety .....	146
	8.10 Record of Consultant's Personnel .....	146
	8.11 Alcohol or Drugs .....	147
	8.12 Arms and Ammunition .....	147
	8.13 Prohibition of Forced or Compulsory Labor and Child Labour .....	147
	8.14 Obligations relating to information.....	147
	8.15 Unforeseeable difficulties .....	147

8.16 Site Data .....	148
8.17 Sufficiency of the Contract Price.....	148
8.18 Inspection .....	148
8.19 Protection of Environment .....	148
8.20 Compliance with Laws .....	149
8.21 Debarment by Exim Bank .....	149
SECTION-8B OBLIGATIONS OF THE CONSULTANT [TO BE ADOPTED IN CASE OF CONSULTANCY SERVICES FOR DPR] .....	149
8.1 Obligations of the Consultant .....	149
8.2 Obligations relating to Sub-Contracts and any other agreements.....	151
8.3 Obligations relating to Employment of Foreign Nationals .....	152
8.4 Obligations relating to Consultant's Personnel and Representative .....	153
8.5 Labor Laws.....	154
8.6 Condition of Labor .....	154
8.7 Working Hours .....	155
8.8 Facilities for Staff and Labor .....	155
8.9 Health and Safety .....	155
8.10 Record of Consultant's Personnel .....	155
8.11 Alcohol or Drugs .....	156
8.12 Arms and Ammunition .....	156
8.13 Prohibition of Forced or Compulsory Labor and Child Labour.....	156
8.14 Obligations relating to information.....	156
8.15 Unforeseeable difficulties .....	156
8.16 Site Data.....	157
8.17 Sufficiency of the Contract Price.....	157
8.18 Inspection .....	157
8.19 Protection of Environment .....	158
8.20 Compliance with Laws .....	158
8.21 Debarment by Exim Bank .....	158
SECTION-9 OBLIGATIONS OF THE AUTHORITY .....	159
9.1 Obligations of the Authority .....	159
9.2 Permits, Licenses or Approvals .....	161
9.3 Authority's Financial Arrangements.....	161
9.4 Authority's Use of Consultant's Documents .....	162
9.5 Authority's Reimbursement of Taxes.....	162
SECTION-10 REPRESENTATIONS, DISCLAIMER AND WARRANTIES.....	163
10.1 Representations and Warranties of the Consultant .....	163
10.2 Representations and Warranties of the Authority .....	164
10.3 Disclosure .....	165

10.4 Disclaimer.....	165
SECTION-11 PERFORMANCE SECURITY .....	167
11.1 Performance Security .....	167
11.2 Extension of Performance Security.....	167
11.3 Appropriation of Performance Security.....	167
11.4 Release of Performance Security .....	168
11.5 Retention Money.....	168
SECTION-12 DEPLOYMENT OF RESOURCES .....	170
12.1 General Requirements.....	170
12.2 Key Expert(s) .....	170
12.3 Substitution of Key Expert(s) .....	170
12.4 Non-Key Expert(s).....	171
12.5 Removal of Key Experts and Non-Key Experts .....	171
12.6 Equipment and Tools of Trade.....	172
SECTION-13 DELIVERY OF SERVICES .....	173
13.1 Obligations prior to Commencement of Services .....	173
13.2 Works Plan.....	173
13.3 Effective Date of Agreement or Appointed Date .....	173
13.4 Commencement of Services.....	173
13.5 Review of Phases and Milestones .....	173
13.6 Time of Essence.....	174
SECTION-14 QUALITY ASSURANCE AND SUPERVISION .....	175
14.1 Quality of Materials and Workmanship .....	175
14.2 Quality Control System.....	175
14.3 Methodology .....	175
14.4 Inspection and Review by the Authority .....	175
14.6 Inspection of Records .....	175
14.7 Inspection of Works .....	175
14.8 Monthly Progress Reports.....	176
14.9 Samples .....	176
14.10 Tests .....	176
14.11 Examination of Work before Covering up .....	177
14.12 Rejection.....	177
14.13 Remedial Work .....	177
14.14 Delays during Construction .....	178
14.15 Quality Control Records and Documents.....	178
14.16 Suspension of Unsafe Works.....	178
SECTION-15 COMPLETION CERTIFICATE .....	179
15.1 Tests on Completion .....	179



15.2 Provisional Completion Certificate.....	179
15.3 Project Completion Certificate .....	180
15.4 Interference on Tests for Completion .....	181
SECTION-16 CHANGE OF SCOPE .....	182
16.1 Change of Scope.....	182
16.2 Procedure for Change of Scope .....	182
16.3 Payment for Change of Scope .....	183
16.4 Restrictions on Change of Scope .....	183
16.5 Power of the Authority to undertake works .....	184
SECTION-17 EXTENSION OF TIME .....	185
17.1 Extension of Time for Completion.....	185
SECTION-18 DEFECTS LIABILITY.....	187
18.1 Remedy and Rectification of Defects and Deficiencies.....	187
SECTION-19 DAMAGES.....	188
19.1 Damages to be paid by Consultant.....	188
SECTION-20 PRICES AND PAYMENTS .....	190
20.1 Contract Price .....	190
20.2 Procedure for Payment.....	192
20.4 Payment of Damages .....	195
20.5 Time of payment.....	195
20.6 Restrictions on Price Adjustment .....	195
20.7 Final Payment .....	195
20.8 No Claim Certificate.....	196
20.9 Change in Law .....	196
20.10 Suspension of Payments.....	197
20.11 The Authority's Claims.....	197
SECTION-21 INSURANCE .....	198
21.1 Insurance for Services .....	198
21.2 Notice to the Authority .....	199
21.3 Evidence of Insurance Cover .....	199
21.4 Remedy for Failure to Insure .....	199
21.5 Waiver of Subrogation .....	199
21.6 Consultant's Waiver.....	200
21.7 Cross Liabilities.....	200
21.8 Accident or Injury to Workmen .....	200
21.9 Insurance against accident to Workmen .....	200
21.10 Application of Insurance proceeds.....	201
21.11 Compliance with Policy Conditions .....	201
SECTION-22 FORCE MAJEURE AND TERMINATION .....	202

22.1 Force Majeure .....	202
22.2 Non-Political Event.....	202
22.3 Indirect Political Event .....	203
22.4 Political Event .....	203
22.5 Duty to report Force Majeure Event .....	204
22.6 Effect of Force Majeure Event on the Agreement.....	205
22.7 Termination Notice for Force Majeure Event .....	206
22.8 Termination Payment for Force Majeure Event .....	206
22.9 Dispute Resolution.....	207
22.10 Excuse from Performance of Obligations.....	207
SECTION-23 SUSPENSION OF CONSULTANT’S RIGHTS .....	208
23.1 Suspension upon Consultant’s Default .....	208
23.2 Authority to act on behalf of Consultant.....	208
23.3 Revocation of Suspension.....	208
23.4 Termination .....	208
SECTION-24 TERMINATION.....	210
24.1 Termination for Consultant’s Default.....	210
24.2 Termination for the Authority Default.....	213
24.3 Termination for Authority’s convenience and failure to achieve Appointed Date .....	214
24.4 Requirements after Termination.....	214
24.5 Valuation of Unpaid Services .....	215
24.6 Termination Payment .....	215
24.7 Other Rights and Obligations of the Parties.....	216
24.8 Survival of Rights.....	217
SECTION-25 ASSIGNMENT AND CHARGES .....	219
25.1 Restrictions on assignment and Charges .....	219
SECTION-26 LIABILITY AND INDEMNITY .....	220
26.1 General Indemnity .....	220
26.2 Indemnity by the Consultant .....	220
26.3 Notice and Contest of Claims.....	221
26.4 Defence of Claims.....	221
26.5 No consequential claims .....	222
26.6 Survival on Termination.....	222
SECTION-27 DISPUTE RESOLUTION.....	223
27.1 Amicable Settlement .....	223
27.2 Resolution by Dispute Board .....	223
27.3 Arbitration.....	225
SECTION-28 MISCELLANEOUS.....	226

28.1 Governing Law and Jurisdiction .....	226
28.2 Waiver of Immunity .....	226
28.3 Delayed Payments.....	226
28.4 Waiver .....	226
28.5 Liability for review of Documents and Drawings .....	227
28.6 Exclusion of Implied Warranties etc.....	227
28.7 Survival.....	227
28.8 Entire Agreement .....	227
28.9 Severability.....	228
28.10 No partnership.....	228
28.11 Third Parties .....	228
28.12 Successors and Assigns .....	228
28.13 Notices.....	228
28.14 Counterparts.....	229
28.15 Confidentiality .....	229
28.16 Copyright and Intellectual Property Rights .....	229
28.17 Limitation of Liability .....	230
28.18 Code of Integrity .....	230
<b>PART-VII: APPENDICES TO THE AGREEMENT.....</b>	<b>235</b>
APPENDIX-X: FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT.....	238

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

- 1.1 Background**
- 1.1.1** The Borrower ("**Borrower**") as specified in the **Appendix to Instructions to Bidders ("AITB")** has received a Line of Credit (the "**LOC**") from Export-Import Bank of India ("**Exim Bank**"). The Borrower, through the Authority as specified in the **AITB** intends to apply a portion of the LOC to eligible payments for Consultancy services under the Project 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.
- The Authority intends to undertake selection of a Consultant 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**.
- 1.1.2** The Selected Bidder ("**Consultant**") shall be responsible for providing Services under 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 Consultant 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 Assignment to the Consultant, including the scope of the services and obligations to be undertaken by the Consultant. The detailed scope of services has been laid out in Section-7 [Scope of the Services] of the Conditions of Contract (read with the relevant Appendices). 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. 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 under the Assignment, 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 technical eligibility 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 for all Bidders whose Technical Bids are responsive to eligibility in accordance with this RFP. Subsequently, the Bids shall be evaluated in accordance with Clause 3.7 [Selection Methodology] under 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 Consultant, 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 Contract.

**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 standards of Services set

out in the Bidding Document.

**1.2.7** Banks acceptable for submission of Bank Guarantees are **as specified in the AITB**. 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 on the basis of “**Quality and Cost-Based Selection (QCBS)**”. The evaluation of the price quoted by the Bidders in the Financial Bid in accordance with the assigned weightage along with evaluation of the Technical Bid in accordance with the assigned weightage and arriving at a total score calculated by combining the weighted technical and financial scores (the “**Combined QCBS Score**”) shall constitute sole criteria for evaluation of Bids amongst the Technically Eligible Bidders in accordance with Sub-Clause 3.4.2 and the Contract shall be awarded to the Bidder with the highest Combined QCBS Score after evaluation among the Technically Eligible Bidders.

**1.2.9** 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 **as specified in AITB**.

**1.4 Reporting Currency**

**1.4.1** All financial information to be submitted by the Bidder in the Bid shall be in the currency **as specified in the AITB** (the “**Reporting Currency**”). 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.aspx> 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, Part-II and Part-III as listed below shall be collectively referred as Request for Proposal (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 Services
- Section-8: Obligations of the Consultant
- Section-9: Obligations of the Authority
- Section-10: Representations, Disclaimer and Warranties
- Section-11: Performance Security
- Section-12: Deployment of Resources



Section-13: Delivery of Services  
Section-14: Quality Assurance and Supervision  
Section-15: Completion Certificate  
Section-16: Change of Scope  
Section-17: Extension of Time  
Section-18: Defects Liability  
Section-19: Damages  
Section-20: Prices and Payments  
Section-21: Insurance  
Section-22: Force Majeure and Termination  
Section-23: Suspension of Consultant'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: Appendices to the Agreement**

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

- 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 Consultant 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.
- 2.1.2 The Technical Bid shall be furnished in the format exactly as per **Appendix-I including Forms annexed to Appendix-I**. The Financial Bid shall be furnished in the format exactly as per **Appendix-II, including Forms annexed to Appendix-II**. Financial 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 **Appendix-III**.
- 2.1.3 The Bidder shall submit a Power of Attorney as per the format at **Appendix-IV**, authorizing the signatory of the Bid to commit the Bidder.
- 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 **Appendix-V** and Joint Bidding Agreement in the format at **Appendix-VI**.
- 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.
- 2.1.6 The Bid and all communications in relation to or concerning

the Bidding Document and the Bid shall be in language as specified in Clause 2.14 [Language].

**2.1.7** Any award of Contract 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, Consultant, suppliers, contractors, sub-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.

## **B. ELIGIBILITY AND CONDITIONS OF BIDDING**

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

**2.2.1** Only the prequalified Bidders notified by Exim Bank (the “Bidder”) 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, government agency 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 Consultant(s) and non-prequalified Consultant(s)

- 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 Consultant 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 Contract, 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 performance of the Services, 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 towards the Contract.
- 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-consultant 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 Contract, 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 'Consultant', including but not limited to abandoning the work/services, 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, at any later stage.

- 2.2.2** The Bidder undertakes that the Bidder continues to meet the "Technical Capacity" and "Financial 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.



### 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**.
- c. The cutoff date for meeting the eligibility under this clause shall be **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 3 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 3 (three) 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**.
- e. The cutoff date for meeting the eligibility under this clause shall be **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 2.2.3.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 certifying 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-consultants 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 Consultant 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 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 Order No.4 dated February 23, 2023, issued by the Procurement Policy 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 Procurement Policy 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 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 the Contract Agreement. 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 any materials, equipment and services to be supplied under the Contract Agreement. At the Authority's request, Bidders may be required to provide evidence of the origin of materials, equipment and services, as applicable. 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 Consultant 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 Agreement. 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 change of Lead Member of the JV shall not be permitted under any circumstances and any change in the composition of the JV shall be with the 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 Assignment. 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.

**2.5 Proprietary Data**

**2.5.1** 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 *mutatis mutandis* 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.

## **2.6 Cost of Bidding**

### **2.6.1**

The Bidders shall be responsible for all of the 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 pre-bid meeting, pre-bid site visit, demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. 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.

## **2.7 Pre-Bid Meeting, Site visit and Verification of Information**

### **2.7.1**

(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 Appendices 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, performance of the Services 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 Consultant;
- 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 the period of Contract Agreement, 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 Consultant 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 Consultant, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Consultant. 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 Consultant's Default. The Bidder / Selected Bidder shall also be liable for Debarment in accordance with Exim Bank's Debarment Policy.
- 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 Consultant, 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, 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 Consultant for the same. For the avoidance of 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.

**2.11  
Correspondence  
with the  
Authority**

**2.11.1** Details of the Authority and the mode of communication for the purpose of communication, clarification and Bid submission and Bid opening are **as specified in the AITB**.

**2.12  
Clarifications**

**2.12.1** 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  
Bid**

- 2.15.1** The Bidder shall adhere to the following requirements:
- 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”**, 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”** 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. Except that the inner envelope for financial bid shall bear a warning not to open with the technical bid.
- 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 the Sub-Clause 2.19.2, additional requirements maybe 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 Technical and Financial Bid**

- 2.16.1** (a) The Bidder shall submit all the details as required in this RFP for technical eligibility and technical qualification. The 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 3 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 3 (three) 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 services. 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 Services 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 Consultant's obligations under the Contract. The Services shall include any service which is necessary to satisfy the Authority's Requirements as outlined in the Conditions of Contract, or is implied by the Agreement, and all services which (although not mentioned in the Agreement) are necessary for stability or for the completion, or safe and proper operation, of the Project.

#### **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 services 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 only Technical Bid envelope 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. The envelopes with the Financial Bid shall remain unopened, sealed and securely stored.

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 Technical 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 Technical 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 nor the reasons for 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 Contract 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 Contract 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 Contract 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 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, 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;
- (e) 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 Performance Security as per Clause 2.26 [Performance Security]; or
  - (iii) To sign the Agreement.

## 2.26 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 “**Performance Security**”) for an amount as prescribed in the Conditions of Contract.
- 2.26.2 The Performance Security shall be valid for a period in accordance with the Conditions of Contract.
- 2.26.3 The Selected Bidder shall provide 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 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 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 Consultant, 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 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 Technical Scoring of the Technically Eligible Bidders shall be undertaken as per the criteria and manner in accordance with Clause 3.4 to identify the “**Technically Qualified Bidders**”.
- (e) The Financial Bids of the Technically Qualified Bidders would be opened for further scrutiny, and Financial Scoring shall be undertaken by the Authority in accordance with Clause 3.5.
- (f) For identification of the “**Selected Bidder**”, the combined QCBS score is calculated by weighting the technical and financial scores in accordance with Clause 3.7 [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 services of the Bidder;
- (b) which limits in any substantive way, inconsistent with the Bidding Document, the Authority's rights, or the Consultant's obligations under the contract; or



- (c) Whose rectification would unfairly affect the competitive position of other Consultants presenting/submitting 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** Unless otherwise specified in the AITB, the selection method applicable in this Biding Document shall be Quality and Cost Based Selection ("**QCBS**") as below

(a) For ascertaining the Technical Qualification, the Technically Eligible Bidders shall be evaluated on the basis of their responsiveness to the Terms of Reference as per **Appendix-IX** and the RFP, applying the evaluation criteria, sub-criteria, and point system as specified in the **AITB**. Each Technically Eligible Bidders shall be assigned a Technical Score (St) by the Authority. "**Technical 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 Technical Score shall be final.

(b) All Key Experts (including the Team Lead) must meet the minimum requirements specified in **Appendix-IX**. If any Key Expert fails to meet these minimum requirements, his score

shall be evaluated as Nil. If any Key Expert or Team Lead of the Selected Bidder scores less than the specified percentage of the maximum score as specified in **AITB** (or 50%, if not so specified), Authority shall be entitled to ask for a better replacement at the time of the negotiations as per clause 3.8.

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

**3.4.2** (a) The Technically Eligible Bidder shall be declared as Technically Qualified in the Technical 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 Technical Scoring.

### **3.5 Evaluation of Financial Bids**

**3.5.1** (a) The Authority shall open and evaluate only the Financial Bids 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.

The Authority reserves the right to seek clarifications on the Bid Price. Financial score (Sf) shall be assigned by the Authority on the basis of evaluation methodology as specified in **AITB**.

(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** The estimated effect of the price adjustment provisions under the Agreement, if any, applied over the period of execution of

the Contract, shall not be taken into account in ascertaining the Financial Bid.

**3.6 Correction of Arithmetical Errors**

**3.6.1** No arithmetical correction of errors shall be undertaken by the Authority during the Evaluation of Financial Bids.

**3.7 Selected Bidder**

**3.7.1** For arriving at the combined QCBS score, the total score is calculated by weighting the technical (St) and financial (Sf) scores and adding them to obtain a combined QCBS (Technical cum Financial) score as per the formula and instructions as specified in the **AITB**. Amongst the Technically Qualified Bidders, without prejudice to Clause 3.5 [Evaluation of Financial Bids], the Bidder achieving the highest combined weighted technical and financial score (combined QCBS score) 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; and
- (d) Bid with the highest combined QCBS (weighted technical, St and financial, Sf) scores.

**3.8 Contract Negotiation and Letter of Award**

**3.8.1** The Authority may invite the Selected Bidder with highest QCBS score for negotiations as per the provision of this Clause 3.8. The negotiations shall be held at the date and address announced after the selection of the successful Bidder with their representative(s), who must have written power of attorney to negotiate and sign a contract on behalf of the Selected Bidder. During the negotiations, it shall be ensured that no undue advantage accrues to the Selected Bidder and that nothing shall vitiate the basis on which it has been declared successful. The minutes of negotiations shall be signed by the Authority and the Selected Bidder’s authorized representative.

**3.8.2** As a pre-requisite to the negotiations, the invited Selected Bidder shall confirm the availability of all Key Experts included in the Technical Bid. Failure to confirm the Key Experts’ availability may result in the Selected Bidder’s being declared non-responsive and the Authority proceeding to negotiate the Contract with the next-ranked responsive Bidder.

**3.8.3** Notwithstanding the above, the substitution of Key Experts at the negotiations may be considered if due solely to circumstances outside the reasonable control of and not foreseeable by the Selected Bidder, including but not limited to death or medical incapacity. In such case, the Selected

Bidder shall offer a substitute Key Expert within the period specified in the invitation letter to negotiate the Contract, who shall have equivalent or better qualifications and experience than the original expert. The Authority reserves its right to seek during negotiations the replacement of the Team Leader/ other Key Experts who score below the minimum score as specified in **AITB**.

- 3.8.4** The negotiations may include discussions of the Terms of Reference (TORs), the proposed methodology, the Authority's inputs, the special conditions of the Contract, and finalizing the 'Appendix A: Description of Services' part of the Contract. These discussions shall not substantially alter the original scope of services under the TOR or the terms of the contract lest the quality of the final product, its price, or the initial evaluation be vitiated and without prejudice to the Authority's rights to annul the Bidding Process at its discretion and invite fresh Bids.
- 3.8.5** The total price stated in the Financial Bid shall not be negotiated.
- 3.8.6** If the negotiations fail as per provisions of Sub Clauses 3.8.2, 3.8.3 and 3.8.4, the Authority shall inform the Selected Bidder with highest QCBS score in writing of all pending issues and disagreements and provide a final opportunity to respond. If disagreement persists, the Authority shall declare the Bidder with highest QCBS score as non-responsive, informing the reasons for doing so. The Authority shall invite the next-ranked responsive Bidder to negotiate a Contract. Once the Authority commences negotiations with the next-ranked Bidder, the Authority shall not reopen the earlier negotiations. If the negotiations are concluded with the next ranked Bidder in accordance with this Clause 3.8, the next ranked Bidder shall be declared as the Selected Bidder. The minutes of negotiations shall be signed by the Authority and the Selected Bidder's authorized representative.
- 3.8.7** In the event that the contract is not awarded to the Bidder receiving the highest Combined QCBS Score or the next ranked Bidder for any reason, 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.
- 3.8.8** After ascertaining the Selected Bidder, 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 Consultant in consideration of the execution and completion of the Services 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.

- 3.8.9** After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Bidder to submit Performance Security in accordance with Sub-Clause 2.26.3. Submission of the 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.

- 3.8.6** 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 3.8.8, 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.

**3.9 Contacts during Bid Evaluation**

- 3.9.1** 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.

## 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, Consultant, Suppliers, Sub-Consultants and Contractors 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 or any similar law in the Authority's Country, 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 impedes 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 Consultant, its Sub-Consultants 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 Agreement, 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-consultant, sub-contractors, service providers, or suppliers and any personnel thereof, to permit the Authority, Government Instrumentality, 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 entity inspecting the records. Provided that any such inspection by Government Instrumentalities shall only be conducted with prior approval of the Authority.

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 [AITB]

### 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 and whether Detailed Project Report (DPR) Consultant/ Project Management Consultant (PMC) or both are to be selected]</i>
Identification of the Tender	1.1.1	<i>[Mention Name, Reference Number, Number of Lots (Contracts)]</i>
Project Information Memorandum (PIM) (Yes/ No)	1.1.3	<i>[Yes / No to be mentioned]. If provided to be enclosed with the document.</i>
Implementation Schedule	1.1.3	<i>The implementation schedule for the Assignment is as under:</i>  Estimated months for completion of Assignment for preparation of Detailed Project Report (DPR) / Construction Supervision to be mentioned with phase-wise break up.
Project Cost Estimate	1.1.4	<i>[Mention estimated cost of the Project]</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)]. The Bid Security shall be an amount equivalent to 2% of the Estimated cost for the captioned Assignment. However, the Authority may prescribe a higher Bid Security not exceeding 5% of the Estimated Cost for Services.</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>[Banks in India / Banks in Authority's Country etc. to be mentioned here. It is advisable to mention the Category of Banks like Commercial Banks in India and Authority's Country etc. instead of any identified Bank]</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	Last date for Submission of Bid	<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>
7	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 3.8.8**]</i>

Reporting Currency	1.4.1	<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 names of the prequalified Bidders]</i>

Technical Capacity Requirements	2.2.3.b	<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>  <i>In case additional requirements are stipulated, suitable Form reference to be provided.</i>
Technical Capacity Requirements	2.2.3.c	<i>Cut off date for establishing the Technical Capacity eligibility to be specified</i>  <i>[Date/Month/Year]</i>
Financial Capacity Requirements	2.2.4.d	<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>  <i>In case additional requirements are stipulated, suitable Form reference to be provided.</i>
Financial Capacity Requirements	2.2.4.e	<i>Cut off date for establishing the eligibility of Financial Capacity to be specified</i>  <i>[Date/Month/Year]</i>
Other Eligibility Conditions	2.2.5	<i>[Requirements for ascertaining other eligibility conditions, if any].</i>  <i>In case requirements are stipulated, suitable Form reference to be provided.</i>
Additional / Supplemental Conditions in case of JV	2.2.6	<i>In case additional eligibility conditions are stipulated under Sub-Clause 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>
Pre-Bid Meeting	2.7.1 (c)	<i>[Mention date, time and place and link for Pre-Bid Meeting]</i>
Correspondence with the Authority	2.11.1	<i>[Details and Address for Communication, Clarification, Bid Submission and Bid Opening]</i>
Number of Copies of Bids	2.15.1 (a)	<i>[Mention the Number of copies of the Bid required to be submitted applicable in case of offline submission of Bids only]</i>
Documents comprising Technical Bid	2.16.3	<i>[Mention any other document required that shall form part of the Technical Bid]</i>
Currency of Financial Bid	2.16.4	United States Dollars (USD)

Procedure for Submission of Bids	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>
Modifications/ Substitution/ Withdrawal of Bids	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>
Opening of Technical Bids	2.20.1	<i>[In case, the submission of Bid is electronic/online, mention the specific procedure for opening of Technical bids]</i>
Validity of Bids	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

Technical Qualification	3.4.1	<p>Quality and Cost-Based Selection (QCBS) shall be followed for evaluation and scoring of the Technical Bids and Financial Bids.</p> <p>The Technically Eligible Bidders shall be evaluated on the basis of their responsiveness to the Terms of Reference and the RFP, applying the evaluation criteria, sub-criteria, and point system for arriving at the Technical score (St) to each Technically Eligible Bidders as below:</p> <table border="1"> <thead> <tr> <th>Criteria</th><th>Max Points</th><th>Notes</th></tr> </thead> <tbody> <tr> <td>(A) Specific experience of the Bidder (as a firm) relevant to the Assignment</td><td>[0 - 10]</td><td>[Notes to Bidders: Ref. Form IV: Past Experience]</td></tr> <tr> <td>B) Adequacy and quality of the proposed methodology and work plan in responding to the Terms of Reference (TORs):</td><td>[20 - 50]</td><td>[Notes to Bidders: Ref Form VIII. The Authority shall assess whether the</td></tr> </tbody> </table>	Criteria	Max Points	Notes	(A) Specific experience of the Bidder (as a firm) relevant to the Assignment	[0 - 10]	[Notes to Bidders: Ref. Form IV: Past Experience]	B) Adequacy and quality of the proposed methodology and work plan in responding to the Terms of Reference (TORs):	[20 - 50]	[Notes to Bidders: Ref Form VIII. The Authority shall assess whether the
Criteria	Max Points	Notes									
(A) Specific experience of the Bidder (as a firm) relevant to the Assignment	[0 - 10]	[Notes to Bidders: Ref. Form IV: Past Experience]									
B) Adequacy and quality of the proposed methodology and work plan in responding to the Terms of Reference (TORs):	[20 - 50]	[Notes to Bidders: Ref Form VIII. The Authority shall assess whether the									

		I. Technical approach and methodology and work plan for carrying out the assignment	[50% of B]	proposed methodology is a clear response to the TORs, the work plan is realistic and implementable; the overall team composition is balanced and has an appropriate skill mix, and the work plan has the correct input of Experts]	
		II. Demonstration of the understanding of the Authority's requirements, key issues & challenges and mitigation proposed	[25% of B]		
		III. Organization and Staffing	[25% of B]		
		C. Experts' qualifications and competence for the Assignment:  Sub-criteria:	[30 - 60]	[Notes to Bidders: Ref Form V. Each position number corresponds to that in Terms of Reference ]	
		Sr	Position	Nos (A)	Max Points (B)
	1	[Team Leader]			[50%]
	2	[position title]			[50%]
	3	[position title]			[50%]
		Total	[..]		
		The number of points to be assigned to each of the above positions shall be determined considering the following three sub-criteria and relevant percentage weights (total 100%):			

		(i) Adequacy for the assignment	[60-80%] of C	[professional experience in the sector/ similar assignments]
		(ii) Educational Qualification	[10-20%] of C	[General and relevant Education]
		(iii) Relevant Experience in "Transfer of knowledge" or Experience in region and language	[0-10%] of C if relevant to the assignment	[Training and adult pedagogy experience] or [Relevant experience in the region (working level fluency in local language(s)/ knowledge of local culture or administrative system, government organization, etc.)]
		Total Score for the Technical Bid (Ta)	100	
		The minimum technical score (Ta) required to pass is:	[.....]	[The indicative range is 70 to 85 on a scale of 1 to 100]
		<p>After arriving at Technical score (Ta) for each Technically Eligible Bidder, Bidders achieving minimum Technical score (Ta) required to pass as per above point system would be declared as Technically Qualified Bidders. Subsequent to above, a relative Technical Score (St) based on relative ranking of Technically Qualified Bidders shall be calculated as below:</p> <p>The Bidder with highest evaluated Technical Score (Ta-max) is assigned the maximum relative Technical Score (St) of 100 (Hundred). The formula for determining the relative Technical scores (St) of all other Bidders is as follows:</p>		

		<p><math>St = 100 \times Ta / Ta\text{-max}</math>,</p> <p>in which "Ta-max" is the highest evaluated absolute Technical Score, "St" is the relative Technical score calculated, and "Ta" is the absolute Technical Score of the Bidder under consideration.</p> <p><i>Suitable Form under Appendix-I to be provided for the Bidder to submit information for Quality Scoring</i></p> <p><i>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.</i></p>
<b>Evaluation of Financial Bids</b>	3.5.1	<p>The Financial Bids for the Technically Qualified Bidders shall be opened, and the lowest evaluated Financial Bid (Fm) is given the maximum financial score of 100.</p> <p><b>The formula for determining the financial scores (Sf) of all other Bidders is calculated as following:</b></p> <p><math>Sf = 100 \times Fm / F</math>,</p> <p>in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the Bidder under consideration.</p>
<b>Selected Bidder</b>	3.7.1	<p>The total score shall be calculated for those bidders whose Financial Bids have been evaluated as per clause 3.5.1 by weighting the technical (St) and financial (Sf) scores and adding them to obtain a combined QCBS (Technical cum Financial) score as below:</p> <p>The weights given to the Technical (T) and Financial (P) Scores are:</p> <p>T (the weight given to the Technical Score) = [Insert percentage] and  P (the weight given to the Financial Score) = [Insert percentage %]  (T + P = 100%)</p> <p><i>[For High complex / downstream consequences / specialised assignments, it</i></p>



		<p><i>is advisable to use weights as 80% for technical and 20% for financial]</i></p> <p><i>[For Moderate complexity assignments, it is advisable to use weights as 75-65% for technical and 35-25% for financial]</i></p> <p><i>[For Assignments of a standard or routine nature such as auditors/procurement agents handling the procurement, it is advisable to use weights as 60-50% for technical and 40-50% for financial]</i></p> <p>Bidders would be ranked according to their combined QCBS (weighted technical, St and financial, Sf) scores as follows:</p> <p><math>S = (St \times T + Sf \times P)/100.</math></p> <p>in which "S" is the combined QCBS score, "St" is the technical score calculated as per clause 3.4.1 above and "Sf" is the financial score calculated as per 3.5.1 above.</p> <p>All scores shall be calculated up to two decimal places only.</p> <p>The Bidder obtaining the highest total combined QCBS score will be ranked as H-1, followed by the Bidders securing combined QCBS score as H-2, H-3 etc. If two or more Bidders have the same highest score in the final ranking, the bidder with a higher financial score (Sf) will be considered as H-1.</p>
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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	<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>

### **PART-III: BIDDING FORMS AND RFP APPENDICES**

## 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 Assignment. 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 Consultant for the aforesaid Assignment, 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 Assignment.
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 Assignment, without incurring any liability to the Bidders.

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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*

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 Assignment is not awarded to us or our Bid is not opened or rejected in accordance with the terms and conditions of the RFP.

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 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 have not been debarred by Exim Bank or any other Authority in India or in the Authority's Country.
- 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 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;
- g) I/We have the necessary equipment and personnel / have the ability to source the necessary equipment and personnel to undertake the Assignment in the manner provided herein and within the timelines as may be stipulated.
- h) 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 'Consultant', including but not limited to abandoning the work/services, 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 Agreement.

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 Agreement.

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 2.2.3 & 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 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 India, 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 of India / Authority's Country 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 our employment any near relations (defined as first blood relations, and their spouses, of the Bidder or the Bidder's spouse) who would be directly / indirectly involved in a) decision making in the Project at the Authority; or b) in preparation of the Bidding Document or specifications of the Contract and/or the Bid evaluation process of such Contract; or c) in implementation or supervision of the Agreement.
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 implementation thereof.
22. I/We agree to the provisions of the Public Procurement Order No.4 dated February 23, 2023, issued by the Procurement Policy 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 Consultants 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-Consultants or 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 Assignment cost and implementation 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 Assignment 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 the Assignment.
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 33 and 34 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 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 company, our Joint Venture or our Sub-Consultants 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]

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

**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 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 Submission: [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.

**Supporting certificates / documents**, for Bidder or for each member of JV in case of a JV, to be submitted as below:

- a. 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.
- b. Certificate of Incorporation (or equivalent documents of constitution or association), and/or documents of registration.
- c. PAN and GST Registration Details.
- d. Organizational chart.
- e. List of Board of Directors with their complete designation in case of nominee directors.
- f. The beneficial ownership with respective shareholding and nationality of shareholders.
- g. A copy (self-attested on all pages) of Power of Attorney in favour of the person who has been authorised, through an appropriate Company Board Resolution or equivalent document, to sign on behalf of the Bidder:
  - i. Where Bidder is a single entity, the Power of Attorney as per format;
  - ii. Where Applicant is a JV, the Power of Attorney by each member of JV as per the format;
  - iii. A copy of relevant Company Board Resolution;
  - iv. JV Application Agreement as per format Or Letter of intent to form JV, in case of JV.

**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]

<b>Bidder name:</b> <i>[insert full name of the JV]</i>
<b>Bidder's JV Member's name:</b> <i>[insert full name of Bidder's JV Member]</i>
<b>Bidder's JV Member's country* of registration:</b> <i>[indicate country of registration]</i>
<b>Bidder JV Member's date of constitution:</b> <i>[indicate date of constitution in dd/mmm/yyyy]</i>
<b>Bidder JV Member's legal address registered in India:</b> <i>[insert street/ number/ town or city/ country]</i>
<b>Bidder JV Member's authorized representative information</b> 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>
<b>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]</b> 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. 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 Contract Non-performance has occurred, provide details:

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 Contract Litigation

Pending Litigation: [Pending Litigation /No Litigation Pending]

If Contract Litigation is Pending, provide details:

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

### C. Contract Litigation History

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

If Contract Litigation Awarded, provide details:

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 "Consultant"]</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) years, (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.	Total Fund Based			
C.	Non-fund Based Limits			
	a			
	b			
	c			
D.	Total Non –fund Based			
E.	Total Fund and Non-fund Based Limit			

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 contracts/projects 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 of the Bidder and of each member (in case of JV) 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. 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. To 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:

Stamp

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

Date:

Place:

UDIN:

**Form-III (C) Annual Consultancy Turnover**

*[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.]*

	Annual Consultancy Revenue Data						
Year	Consultancy Revenue Amount (INR)			Total Revenue (INR)	Consultancy Revenue as % of Total Turnover	Exchange rate* (v/s Reporting Currency)	Consultancy Revenue Reporting Currency equivalent
	Contracts in India	Overseas Contracts	Total Turnover				
	[A]	[B]	C = [A+B]	[D]	C/D*100	[E]	C/E
_____							
_____							
_____							
_____							
_____							

\* 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: Past 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 Consultant" or "JV Member"]</i>

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

Attachments to be submitted under Form-IV.A

1. Final Acceptance Certificate/ Completion Certificate/ Testimonial Letters issued by the main client/Project Authority for each contract listed in Form IV.A giving, inter alia, details of scope and value of work executed by the Bidder, contract start and completion dates. In case of projects executed through a Special Purpose Vehicle (SPV) under a concession agreement, FAC shall be issued by the Concession Granting Authority indicating that the project was completed by the said SPV and Certificate from the SPV or Concession Granting Authority indicating that the project was executed by the Bidder or JV/ consortium comprising the Bidder as the EPC/Construction Consultant.  
In case the contracts listed in Form IV.A are executed by the Bidder through an SPV under a concession agreement, either singly or in joint venture, the following additional documents/information should be submitted:
  - a. Copy of Letter of Acceptance of the bid/grant of concession issued by the Concession Granting Authority in favour of the Bidder or a JV comprising the Bidder; and
  - b. Copy of Concession Agreement indicating the shareholding structure of the SPV establishing that the SPV is wholly held by the Bidder or by a JV comprising the Bidder;
2. ➤ In case the contracts listed in Form IV.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-Consultant'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	<i>Contractual: [dd/mmm/yyyy]</i>	<i>Actual: [dd/mmm/yyyy]</i>	
Role in Contract <i>[check the appropriate box]</i>	Prime Consultant <input type="checkbox"/>	Member in JV <input type="checkbox"/>	
Total Contract Amount and Project value	<i>[insert total contract amount and Project Value in contract currency]</i>	<i>US\$[insert Exchange rate and total contract amount and Project Value in US\$ equivalent]*</i>	
If member in a JV, specify participation in total Contract	<i>[insert a percentage]</i>	<i>[insert total contract]</i>	<i>[insert exchange rate and total contract amount in US\$]</i>

amount	<i>amount]</i>	<i>amount in local/</i>	<i>equivalent]**</i>
Employer Details	Employer's Name: Address: Telephone, fax number, E-mail:		
Description of the similarity in accordance with Sub-Factor D.2 of Part IV:	<i>[Name the Sector/ Sub-Sector][Briefly mention the similarity in terms of sectoral characteristics]</i>		
Brief Scope of the Services as per Contract			
Narration of the Actual Services Rendered			
Key Staff Positions and Names of Staff			
Total Staff Months by your firm			
Total Staff Months by Associate firm (if applicable)			

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

#### Attachments to be submitted under Form-IV.B

1. Final Acceptance Certificate/ Completion Certificate/ Testimonial Letters issued by the main client/Project Authority for each contract listed in Form IV.B giving, inter alia, details of scope and value of Contract executed by the Bidder, contract start and completion dates. In case of projects executed through a Special Purpose Vehicle (SPV) under a concession agreement, FAC shall be issued by the Concession Granting Authority indicating that the project was completed by the said SPV and Certificate from the SPV or Concession Granting Authority indicating that the project was executed by the Bidder or JV/ consortium comprising the Bidder as the EPC/Construction Consultant.

In case the contracts listed in Form IV.B are executed by the Bidder through an SPV under a concession agreement, either singly or in joint venture, the following additional documents/information should be submitted:

- Copy of Letter of Acceptance of the bid/grant of concession issued by the Concession Granting Authority in favour of the Bidder or a JV comprising the Bidder; and
- Copy of Concession Agreement indicating the shareholding structure of the SPV establishing that the SPV is wholly held by the Bidder or by a JV comprising the Bidder.

In case the contracts listed in Form IV.B 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-Consultant's experience and resumes, if any, submitted with the application shall not be taken into account in determining the Bidder's compliance.

**FORM-V: Consultant' Representative and Personnel**  
**(Appendix-I)**

*[Furnish details for key and non-key personnel to be deployed for execution of the Agreement. In case of JV, this shall be on a combined basis.]*

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

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

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

Bidders should provide the names and details of the suitably qualified Consultant's Representative, Key and non-key Personnel to perform the Contract. The data on their experience should be supplied using the Form V (A) below for each candidate.

Sr. No.	Position Title	Personnel Name	Academic Qualification	Total (Post Qualification) General Experience (In Years)	Years of Specific Experience in proposed position (In Years)
1					
2					
3					
...					

**FORM-V (A): Resume and Declaration**  
(Appendix-I)

[The following information shall be submitted for each expert separately on Bidder's Letterhead)

<b>Name of Bidder:</b>
------------------------

**1. General Information**

<b>Position No. and Title :</b> <i>[Position No. and Title from Form V]</i> <i>{e.g. 1, Team Leader}</i>		
<b>Personnel information</b>	<b>Name:</b>	<b>Date of birth:</b>
	<b>Address:</b>	<b>E-mail:</b>
	<b>Country of Citizenship:</b>	
<b>Qualifications</b>	<b>Professional qualifications:</b>	
	<b>Academic qualifications:</b>	
	<b>Specialization:</b>	

**2. Employment Record**

<b>Present Employment</b>	<b>Address of employer:</b>	
	<b>Telephone:</b>	<b>Contact (manager / personnel officer):</b>
	<b>Fax:</b>	
	<b>Job title:</b>	<b>Years with present employer:</b>

**3. Relevant Experience**

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project. Past employment not related to the Project does not need to be included.



Project	Role	Duration of involvement (in Month, Year)		Relevant Experience
<i>[Main project details]</i>	<i>[Role and responsibilities on the project]</i>	<i>From</i>	<i>To</i>	<i>[describe the experience relevant to this position]</i>

#### 4. Language; [language and levels of speaking, reading and writing skills]

#### Declaration

I, the undersigned *[ insert either "Consultant's Representative" or "Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained herein correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

Commitment	Details
<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
<b>Commitment to duration of contract:</b>	<i>[insert period (start and end dates) for which this Consultant's Representative or Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Bid evaluation;<sup>6</sup>
- (b) result in my disqualification from participating in the Bid;
- (c) result in my dismissal from the contract.

**Name of [Consultant's Representative or Personnel] : *[insert name]***

Signature: \_\_\_\_\_

<sup>6</sup> To be omitted in case, Experience of Non-key Personnel is not considered for evaluation of Bids

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

**Countersignature of authorized representative of the Bidder:**

Signature: \_\_\_\_\_

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

*[To be attested by the authorized representative of the Bidder and in case of a JV, by the lead member on behalf of the JV members]*

**FORM-VI 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-VII: 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/mm/yyyy]	[dd/mm/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-VIII: Additional Information for Technical Scoring**  
(Appendix-I)

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

- A. **Bidder's Organisation and Experience:** Provide a brief description of the background and organization of your organisation and – in case of a joint venture – of each member for this assignment.
- B. **Comments and Suggestions on the Terms of Reference:** Comments and Suggestions on the areas that have not been provided or any changes to the existing provisions of the Terms of Reference that could improve the quality/effectiveness of the assignment. The Bidders should specifically mention whether the proposal deviates from Terms of Reference.

Note: Suggest and justify any modifications or improvements to the Scope of Services that the Bidder is proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, adding another, or proposing a different phasing of the activities). Such suggestions should be concise, to the point, and incorporated into the proposal. Consultants must maintain the same numbering and structure as in Terms of Reference.

- C. **Description of Approach, Methodology and Work Plan in Responding to the Terms of Reference:** A description of the approach, methodology and work plan for performing the assignment, including a detailed description of the proposed methodology and staffing for training, if the Terms of Reference specify training as a specific component of the assignment.

Suggested structure of Bidder's response is as below:

- i. **Technical Approach and Methodology-** Bidders to explain their understanding of the objectives of the assignment as outlined in the 'Terms of Reference' (TORs), the technical approach, and the methodology to be adopted for implementing the tasks to deliver the expected output(s), and the degree of detail of such output. Please do not repeat/copy the TORs here.
- ii. **Work Plan-** Bidders to outline the plan for implementing the main activities/tasks of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Authority), and tentative delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing the understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents (including reports) to be delivered as final output(s) should be included here.

The work plan should be consistent with following Work Schedule and Planning of Deliverables to be submitted by the Bidder:

## Work Schedule and Planning for Deliverables<sup>7</sup>:

N°	Deliverables <sup>8</sup> (D-n)	Months/ Quarters <sup>9</sup>												TOTAL
		1	2	3	4	5	6	7	8	9	10	11	12	
D-1	{e.g., Deliverable #1: Interim Report}													
	1) data collection													
	2) drafting and submission of a draft report													
	3) Meeting to discuss the draft													
	3) incorporating comments from Authority													
	4) delivery of the final report to Authority													
D-2	{e.g., Deliverable #2: Interim Report}													
D-3	Specific Reports													
D-Final	Final Report													

- iii. Organisation and Staffing: Bidders to describe the structure and composition of their team, including the list of the Key Experts, Non-Key Experts, and relevant technical and administrative support staff. The Organization and staffing should be consistent with Form-V: Consultant' Representative and Personnel.

(Signature with date)

(Name and designation)

Duly authorized to sign Proposal for and on behalf of the  
[name, address, and seal of Bidder]

*Relevant documents like technical data, literature, drawings, and other documents may be enclosed.*

<sup>7</sup> The final deliverables and work plan shall be worked out in consultation with the selected consultant based on programmatic requirements.

<sup>8</sup> List the deliverables with the breakdown for activities required to produce them and other milestones such as the Authority's approvals. For phased assignments, indicate the activities, delivery of reports, and benchmarks separately for each phase.

<sup>9</sup> Duration of activities shall be indicated in a form of a bar chart. Include a legend, if necessary, to help read the chart.

## 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>10\$</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 Consultant 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 implementation 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) exclusive of all applicable taxes for undertaking the aforesaid Project in accordance with the Bidding Document and the draft Conditions of Contract.

<sup>11</sup>[In case of multiple lots, total price of each lot is as follows:

---

<sup>10\$</sup> All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

<sup>11</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-IX: Breakup of Financial Bid**  
(Appendix-II)

<i>Item</i>	Financial Bid			
	Indian Content US Dollars	Borrowing Country Content US Dollars	Third Country Content US Dollars  (Name of country(ies) to be specified)	Total US Dollars
<b>Cost of the Financial Bid</b>				
Including:				
(1) Remuneration				
(2) Reimbursables				
<b>Total Cost of the Financial Bid:</b> { Should match the amount in Appendix-II: Financial Bid }				
Percentage	%	%	%	100%

**Breakdown of Remuneration**

<b>A. Remuneration</b>								
No	Name	Position (as in Terms of Reference)	Person-month Remuneration Rate	Time Input in Person/Month (from Section VI-A)	Indian Content US Dollars	Borrowing Country Content US Dollars	Third Country Content US Dollars  (Name of country(ies) to be specified)	Total US Dollars
	<b>Key Experts</b>							
K-1			[Home]					
			[Field]					
K-2								

A. Remuneration								
No.	Name	Position (as in Terms of Reference)	Person- month Remunerati on Rate	Time Input in Person/Mo nth (from Section VI- A)	Indian Conte nt US Dollar s	Borrowi ng Country Content US Dollars	Third Country Content US Dollars  (Name of country(i es) to be specified)	Total US Dolla rs
	Non- Key Exper ts							
N-1			[Home]					
N-2			[Field]					
	Total Costs							

#### Breakdown of Reimbursable Expenses

B. Reimbursable Expenses								
N <sup>o</sup>	Type of Reimbursable Expenses	Unit	Unit Cost	Quantit y	Indian Conte nt US Dollars	Borrowin g Country Content US Dollars	Third Country Content US Dollars  (Name of country(ie s) to be specified)	Total US Dollar s
	{e.g., Per diem allowances**}	{Day}						
	{e.g., International flights}	{Ticket}						
	{e.g., In/out airport transportation}	{Trip}						
	{e.g., Communication costs between Insert place and Insert place}							
	{e.g., reproduction of reports}							
	{e.g., Office rent}							
	..... .....							

{Training of the Authority's personnel – if required in TOR}								
Total Costs								

Legend:

“Per diem allowance” is paid for each night the expert is required by the Contract to be away from his/her usual place of residence. Authority can set up a ceiling.

**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 Contract 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>12\$</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>13\$\$</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**”) through lump-sum  
mode of bidding.
- (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**

---

<sup>12\$</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>13\$\$</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.

In this Joint Bidding Agreement, the capitalised terms shall, unless the 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 Consultant 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 Consultant 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>14\$</sup>; and}
- {(d) Party of the Fourth Part shall be \_\_\_\_\_<sup>15\$</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

---

<sup>14\$</sup> define the role of the Second Party or state “the other member of the Joint Venture”

<sup>15\$</sup> define the role of the Second Party or state “the other member of the Joint Venture”

the terms of the RFP and the Agreement, till such time as the final 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 signing 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:

(Signature)

SIGNED, SEALED AND DELIVERED

SECOND PART

(Signature)

(Name)  
(Designation)  
(Address)

(Name)  
(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])

**Beneficiary:** *[Insert name of the Project Authority]*

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

**Consultant:** \_\_\_\_\_

**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 [Construction of the Project]]* (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.

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*[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 3.8.8)  
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 execution of the (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 an amount of .....as per Clause 2.26 [Performance Security] 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 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)

## **RFP APPENDIX-IX: TERMS OF REFERENCE**

*[Note for Authority: The Terms of Reference (ToR) is the key document in the RFP. It explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Authority and the Consultant, and expected results and deliverables. Adequate and clear ToR is essential for the understanding of the assignment and its correct execution by the Consultant. It also helps reducing the risk of ambiguities during the preparation of Proposals/Bids by the Bidders, contract negotiation, and delivery of the Services. A suggested structure is given below.]*

### **A. 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:
- Project Facilities:

### **B. Background and Objectives of the Authority**

### **C. Objectives of the Consultancy Services**

### **D. Scope of Services:**

- (i) Short Description and Broad Scope of Services: *[Give an overview]*
- (ii) Bidding Services for EPC Contractor: *[Give scope of the Consultant and support to be provided by the Consultant to the Authority]*
- (iii) Key Activities and Dependencies: *[Break up the assignment into specific Service modules and Key activities. Mention inputs from Procuring Entity and third parties on which the activities would be dependent]*
- (iv) Incidental Goods, Works or other Services required, if any:
- (v) Deliverables/ Outcomes and Timelines (frequency) thereof: *[including Know-how transfer/ training, reports/ reporting, Milestones]*
- (vi) Reporting Requirements:
  - a) format, frequency, and contents of reports;
  - b) number of hard copies and requirements for electronic submission;
  - c) dates of submission;
  - d) persons (indicate names, titles, submission address) to receive and approve them, etc.

### **E. Data, Local Services, Personnel and Facilities to be provided by the Authority**

- (i) Past Studies, Reports, documents, data etc.
- (ii) Utilities, facilities, and property to be made available to the Consultant by the Procuring Entity: *[Indicate if any facility/ utility (Medical facilities, Rooms, Furniture, IT services, Electricity or Water connection etc.) would be made available to the Consultant. Especially mention facilities and utilities that shall not be provided or those that would be provided on a chargeable basis.]*
- (iii) Professional and support counterpart personnel to be assigned by the Authority to the Consultant's team: *[list/specify]*

- F. List of Key Experts and Non-Key Experts: The Consultant is expected to mobilize an experienced team of engineering and technical professionals for discharging the responsibilities. The requirement of personnel will depend on the nature of the project. The information summary of personnel with the required qualifications maybe provided in the format given hereinbelow:

Sr. No.	Position Title (Mention Key or Non-Key)	Academic Qualification	Total Post Qualification General Experience (In Years)	Years of Specific Experience in proposed position (In Years)
	<i>[To be modified by Authority as per Project requirements]</i>	<i>[To be modified by Authority as per Project requirements]</i>	<i>[To be modified by Authority as per Project requirements]</i>	<i>[To be modified by Authority as per Project requirements]</i>
1				
2				
3				
...				

Working hours and holidays for all Experts to be also included as per Authority's rules and regulations.

- G. Statutory, Sustainability, and contractual obligations including environmental and social safeguards, insurance requirements, applicable permits etc. to be complied with by the Consultant.
- H. Handover and Documentation.

***Mandatory clauses to be included suitably under the scope of Services to be provided by the Consultant for Construction Supervision under the Project are as below:***

- The Consultant shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.*
- The Consultant shall perform the duties and exercise the authority in accordance with the provisions of the Contractor's Agreement, but subject to obtaining prior written approval of the Authority before determining:*
  - any Time Extension;*
  - any additional cost to be paid by the Authority to the EPC Contractor;*
  - the Termination Payment; or*
  - any other matter which is not specified in (a), (b) or (c) above and which creates an obligation or liability on either Party.*
- The Consultant shall submit regular periodic reports to the Authority in respect of its duties and functions under this Agreement. Such reports shall be submitted by the Consultant within 10 (ten) days of the beginning of every month.*
- The Consultant shall inform the EPC 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 the Contractor's Agreement.*

- 5. The Consultant shall aid and advise the Authority on any proposal for Change of Scope under the Contractor's Agreement.*
- 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 Contractor's Agreement, the Consultant shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.*
- 7. During the Construction Period, the Consultant shall review the Drawings furnished by the EPC Contractor along with supporting data, including the geotechnical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys, and the recommendations of the Safety Consultant under the Contractor's Agreement. The Consultant shall complete such review and send its observations to the Authority and the EPC Contractor within 15 (fifteen) days of receipt of such Drawings, provided, however, that in case of a Major 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 under the Contractor's Agreement.*
- 8. The Consultant shall review any revised Drawings sent to it by the EPC Contractor and furnish its comments within 10 (ten) days of receiving such Drawings.*
- 9. The Consultant shall review the Quality Assurance Plan submitted by the EPC Contractor and shall convey its comments to the EPC Contractor within a period of 21 (twenty-one) days stating the modifications, if any, required thereto.*
- 10. The Consultant shall complete the review of the methodology proposed to be adopted by the EPC Contractor for executing the Works and convey its comments to the EPC Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the EPC Contractor.*
- 11. The Consultant shall grant written approval to the EPC Contractor, where necessary, for interruption in public services due to the Project.*
- 12. The Consultant shall review the monthly progress report furnished by the EPC Contractor and send its comments thereon to the Authority and the EPC Contractor within 7 (seven) days of receipt of such report.*
- 13. The Consultant 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 EPC Contractor in respect of Defects or*

*deficiencies. In particular, the Consultant shall include in its Inspection Report, the compliance of the recommendations made by the Safety Consultant.*

- 14. The Consultant shall conduct the pre-construction review of manufacturer's test reports and standard samples of manufactured Materials, and such other Materials as the Consultant may require under the Contractor's Agreement.*
- 15. For determining that the Works conform to Specifications and Standards, the Consultant shall require the EPC Contractor to carry out, or cause to be carried out, tests at such time and frequency and in such manner as specified in the Contractor's Agreement and in accordance with Good Industry Practice for quality assurance.*
- 16. The Consultant 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 EPC Contractor under the Contractor's Agreement.*
- 17. The timing of tests referred above, and the criteria for acceptance/ rejection of their results shall be determined by the EPC Contractor in accordance with the Quality Control Manuals under the Contractor's Agreement. 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 EPC Contractor for its own quality assurance in accordance with Good Industry Practice.*
- 18. In the event that results of any tests conducted in accordance with the Contractor's Agreement establish any Defects or deficiencies in the Works, the Consultant shall require the EPC Contractor to carry out remedial measures.*
- 19. The Consultant may instruct the EPC 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 the Contractor's Agreement shall apply.*
- 20. In the event that the EPC Contractor fails to achieve any of the Milestones, the Consultant shall undertake a review of the progress of construction and identify potential delays, if any. If the Consultant shall determine that completion of the Project is not feasible within the time specified in the Contractor's Agreement, it shall require the EPC 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 EPC Contractor, the Consultant shall review the same and send its comments to the Authority and the EPC Contractor forthwith.*
- 21. The Consultant shall obtain from the EPC Contractor a copy of all the EPC Contractor's quality control records and documents before the Project Completion Certificate is issued under the Contractor's Agreement.*
- 22. Consultant 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 EPC Contractor has carried out remedial measures, the Consultant shall inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.*

*23. In the event that the EPC Contractor carries out any remedial measures to secure the safety of suspended works and Users, and requires Consultant to inspect such works, the Consultant 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.*

*24. The Consultant shall carry out, or cause to be carried out, all the Tests specified in the Contractor's Agreement and issue a Project Completion Certificate or Provisional Completion Certificate, as the case may be. For carrying out its functions hereunder and all matters incidental thereto, the Consultant shall act under and in accordance with the provisions of the Contractor's Agreement.*

*25. The Consultant shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Contractor's Agreement.*

*26. The Consultant shall determine the period of Time Extension that is required to be determined by it under the Contractor's Agreement.*

*27. The Consultant shall consult each Party in every case of determination in accordance with the provisions of the Contractor's Agreement.*

*28. The Consultant shall withhold payments for the affected works for which the EPC Contractor fails to revise and resubmit the Drawings to the Consultant in accordance with the provisions of the Contractor's Agreement.*

*29. Consultant shall under the Contractor's Agreement -*

*(a) within 10 (ten) days of receipt of the Stage Payment Statement from the EPC Contractor, determine the amount due to the EPC 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 deliver to the Authority and the EPC Contractor an Interim Payment Certificate certifying the amount due and payable to the EPC Contractor.*

*30. The Consultant shall perform all other duties and functions as specified in the EPC Contractor.*

*31. A copy of all communications, comments, instructions, Drawings or Documents sent by the Consultant to the EPC Contractor, and a copy of all the test results with comments of the Consultant thereon, shall be furnished by*

*the Consultant to the Authority.*

- 32. The Consultant 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.*
- 33. Within 90 (ninety) days of the Project Completion Date, the Consultant 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.*
- 34. The Consultant, if called upon by the Authority or the EPC Contractor or both, shall mediate and assist the Parties in arriving at an amicable settlement of any Dispute between the Parties.*
- 35. The Consultant shall inform the Authority and the EPC Contractor of any event of EPC Contractor's Default within one week of its occurrence.*
- 36. The Consultant shall certify the Indian Content under the Project to the satisfaction of the Authority, and in a format as desired by the Authority under the Contractor's Agreement.*

**CONDITIONS OF CONTRACT**

**CONSULTANCY AGREEMENT**



## 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 "**Consultant**" 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 desires certain consulting services under the Project 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 consulting services under 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 Assignment 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 Consultant has fulfilled the requirements specified in Recital D (i) and D (ii) above.

The Authority and the Consultant 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 Consultant;
  - (iii) the Letter comprising the Financial Bid of the Consultant;
  - (iv) the minutes of the Pre-Bid Meeting(s);
  - (v) the addenda Nos \_\_\_\_\_(if any);
  - (vi) Conditions of Contract
  - (vii) Appendices (as attached with this Contract Agreement); and
  - (viii) any other documents forming part of the Agreement.
3. In consideration of the payments to be made by the Authority to the Consultant as specified in the Agreement, the Consultant hereby covenants with the Authority to deliver the Services therein, in conformity in all respects with the provisions of the Agreement.
4. The Authority hereby covenants to pay the Consultant in consideration of the performance of the Services in the manner contemplated in the Agreement and the remedying of defects therein, 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 CONSULTANT by:

(Signature)  
(Name)  
(Designation)

In the presence of :

Authority's Witness: 1. {2}.

Consultant'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 Appendices and used therein shall have the meaning ascribed thereto in the Appendices.

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

**“Agreement” or “Contract Agreement”** means the Contract Agreement, Letter of Award, the Letter comprising the Technical Bid of the Consultant, Letter comprising the Financial Bid of the Consultant, minutes of the pre-bid meeting(s), addenda (if any), these Conditions, the Terms of Reference, 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 Procurement Policy 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 as 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 construction 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;

**“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 Consultant to the Authority in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

**“Borrower”** means the Sovereign Government having received a Line of Credit (LOC) from Exim Bank for a

specific purpose as per an LOC Agreement signed between the Sovereign Government and Exim Bank.

**“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 Consultant.

**“Completion Date” or “Project 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 Completion Certificate as the case may be, issued by the Authority; or the date on which part(s) are taken over or used by the Authority, as relevant to the context;

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

**“Contractor’s Agreement”** shall mean with Agreement with the EPC Contractor associated with the services being provided by the Consultant.

**“Consultant”** means the Indian Entity named as consultant in the Letter of Award accepted by the Authority and the legal successors in title to this person(s). “Consultant” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**“Consultant’s Equipment”** means all apparatus, machinery, vehicles and other things required for delivering the Services for the execution and completion of

the Works and the remedying of any defects. However, Consultant's Equipment excludes Temporary Works, Authority's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works;

**"Consultant's Personnel"** means collectively, Project Manager, Key Experts, Non-Key Experts, or Consultant's Representative and all personnel whom the Consultant utilizes on Site, who may include the staff, labor and other employees of the Consultant and of each Sub-Consultant or JV member(s); and any other personnel assisting the Consultant in the performance of this Agreement;

**"Construction Period"** means the period commencing from the Appointed Date and ending on the date of the Completion Certificate;

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

**"Country"** means the Authority's Country;

**"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 Consultant requires any reasonable action by the Consultant that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord their approval;

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

**"Defect"** means any defect or deficiency in Construction of the Works 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 Consultant's Documents;

**"Drawings"** means all of the drawings, calculations and documents pertaining to the Project and shall include 'as-built' drawings of the Project under the Contractor's Agreement;

**"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;

**"EPC"** means engineering, procurement and construction;

**"EPC Contractor"** means the party executing the EPC / civil works contract for which the Consultant is providing Consultancy services;

**"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"** means Consultant's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate;

**"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 Consultant 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 Consultant 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 Permanent Works are to be executed;

**“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 Consultant 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 construction 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;

**“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 performance of the Agreement;

**“Key Expert(s)”** means an individual professional (usually identified by name) whose skills, qualifications, knowledge, and experience are critical to the performance of the Services under the Contract and whose Curricula Vitae (CV) was considered in the technical evaluation of the Consultant’s proposal;

**“Non-Key Expert(s)”** means an individual professional (usually not identified by name) provided by the Consultant or its Sub-consultants to perform the Services or any part thereof under the Contract;

**“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 Consultant;

**“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;

**“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 EPC Contractor;

**“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;

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

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

**“Services” or “Consultancy Services”** means the activities to be performed by the Consultant under this Agreement, as described in Appendix A thereto;

**“Site”** means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Agreement as forming part of the Site;

**“Sub-Consultant” or “SubConsultant”** means any person or persons to whom a part of the Works has been sub-contracted by the Consultant and the permitted legal successors in title to such person or sub-Consultants (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.

**“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, engineering, procurement, construction, Plant, Materials, Installation, Commissioning, 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) references to **“construction”**, **“Construction”** or **“building”** include, unless the context otherwise requires, survey and investigation, design, developing, engineering,

procurement, supply of plant, materials, equipment, labour, delivery, transportation, installation, processing, fabrication, testing, and commissioning of the Project, including maintenance during the Construction Period, including maintenance during maintenance period, rectification of defects, if any, and other activities incidental to the construction and **“construct”** or **“build”** shall be construed accordingly under the Contractor’s Agreement;

(f) references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto during the Construction 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 shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;

(s) the Appendices 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 Appendices in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses, Sub-Clauses, Provisos and Appendices 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 Appendix 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 Appendix 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 Consultant 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 Appendices, the Clauses of Appendices shall prevail;
- (c) between the Appendices 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 the Clauses of the Bidding Document or RFP and the Agreement, the Clauses of Agreement shall prevail;
- (f) between Appendices and Annexes, the Appendices shall prevail;
- (g) between any two Appendices, the Appendix relevant to the issue shall prevail;
- (h) between any value written in numerals and that in words, the latter shall prevail; and
- (i) in all other cases not forming a part of the above, the Special Conditions Contract shall prevail.

## **6.5 Joint and several liability**

6.5.1 If the Consultant has formed a Joint Venture of two or more persons for performance of this Agreement:

(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 Consultant 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.

6.5.2 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 Consultant. The Consultant 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.

## **6.6 Law and Language**

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

6.6.2 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 SERVICES

### 7.1 Scope of the Services

7.1.1 Under this Agreement, the scope of the Services(**"Scope of the Services"**) shall mean and include:

(a) Performance/ delivery of Services of the description, scope/ quantum outlined in **Appendix A: 'Description of Services'**; and

(b) **Incidental Works/ Goods/ Other Services:** If so stipulated, the Consultant shall be required to perform/ deliver specified incidental Works/ Goods/ and other services required to provide the Services.

(c) Performance and fulfilment of all other obligations of the Consultant, 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 Consultant under this Agreement.

(d) The day **as specified in the SCC** from the Appointed Date shall be the scheduled completion date (the **"Scheduled Completion Date"**) and the Consultant agrees and undertakes to complete the milestones as per Scope of the Services in clause 7.1.1 on or before the Scheduled Completion Date, including any extension thereof.

### 7.2 Site

7.2.1 The Services shall be performed at such Site as are specified in **Appendix A** and, where the location of a particular task is not so specified, at such locations, whether in the Authority's Country or elsewhere, as the Authority may approve.

### 7.3 Reporting Requirements

7.3.1 The Consultant shall deliver to the Authority the reports, deliverables, outputs, and documents specified in **Appendix A: 'Description of Services'**, in the form, in the numbers and within the periods outlined in the said Appendix, besides progress reports.

### 7.4 Standard of Performance

7.4.1 The Consultant shall perform and carry out the Services with all due diligence, efficiency, and economy, in accordance with generally accepted professional standards and practices, observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods.

7.4.2 Unless otherwise specified, the performance standards and quality of the Services shall conform to the Terms of Reference as stipulated in the Contract or as per best standards in the market, where not so specified.

## **7.5 Defects in Services**

7.5.1 The Authority shall promptly notify the Consultant of any identified defects in the Services/ deliverables as specified in **Appendix A: 'Description of Services'**, requesting the correction of the notified defect within a reasonable time. If the Consultant has not corrected notified defect within the time stipulated in the Authority's notice, the Authority may suspend payments as per GCC clause 20.10.

## **7.6 Eligible Services**

7.6.1 The Consultant shall ensure that the value of Plant, Material and services sourced from India (the "**Indian Content**") by the Consultant under this Agreement shall be as specified in the **SCC**. 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 Agreement. 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 Agreement. The Bidder shall provide evidence of the origin of materials, equipment and services. The term "origin" means the country where the goods or services 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.

## **7.7 Progress Reports**

7.7.1 The Consultant shall, no later than 10 (ten) days after the close of each month, furnish to the Authority, a monthly report on the progress of the Services and shall promptly give such other relevant information as may be required by the Authority. The format of the Progress Reports shall be as directed by the Authority to the Consultant.

Reporting under this Clause shall continue until the duration of the contract as specified in this Agreement.

## SECTION-8 OBLIGATIONS OF THE CONSULTANT

### SECTION-8A OBLIGATIONS OF THE CONSULTANT [TO BE ADOPTED IN CASE OF CONSULTANCY SERVICES FOR CONSTRUCTION SUPERVISION]

#### 8.1 Obligations of the Consultant

8.1.1 Subject to and on the terms and conditions of this Agreement, the Consultant shall undertake the survey, investigation, design, construction supervision, and any other requirement for performance of the Services, and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

8.1.2 The Consultant 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, if any under this Agreement.

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

8.1.4 The Consultant 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 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, technology 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-Consultants in connection with the performance of its obligations under this Agreement;

(e) ensure and procure that its Sub-Consultants comply with all Applicable Permits and Applicable Laws in

performance by them of any of the Consultant'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 Consultant and its Sub-Consultants comply with the safety and welfare measures for Personnel 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 and its authorised personnel, and Exim Bank;

(j) cooperate with other consultants 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 Consultant's operations and activities;

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

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

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

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

8.1.7 The Consultant shall maintain required staff and necessary Consultant's equipment within the reach of the Site during the Defects Liability Period so that any defects arising are promptly attended.

8.1.8 The Consultant shall attend to the inspection, if any, carried out by the Authority, Government Instrumentalities, Government of India or the Exim Bank, comply with their statutory requirements and effectively arrange for replying to their observations and remarks. Provided that any inspection by Government Instrumentalities shall only be conducted with prior approval of the Authority.

8.1.9 The Consultant 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 completion of the Services and the Services related to remedying of any defects; and the Consultant shall indemnify and hold the Authority harmless against and from the consequences of any failure to do so, unless the Consultant is impeded to accomplish these actions and shows evidence of its diligence. Levy of taxes shall be in accordance with Sub-Clause 20.1.6.

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

8.2.1 The Consultant shall not sub-contract Services comprising more than the percentage of the Contract Price **as specified in the SCC** and shall perform the remaining Services directly under its own supervision and through its own personnel.

8.2.2 The Parties agree that in case of the Consultant being a JV, the obligation of the Consultant corresponding to at least 40% (forty percent) of the Contract Price shall be discharged solely by the Lead Member. Further, the Parties agree that the obligation of the Consultant to perform the Services corresponding to at least 15% (fifteen percent) of the Contract Price shall be discharged solely by the JV member(s).

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

8.2.4 In the event of any Sub-contract for Services, the Consultant shall take prior approval of the Authority

before entering into any such Sub-contract. The Consultant shall submit the name and particulars, including the relevant experience of the Sub-Consultant, to the Authority along with a request for seeking approval for appointment of the Sub-Consultant. The Authority shall examine the particulars of the Sub-Consultant and no later than 15 (fifteen) business days from the date of receiving the communication from the Consultant 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-Consultant. The Authority shall provide reasons in case it decides not to proceed with the Sub-contract, and the Consultant shall comply therewith. For avoidance of doubt, such approval by the Authority shall be required for appointment of all the Sub-Consultants, irrespective of the Sub-Consultant being an equipment supplier, labour or material supplier or any other Sub-Consultant. The decision of the Authority shall be final and binding on the Consultant.

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

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

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

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

### **8.3 Obligations relating to Employment of Foreign Nationals**

8.3.1 The Consultant acknowledges, agrees and undertakes that employment of foreign personnel (including Indian personnel) by the Consultant and/or its Sub-Consultants and their sub-Consultants 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 Consultant. The Authority shall, on the request of the Consultant, endeavor in a timely and expeditious manner to assist the Consultant in obtaining any local, state, national or government permission required for bringing in the Consultant'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 Consultant or any of its Sub-Consultants or their sub-Consultants shall not in any manner (a) excuse the Consultant 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 Consultant's Personnel and Representative**

8.4.1 The Consultant shall ensure and procure that the personnel engaged by it or by its Sub-Consultants 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 may, for reasons to be specified in writing, direct the Consultant to remove any member of the Consultant's or Sub-Consultant's personnel from the Project with the approval of the Authority, who

- (a) are involved in misconduct of 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 Consultant shall, on receiving a direction from the Authority 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 Consultant shall further ensure that such persons have no further connection with the Project. The Consultant shall then appoint a suitable replacement for the person.

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

8.4.5 The Team Leader shall, on behalf of the Consultant, receive instructions from the Authority under this Agreement.

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

8.4.7 The Consultant 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 Consultant 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 Consultant shall at its own expense provide the means of repatriation to all of its and its Sub-Consultant'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 Consultant 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 Consultant.

## **8.5 Labor Laws**

8.5.1 The Consultant shall obtain all relevant labour registrations and shall comply with all the relevant labour laws applicable to the Consultant'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 Consultant 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 labour of its Sub-Consultants.

## **8.6 Condition of Labor**

8.6.1 The Consultant 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 Consultant 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 Consultant.

8.6.2 The Consultant shall inform the Consultant'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 Consultant shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

#### **8.7 Working Hours**

8.7.1 No work shall be carried out 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 Consultant shall immediately advise the Authority.

#### **8.8 Facilities for Staff and Labor**

8.8.1 Except as otherwise stated, the Consultant shall provide and maintain all necessary accommodation and welfare facilities for the Consultant's Personnel. The Consultant shall not permit any of the Consultant'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 Consultant shall at all times take all reasonable precautions to maintain the health and safety of the Consultant's Personnel. The Consultant 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. Provide health and safety training of Consultant's Personnel as appropriate maintain training records;
- e. 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 Consultant's Personnel and the local community.

8.9.2 In the event of the death of any of the Consultant's Personnel or accompanying members of their families, the Consultant shall be responsible for making the appropriate arrangements for their return or funeral.

#### **8.10 Record of Consultant's Personnel**

8.10.1 The Consultant shall keep accurate records of the Consultant's Personnel, including the number of each class of Consultant'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 Project Completion Date.

#### **8.11 Alcohol or Drugs**

8.11.1 The Consultant 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 Consultant's Personnel.

#### **8.12 Arms and Ammunition**

8.12.1 The Consultant shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Consultant's Personnel to do so.

#### **8.13 Prohibition of Forced or Compulsory Labor and Child Labour**

8.13.1 The Consultant shall not employ **"Forced or Compulsory Labour"** in any form. **"Forced or Compulsory Labour"** consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

8.13.2 The Consultant 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.

#### **8.14 Obligations relating to information**

8.14.1 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 Consultant shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

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

#### **8.15 Unforeseeable difficulties**

8.15.1 Except as otherwise specified in this agreement:

- (a) The Consultant shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Services;
- (b) The Consultant 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 Consultant, or any person claiming through or under any of them, and shall not lead to any adjustment of Contract Price or Scheduled Completion Date;

- (c) The Consultant accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Services;
- (d) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (e) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

8.15.2 For the purposes of this Clause 8.15, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions, climatic conditions, which the Consultant encounters at the Site during performance of the Services. 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].

#### **8.16 Site Data**

8.16.1 The Consultant 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.

#### **8.17 Sufficiency of the Contract Price**

8.17.1 The Consultant 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 Consultant has agreed to undertake under this Agreement, including those associated with the performance of its obligations under this Agreement and all things necessary for the provision of the Services in a manner satisfactory to the Authority and in accordance with this Agreement.

#### **8.18 Inspection**

8.18.1 The Consultant shall permit and shall cause its Sub-contractors and sub-consultants to permit, the Authority, Exim Bank, Government of India and/or persons appointed by the Exim Bank / Government of India / Authority to inspect the 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 / Government of India / Authority, if required. Provided that inspection by any other Government Instrumentality shall be with prior approval of Authority.

#### **8.19 Protection of Environment**

8.19.1 The Consultant shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting

from pollution, noise and other results of its operations. The Consultant shall ensure that emissions, surface discharges and effluent from the Consultant's activities shall not exceed the values prescribed by Applicable Laws.

#### **8.20 Compliance with Laws**

8.20.1 The Consultant 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.

8.20.2 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 Consultant 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 Consultant, except as necessary for the purposes of the Contract.

#### **8.21 Debarment by Exim Bank**

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

### **SECTION-8B OBLIGATIONS OF THE CONSULTANT [TO BE ADOPTED IN CASE OF CONSULTANCY SERVICES FOR DPR]**

#### **8.1 Obligations of the Consultant**

8.1.1 Subject to and on the terms and conditions of this Agreement, the Consultant shall undertake the survey, investigation, design, and any other requirement for performance of the Services, and shall observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

8.1.2 The Consultant 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, if any under this Agreement.

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

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

(o) 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.

(p) 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 and other Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

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

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

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

(t) 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;

(u) ensure that Consultant and its Sub-Consultants comply with the safety and welfare measures for Personnel in accordance with local laws and Good Industry Practice;

(v) keep, 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 and its authorised personnel, and Exim Bank;

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

(x) 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;

(y) shall be responsible for the adequacy, stability and safety of all the Consultant's operations and activities;

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

(aa) ensure that the Services are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.

8.1.5 The Consultant shall provide all necessary superintendence for the proper fulfilling of the Consultant's obligations under this Agreement.

8.1.6 The Consultant shall provide the Consultant's Documents, and shall make available all Consultant's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for the completion of Services and fulfilling the Consultant's obligations under this Agreement.

8.1.7 The Consultant 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 completion of the Services; and the Consultant shall indemnify and hold the Authority harmless against and from the consequences of any failure to do so, unless the Consultant is impeded to accomplish these actions and shows evidence of its diligence. Levy of taxes shall be in accordance with Sub-Clause 20.1.6.

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

8.2.1 The Consultant shall not sub-contract Services comprising more than the percentage of the Contract Price **as specified in the SCC** and shall perform the remaining Services directly under its own supervision and through its own personnel.

8.2.2 The Parties agree that in case of the Consultant being a JV, the obligation of the Consultant corresponding to at least 40% (forty percent) of the Contract Price shall be discharged solely by the Lead Member. Further, the Parties agree that the obligation of the Consultant to perform the Services corresponding to at least 15% (fifteen percent) of the Contract Price shall be discharged solely by the JV member(s).

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

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

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

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

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

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

### **8.3 Obligations relating to**

8.3.1 The Consultant acknowledges, agrees and undertakes that employment of foreign personnel

## Employment of Foreign Nationals

(including Indian personnel) by the Consultant and/or its Sub-Consultants and their sub-Consultants 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 Consultant. The Authority shall, on the request of the Consultant, endeavor in a timely and expeditious manner to assist the Consultant in obtaining any local, state, national or government permission required for bringing in the Consultant'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 Consultant or any of its Sub-Consultants or their sub-Consultants shall not in any manner (a) excuse the Consultant 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 Consultant's Personnel and Representative

8.4.1 The Consultant shall ensure and procure that the personnel engaged by it or by its Sub-Consultants 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 may, for reasons to be specified in writing, direct the Consultant to remove any member of the Consultant's or Sub-Consultant's personnel from the Project with the approval of the Authority, who

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

8.4.3 The Consultant shall, on receiving a direction from the Authority 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 Consultant shall further ensure that such persons have no further connection with the Project. The Consultant shall then appoint a suitable replacement for the person.

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



8.4.5 The Team Leader shall, on behalf of the Consultant, receive instructions from the Authority under this Agreement.

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

8.4.7 The Consultant 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 Consultant shall at its own expense provide the means of repatriation to all of its and its Sub-Consultant'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 Consultant 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 Consultant.

## **8.5 Labor Laws**

8.5.1 The Consultant shall obtain all relevant labour registrations and shall comply with all the relevant labour laws applicable to the Consultant'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 Consultant 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 labour of its Sub-Consultants.

## **8.6 Condition of Labor**

8.6.1 The Consultant 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 Consultant 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 Consultant.

8.6.2 The Consultant shall inform the Consultant'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 Consultant shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

#### **8.7 Working Hours**

8.7.1 No work shall be carried out 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 Consultant shall immediately advise the Authority.

#### **8.8 Facilities for Staff and Labor**

8.8.1 Except as otherwise stated, the Consultant shall provide and maintain all necessary accommodation and welfare facilities for the Consultant's Personnel. The Consultant shall not permit any of the Consultant'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 Consultant shall at all times take all reasonable precautions to maintain the health and safety of the Consultant's Personnel. The Consultant shall:

- f. Comply with all applicable health and safety regulations and Laws;
- g. Comply with all applicable health and safety obligations specified in the Contract;
- h. 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;
- i. Provide health and safety training of Consultant's Personnel as appropriate maintain training records;
- j. 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 Consultant's Personnel and the local community.

8.9.2 In the event of the death of any of the Consultant's Personnel or accompanying members of their families, the Consultant shall be responsible for making the appropriate arrangements for their return or funeral.

#### **8.10 Record of Consultant's Personnel**

8.10.1 The Consultant shall keep accurate records of the Consultant's Personnel, including the number of each class of Consultant'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 Project Completion Date.

#### **8.11 Alcohol or Drugs**

8.11.1 The Consultant 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 Consultant's Personnel.

#### **8.12 Arms and Ammunition**

8.12.1 The Consultant shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Consultant's Personnel to do so.

#### **8.13 Prohibition of Forced or Compulsory Labor and Child Labour**

8.13.1 The Consultant shall not employ **"Forced or Compulsory Labour"** in any form. **"Forced or Compulsory Labour"** consists of all work or service, not voluntarily performed, that is extracted from an individual under threat of force or penalty.

8.13.2 The Consultant 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.

#### **8.14 Obligations relating to information**

8.14.1 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 Consultant shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

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

#### **8.15 Unforeseeable difficulties**

8.15.1 Except as otherwise specified in this agreement:

- (f) The Consultant shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Services;
- (g) The Consultant 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 Consultant, or any person claiming through or under any of them,

and shall not lead to any adjustment of Contract Price or Scheduled Completion Date;

- (h) The Consultant accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Services;
- (i) the Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs; and
- (j) the Scheduled Completion Date shall not be adjusted to take account of any unforeseen difficulties or costs.

8.15.2 For the purposes of this Clause 8.15, unforeseeable difficulties include physical conditions like man-made or natural physical conditions including sub-surface and hydrological conditions, climatic conditions, which the Consultant encounters at the Site during performance of the Services. 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].

#### **8.16 Site Data**

8.16.1 The Consultant 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.

#### **8.17 Sufficiency of the Contract Price**

8.17.1 The Consultant 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 Consultant has agreed to undertake under this Agreement, including those associated with the performance of its obligations under this Agreement and all things necessary for the provision of the Services in a manner satisfactory to the Authority and in accordance with this Agreement.

#### **8.18 Inspection**

8.18.1 The Consultant shall permit and shall cause its Sub-contractors and sub-consultants to permit, the Authority, Exim Bank, Government of India and/or persons appointed by the Exim Bank / Government of India / Authority to inspect the 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 / Government of India / Authority, if required. Provided that inspection by any other Government Instrumentality shall be with prior approval of Authority.

**8.19 Protection of Environment**

8.19.1 The Consultant shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations. The Consultant shall ensure that emissions, surface discharges and effluent from the Consultant's activities shall not exceed the values prescribed by Applicable Laws.

**8.20 Compliance with Laws**

8.20.1 The Consultant 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.

8.20.2 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 Consultant 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 Consultant, except as necessary for the purposes of the Contract.

**8.21 Debarment by Exim Bank**

8.21.1 The Consultant undertakes that the Consultant shall comply with the terms and conditions of this Agreement including the obligations of the Consultant. 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 Services to be performed by the Consultant.

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 Services 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 Consultant, except as otherwise stated in the Conditions of Contract.

9.1.4 The Authority shall be responsible for acquiring and providing legal and physical possession of the Site and access thereto, and for providing possession of and access to all other areas reasonably required, including all requisite rights of way and access to the Site for successful performance of the Services under the Agreement. The Authority shall give full possession of and accord all rights of access thereto in accordance with the Agreement.

9.1.5 If the Consultant suffers delays and/or incurs cost as a result of failure by the Authority to give any such rights or possessions within the stipulated time, in accordance with the provisions of Sub-Clause 9.1.4, it shall entitle the Consultant to Time Extension and Damages in accordance with the provisions of Clause 20.4 [Payment of Damages]. However, if and to the extent the Authority's failure was caused by any error or delay by the Consultant, including any error or delay in submission of any applicable Consultant's Documents, the Consultant shall not be entitled to such Time Extension.

9.1.6 The Authority shall make available to the Consultant and the Experts, for the performance of the contract, free of any charge (unless otherwise stated therein), the services, facilities, and property described in the 'Description of Services' (**Appendix A**) as per terms and conditions and against appropriate safeguards (including Insurances, Bank Guarantee, Indemnity Bonds, Retention Money etc.) specified therein. The

Consultant shall use such property for the execution of the Agreement and no other purpose whatsoever.

In case such services, facilities and property shall not be made available to the Consultant as and when specified in **Appendix A**, the Parties shall agree on (i) any time extension that it may be appropriate to grant to the Consultant for the performance of the Services and (ii) how the Consultant shall procure any such services, facilities and property from other sources.

9.1.7 The Authority agrees to provide support to the Consultant 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 Consultant, provide reasonable assistance to the Consultant 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/Services 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 Consultant in the performance of the Services in accordance with the provisions of this Agreement;
- (e) shall provide reasonable assistance for customs clearance, permits, related to the import and handling of all Goods;
- (f) upon written request from the Consultant and subject to the provisions of Clause 8.3 [Obligations relating to employment of foreign nationals], provide reasonable assistance to the Consultant and any expatriate personnel of the Consultant or its Sub-Consultants to obtain applicable visas and work permits for the purposes of discharge by the Consultant or its Sub-Consultants of their obligations under this Agreement and agreements with the Sub-Consultants.
- (g) shall obtain environmental and forest clearance for the Project from the concerned authorities and Government Instrumentalities;
- (h) shall provide sufficient, properly qualified operating and maintenance personnel;
- (i) 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 Permits, Licenses or Approvals**

9.2.1 Upon written request from the Consultant, and subject to the Consultant complying with Applicable Laws, the Authority shall provide reasonable support to the Consultant 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 Consultant is required to obtain in accordance with this Agreement;
- (b) copies of the Laws of the Authority's Country which are relevant to the Agreement but are not readily available.

9.2.2 The Authority shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions as having been (or to be) obtained by the Authority; and the Authority shall indemnify and hold the Consultant harmless against and from the consequences of any failure to do so.

## **9.3 Authority's Financial Arrangements**

9.3.1 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] for the deliverables specified in **Appendix A** and in such manner as is provided in this Agreement. 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 Services not forming part of the Contract Inclusion Letter.

9.3.2 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 Services under this Agreement, the Authority shall give notice of such suspension to the Consultant with detailed particulars, including the date of such notification, 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 Consultant 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 Consultant about the mechanism for making payment under the Agreement .

9.3.3 Exim Bank shall not, under any circumstances whatsoever, be liable for any payment obligation towards the Consultant or by the Borrower.

#### **9.4 Authority's Use of Consultant's Documents**

9.4.1 The Consultant 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 Consultant'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 Consultant's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Consultant'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 Consultant.

9.4.2 The Consultant shall retain the copyright and other intellectual property rights in the documents made by (or on behalf of) the Consultant, which are not included under the Consultant's Documents but are incidental to the performance of the Consultant's obligations under this Agreement. The documents made by (or on behalf of) the Consultant, which are not included under the Consultant's Documents but are incidental to the performance of the Consultant's obligations under this Agreement shall not, without the Consultant'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.

#### **9.5 Authority's Reimbursement of Taxes**

9.5.1 In accordance with the provisions of Sub-Clause 20.1.5, if the taxes paid by the Consultant have to be reimbursed by the Authority, the Authority shall promptly reimburse such taxes in accordance with Sub-Clause 20.1.5.

## SECTION-10 REPRESENTATIONS, DISCLAIMER AND WARRANTIES

### 10.1 Representations and Warranties of the Consultant

10.1.1 The Consultant 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 signing of this Agreement is true and accurate in all respects as on the date of signing 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, 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 Consultant arising from the Request for Proposal or otherwise shall be binding on the Consultant 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-Consultants, designers, consultants or agents of the Consultant;
- (o) it is adequately financed, has the requisite knowledge, expertise, technical know-how, experience, resources, infrastructure, licenses, patents, copy rights required for performance of the Services including the Defects Liability Period; and
- (p) it shall comply with the Applicable Laws and Applicable Guidelines under this Agreement.

## **10.2 Representations and Warranties of the Authority**

10.2.1 The Authority represents and warrants to the Consultant 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 access to the Project Site to the Consultant;
  - (h) it shall comply with the Applicable Laws and the Applicable Guidelines.

### **10.3 Disclosure**

10.3.1 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 Consultant acknowledges that prior to the execution of this Agreement, the Consultant has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Scope of the Service, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes, 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 Consultant 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 Consultant; 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 Consultant shall, for ensuring the performance of its obligations hereunder, provide to the Authority, an irrevocable and unconditional Bank Guarantee, at Consultant'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 "Performance Security"), prior to signing of this Agreement. The Performance Security shall be valid for the period as specified in the SCC. Until such time the Performance Security is provided by the Consultant pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon providing the Performance Security, the Authority shall release the Bid Security to the Consultant.

Provided that whenever, a Change in Scope in accordance with Section-16 [Change of Scope], results in an increase or decrease in the Contract Price, the Performance Security shall be adjusted to the equivalent amount of 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 Consultant to provide the 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 Consultant under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Consultant, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 11.2 Extension of Performance Security

11.2.1 The Consultant shall provide the Performance Security for the period in accordance with Sub-Clause 11.1.1; 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 Consultant'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 Consultant'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 Consultant 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 Consultant to pay the Authority an amount due, as agreed or determined under this Agreement or agreed or decided under Section-24 [Termination];
- (c) circumstances which entitle the Authority to terminate this Agreement in accordance with Clause 24.1 [Termination for Consultant's Default], irrespective of whether a notice of termination has been given; or

11.3.3 Upon such encashment and appropriation from the Performance Security, the Consultant 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 Consultant 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 Consultant shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Consultant's Default, and in the event of the Consultant 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 Consultant 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 Consultant; or
- (b) if the Agreement is terminated, in payment due to the Consultant under then in accordance with Sub-Clause 24.6.1.

#### **11.4 Release of Performance Security**

11.4.1 The Authority shall release the 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 Defects Liability Period or the extended Defects Liability Period, as the case may be, have been rectified.

#### **11.5 Retention Money**

11.5.1 From every payment for Services due to the Consultant in accordance with the provisions of Clause 20.2 [Procedure for Payment], 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 Consultant during the Contract 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 Consultant’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 Consultant’s Default.

11.5.3 The Authority shall release or cause to release the Retention Money within the days of Project Completion Date **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 DEPLOYMENT OF RESOURCES

### 12.1 General Requirements

12.1.1 The Consultant, shall nominate a Team Lead, which shall, on receiving reasonable notice, present himself to the Authority. Orders given by the Authority or its representative to the Team Lead shall be deemed to have the same force as if given to the Consultant. The Team Lead shall monitor the assignment so that the output is in line with the Authority's objectives of the Contract.

12.1.2 The Consultant shall employ and provide qualified and experienced Key and Non-key Experts and Sub-consultants as required to carry out the Services.

### 12.2 Key Expert(s)

12.2.1 The titles, job descriptions and minimum qualifications, of the Consultant's Key Experts engagement in carrying out the Services are described in **Appendix B** of this Agreement.

12.2.2 The Consultant shall not be entitled to be paid for overtime of Key Experts nor be eligible for paid sick leave or vacation leave except as specified in **Appendix B**, and the Consultant's remuneration shall be deemed to cover these items.

12.2.3 Working hours and holidays for Experts are outlined in **Appendix B**.

12.2.4 Any leave-taking by Key Experts shall be subject to the prior approval by the Consultant, who shall ensure that absence for leave purposes shall not delay the progress and or impact adequate supervision of the Services. If Key Experts are not deployed for significant periods, affecting the progress and quality of the assignment, payments may be suspended as per Clause 20.10.

### 12.3 Substitution of Key Expert(s)

12.3.1 Unless the Authority may otherwise agree in writing, no changes shall be made in the Key Experts.

12.3.2 Notwithstanding the above, the substitution of Key Experts during Contract period may be considered only based on the Consultant's written request and due to compelling or unavoidable situations outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. The substitute shall be of equivalent or higher credentials. Such substitution shall not exceed the limit specified in the Agreement (or 30%, if not specified) of total key experts. At no point of time, shall the position of key expert deployed remain vacant for any reason except as permitted under this Clause 12.3.2. In the event of such a vacancy, it shall be deemed to be considered as Consultant's default.

12.3.3 Substitution of the first 10% of key experts at the request of the Consultant shall be subject to a reduction of remuneration by a percentage specified in this Agreement (or 5%, if not specified) of the remuneration which would have been paid to

the original experts from the date of the replacement till completion of the contract period. Such reduction in remuneration shall progressively increase further for subsequent substitutions as specified in this Agreement. If not specified, the reduction in remuneration shall be 10% and 15%, respectively, for the subsequent two slabs of 10% substitutions of key personnel (i.e., till 30% substitution). Such reduction shall not apply to the substitution of experts in pursuance of orders by the Authority.

12.3.4 If the position of key expert remains vacant for more than 30 days, the Authority may terminate the contract on account of Consultant's default.

12.3.5 If additional Key Experts are required to carry out the Services during the execution of this Agreement, the Consultant shall submit to the Authority for review and approval a copy of their Curricula Vitae (CVs). If the Authority does not object in writing (stating the reasons for the objection) within twenty-one (21) days from receiving such CVs, such additional Key Experts shall be deemed approved by the Authority. The rate of remuneration payable to such new additional Key Experts shall be based on the rates for other Key Experts' positions which require similar qualifications and experience.

#### **12.4 Non-Key Expert(s)**

12.4.1 The Consultant must ensure the deployment of non-key experts as per **Appendix B, Appendix-A**, and the approved Works plan as updated. Daily attendance records of such non-key personnel shall be maintained by the Consultant and shared with the Authority. If the Authority believes that the Consultant is not employing sufficient Non-key personnel as is specified or otherwise for the proper delivery of the Services, he shall issue a notice to the Consultant for remedial measures. The Consultant shall forthwith, on receiving intimation to this effect, deploy the additional number of non-key personnel as specified by the Authority immediately, and failure on the part of the Consultant to comply with such instructions shall entitle the Authority to suspend payments as per Clause 20.10 for the shortfall in performance or terminate the contract and/ or avail all the remedies thereunder. Such action shall be in addition to the deduction from the Consultant's payment cost of shortfall personnel as estimated by the Authority.

#### **12.5 Removal of Key Experts and Non-Key Experts**

12.5.1 The Consultant shall, at the Authority's written request, provide a replacement, if the Authority finds that any of the Experts or Sub-consultant:

- a) commits severe misconduct or has been charged with having committed a criminal act;
- b) persists in any misconduct or lack of care;
- c) is found to be negligent, incompetent or incapable of discharging assigned duties;
- d) fails to comply with any provision of the Contract; and
- e) based on reasonable evidence, is determined to have

breached the Code of Integrity (including Fraud and Corruption) during the delivery of the Services and execution of Works.

12.5.2 Subject to the requirements in the sub-Clause above, and notwithstanding any requirement from the Authority to request a replacement, the Consultant shall take immediate action as appropriate in response to any violation in the sub-para above. Such immediate action shall include removing (or causing to be removed) such Key/ Non-Key Expert or Sub-consultant from carrying out the Services.

12.5.3 Any replacement of the removed Experts or Sub-consultants shall possess equal or better qualifications and experience and be acceptable to the Authority.

12.5.4 The Consultant shall bear all costs from or incidental to any removal and/or replacement of such Experts.

## **12.6 Equipment and Tools of Trade**

12.6.1 The Consultant must ensure the deployment of Equipment and Tools of Trade necessary to deliver Services as per the Terms of Reference and approved Works plan as updated. If the Authority believes that the Consultant is not employing on the Services sufficient Equipment/Tools of Trade as is specified or otherwise for the proper delivery of the Services within the prescribed time, the Consultant shall forthwith on receiving intimation to this effect deploy the additional equipment/ tools of the trade as specified by the Authority immediately and failure on the part of the Consultant to comply with such instructions shall entitle the Authority to suspend payments as per Clause 20.10 for the shortfall in performance or terminate the contract and/ or avail any or all the remedies thereunder for breach of the Agreement.

## SECTION-13 DELIVERY OF SERVICES

### 13.1 Obligations prior to Commencement of Services

13.1.1 Upon the receipt of notice for commencement of Services under Sub-Clause 9.1.9 within 15 (fifteen) days of the Appointed Date, the Consultant shall:

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

(b) undertake and perform all such acts, deeds and things as may be necessary or required before commencement of Services under and in accordance with this Agreement, Applicable Laws, and Applicable Permits; and

(c) make its own arrangements for mobilization of Personnel needed for the performance of the Services under and in accordance with Applicable Permits and Applicable Laws.

### 13.2 Works Plan

13.2.1 Before the commencement of the Services, the Consultant shall submit for approval of the Authority a Works plan showing the Methods, schedule of delivery of services, and deployment plans for Personnel, Equipment and Materials for the delivery of the Services. The programme of delivery of Services amended as necessary by discussions with the Authority shall be treated as the agreed Works plan for this Contract. The Services shall be carried out and monitored as per the approved Program as updated.

13.2.2 The Authority shall direct the order in which the several components of the Services shall be provided, and the Consultant shall execute all orders the Authority gives from time to time without delay. However, the Consultant shall not be relieved thereby from responsibility for the due performance of the Services in all respects.

### 13.3 Effective Date of Agreement or Appointed Date

13.3.1 Consultant shall commence the Services and shall proceed with due expedition and without delay from the effective date of Agreement ("**Effective Date**" or "**Appointed Date**") (all dates of delivery shall be counted from such a date) **as specified in the SCC**, which shall be the date mentioned as the Effective date or Appointed date in the Agreement.

### 13.4 Commencement of Services

13.4.1 Not later than 15 days after the Appointed Date specified in the Agreement or the Notice to commence from the Authority, the Consultant shall begin carrying out the Services after confirming that as required by the Agreement, all JV members and key experts needed at the beginning of the assignment are effectively participating.

### 13.5 Review of Phases and

13.5.1 The Authority / Borrower and the Consultant shall hold progress meetings at various phases and Milestones. Unless

## Milestones

otherwise indicated, the following actions would be taken during such progress meetings:

1) **Kick-off Meeting:** The Authority and the Consultant/ Team Lead shall meet at the start of the Services to ensure that the Agreement requirements are clearly understood by all concerned and that the Contract Management procedures are finalised.

2) **Inception Phase Review:** The inception meeting shall be held within 21 days of the Appointed Date. Before this meeting, the Consultant must provide a draft Inception Report for discussion. The Consultant shall submit a final Inception Report within the specified time in the 'Terms of Reference' or as agreed in the Inception Meeting, or if not so specified, within 7 days of the Inception Meeting. Template for Inception Report may be agreed to beforehand in the Inception Meeting. It should, at the minimum, cover comments and suggestions on the following:

- a) Terms of Reference;
- b) Work plan and staffing schedule;
- c) Facilities to be provided by the Authority; and
- d) Working arrangements and liaison.

3) **Periodic Reviews:** Unless otherwise decided by the Authority and the Consultant's Team Lead, periodic review meetings shall be held to review the pace of progress as compared to the Work Plan and remedial actions thereto.

4) **Deliverables Reviews:** The Authority and the Consultant/ Team Lead may hold other meetings to review and approve specific deliverables or phases (including Interim and Final Reports) as specified in Appendix A - Description of Services or as agreed between the parties.

## 13.6 Time of Essence

13.6.1 The time for delivery of Services shall be deemed to be the essence of the contract. Subject to any requirement in the contract as to the completion of any portions or portions of the Services before completion of the whole, the Consultant shall fully and finally complete the whole of the Services comprised in the contract as per the Delivery and Completion Schedule stipulated in the Agreement.

13.6.2 If at any time during the contract period, the Consultant encounters conditions hindering the timely performance of Services; the Consultant shall promptly inform the Authority in writing about the same and its likely duration.

13.6.3 The Consultant may request to the Authority for an extension of the delivery schedule not less than one month before the expiry of the date fixed for completion of the Services. The Authority may agree to extend the completion schedule, with or without liquidated damages and denial Clause, by issuing an amendment to the contract in terms of Section 17 [Extension of Time.

## **SECTION-14 QUALITY ASSURANCE AND SUPERVISION**

<b>14.1 Quality of Materials and Workmanship</b>	14.1.1 The Consultant shall supervise that the Construction, Materials and Workmanship are in accordance with the requirements specified in this Agreement, Specifications and Standards and Good Industry Practice.
<b>14.2 Quality Control System</b>	14.2.1 The Consultant shall convey its comments to the EPC Contractor within a period of 21 (twenty-one) days of receipt of the Quality Assurance Plan (QAP) stating the modifications, if any, required.
<b>14.3 Methodology</b>	14.3.1 The Consultant shall complete the review and convey its consent or its comments, if any, to the EPC Contractor within a period of 10 (ten) days from the date of receipt of the proposed methodology from the EPC Contractor.
<b>14.4 Inspection and Review by the Authority</b>	14.4.1 The Authority or any representative authorised by the Authority in this behalf may inspect and review the progress and quality of the construction of Works and issue appropriate directions to the Consultant for taking remedial action in the event the Works/Services are not in accordance with the provisions of this Agreement. At any time during construction or the Defects Liability period, the Authority or Exim Bank may appoint an external technical auditor to conduct an audit of the quality of the Works/Services. The findings of the audit, to the extent accepted by the Authority, shall be notified to the Consultant for taking remedial action in accordance with this Agreement. The Consultant shall provide all assistance as may be required by the auditor in the conduct of its audit hereunder.
<b>14.6 Inspection of Records</b>	14.6.1 The Authority, Exim Bank or any representative authorised by the Authority shall have the right to inspect the records and accounts and the submission of the bid of the Consultant relating to the Services.
<b>14.7 Inspection of Works</b>	<p>14.7.1 The Consultant and its authorised representative shall at all times:</p> <ul style="list-style-type: none"><li>a) have full access to all parts of the Site and to all places from which natural Materials are being obtained for use in the Works; and</li><li>b) 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.</li></ul>

14.7.2 The Consultant shall submit a monthly inspection report (the “**Inspection Report**”) to the Authority and the EPC Contractor bringing out the results of inspections and the remedial action taken by the EPC Contractor in respect of Defects or deficiencies.

#### **14.8 Monthly Progress Reports**

14.8.1 The Consultant shall review the monthly report on the progress of Works submitted by the EPC Contractor. The Consultant may suitably modify the format and the details required in the Monthly Progress Reports.

#### **14.9 Samples**

14.9.1 The Consultant shall review following samples of Materials and relevant information as submitted by the EPC Contractor:

(a) manufacturer’s test reports and standard samples of manufactured Materials; and

(b) samples of such other Materials as the Consultant may require.

#### **14.10 Tests**

14.10.1 For determining that the Works conform to the Specifications and Standards, the Consultant shall require the EPC Contractor to carry out or cause to be carried out tests, at such time and frequency and in such manner as specified in the Contractor’s Agreement, and in accordance with QAP & Good Industry Practice for quality assurance. For avoidance of doubt, the Parties expressly agree that the Authority or the Consultant may require the EPC Contractor to carry out additional tests which are not provided in the Contractor’s 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.

14.10.2 Of the total tests for each category or type to be undertaken by the EPC Contractor in accordance with the Contractor’s Agreement, the Consultant shall (a) carry out or cause to be carried out, test checks equal to about 20% (twenty percent) of the number of the tests required to be undertaken by the EPC Contractor; and (b) witness or participate in at least 25% (twenty five percent) of the number of such tests conducted or caused to be conducted by the EPC Contractor.

14.10.3 In the event that results of any tests conducted under this Clause 14.10 establish any Defects or deficiencies in the Works, the EPC Contractor shall carry out remedial measures at its own cost and furnish a report to the Consultant in this behalf. The Consultant shall require the EPC Contractor to carry out or cause to be carried out tests to determine that such remedial measures have brought the Works into compliance with the Specifications and Standards, and the procedure shall be repeated until such Works conform to the Specifications and Standards.

**14.11  
Examination of  
Work before  
Covering up**

14.11.1 The Consultant shall upon receipt of Request for Inspection (RFI) from the EPC Contractor either carry out the examination, inspection or testing without unreasonable delay, or promptly give notice to the EPC Contractor that the Consultant 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 Consultant upon notification of EPC Contractor, of the schedule of carrying out such work to give sufficient opportunity, not being less than 3 (three) business days' notice shall conduct its inspection, measurement or test while the work is continuing. Provided further that in the event the Consultant provides no response to the EPC Contractor within a period of 3 (three) business days from the date on which the notice hereunder is delivered to the Consultant, it would be assumed that the Consultant would not undertake the said inspection.

**14.12 Rejection**

14.12.1 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 the Contractor's Agreement, the Consultant may reject such Plant, Material, design or workmanship by giving notice to the EPC Contractor, with reasons, by way of issuance of **Non-Conformity Reports (NCR)**. The Consultant may require that a Plant, Material, Design or Workmanship to be retested.

**14.13 Remedial  
Work**

14.13.1 Notwithstanding any previous test or certification, the Consultant may instruct the EPC Contractor to:

- a) remove from the Site and replace any Plant or Materials which are not in accordance with the provisions of the Contractor's Agreement;
- b) remove and re-execute any work which is not in accordance with the provisions of the Contractor's 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 Contractor's Agreement shall apply.

14.13.2 If the EPC Contractor fails to comply with the instructions issued by the Consultant under Sub-Clause 14.13.1 above, within the time specified in the Consultant's notice or as mutually agreed, the Consultant shall promptly inform the Authority.



**14.14 Delays during Construction**

14.14.1 Without prejudice to the provisions of the Contractor's Agreement, in the event the Consultant 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 Completion Date, it may notify the same to the EPC Contractor.

**14.15 Quality Control Records and Documents**

14.15.1 The Consultant shall obtain from the EPC Contractor a copy of all the quality control records and documents before the Completion Certificate is issued pursuant to the provisions under the Contractor's Agreement.

**14.16 Suspension of Unsafe Works**

14.16.1 Consultant may recommend to the Authority suspension of the whole or part of the Works if, in the reasonable opinion of the Consultant, such work threatens the safety of the Users and/or other persons on or about the Project. After the EPC Contractor has carried out remedial measures, the Consultant shall inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked.

14.16.2 If suspension of Works is for reasons not attributable to the EPC Contractor, the Consultant shall determine any Time Extension to which the EPC Contractor is reasonably entitled in accordance with the Contractor's Agreement.

## SECTION-15 COMPLETION CERTIFICATE

### 15.1 Tests on Completion

15.1.1 Upon notification by the EPC Contractor of its intent to subject the Project or a Section thereof, to Tests, prior to the likely completion of the Project, or a Section thereof, the date and time of each of the Tests shall be determined by the Consultant in consultation with the EPC Contractor, and notified to the Authority who may designate its representative to witness the Tests.

For the avoidance of doubt, the Parties agree that in the event of the EPC Contractor and the Consultant failing to mutually agree on the dates for conducting the Tests, the EPC Contractor shall fix the dates by giving not less than 10 (ten) days' notice to the Consultant.

15.1.2 The Consultant shall observe, monitor and review the results of the Tests to determine compliance of the Project or a Section thereof, with Specifications and Standards and if it is reasonably anticipated or determined by the Consultant during the course of any Test that the performance of the Project or Section or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the EPC Contractor to remedy and rectify any Defect or deficiency. Upon completion of each Test, the Consultant shall provide to the EPC Contractor and the Authority copies of all Test data including detailed Test results. For avoidance of doubt, the Parties expressly agree that the Authority or the Consultant may require the EPC Contractor to carry out additional tests which are not provided in the Contractor's 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.

### 15.2 Provisional Completion Certificate

15.2.1 Subject to the provisions of the Contractor's Agreement, 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, the Consultant shall, at the request of the EPC Contractor, issue the "Provisional Completion Certificate". The Provisional Completion 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 the Contractor's Agreement.

The Parties further agree that Provisional Completion 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.

15.2.2 If the Consultant determines that the Project or any completed part thereof does not conform to the provisions of the Contractor's 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 EPC Contractor and withhold issuance of the Provisional Completion Certificate until the Defects or deficiencies are rectified by the EPC Contractor and Tests are successful in accordance with the Contractor's Agreement.

15.2.3 Notwithstanding anything to the contrary contained in Sub-Clause 15.2.2 above, the Authority may, at any time after receiving a report from the Consultant, direct the Consultant to issue a Provisional Completion Certificate under Sub-Clause 15.2.1 and such direction shall be complied forthwith.

### **15.3 Project Completion Certificate**

15.3.1 The Consultant, at the request of the EPC Contractor (the **"Notice for Issuance of Completion Certificate"**) shall issue to the EPC Contractor and the Authority a certificate substantially in the form as per Contractor's Agreement (the **"Project Completion Certificate"**), upon:

- a) receipt of EPC Contractor's request specifying the value of work done in accordance with the Contractor's Agreement up to the Completion Date of Works and any further sums which the EPC Contractor considers to be due in relation to the Works and under the Contractor's Agreement;
- b) completion of all Works, including the items specified in the Punch List;
- c) the Consultant determining the Tests to be successful;
- d) Finalisation of the Maintenance Manual in accordance with the Contractor's Agreement;
- e) handing over of the as-built drawings and other related documents by the EPC Contractor in accordance the Contractor's Agreement; and
- f) Clearance of Site in accordance with the Contractor's Agreement.

After fulfilment of the conditions specified above and issuance of Notice for Issuance of Completion Certificate, the Consultant shall issue the Completion Certificate or seek clarification on the Notice, as may be required by the Consultant, within 28 days from submission of the last clarification by the EPC Contractor, the Consultant shall issue the Completion Certificate or provide reasons for non-issuance of the Completion certificate. If the Consultant fails to issue the Project Completion Certificate or reject the EPC Contractor's request within this period of 28 days, and if the conditions described in sub-paragraphs (a) to (f) above have been fulfilled, the Works or Section shall be deemed to have been completed in accordance with the Contractor's Agreement on the day which is 28 (twenty eighth)

days after the Consultant receives the Notice for Issuance of Completion Certificate or the last clarification, and the Project Completion Certificate shall be deemed to have been issued.

#### **15.4 Interference on Tests for Completion**

15.4.1 If the EPC 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 EPC Contractor shall give a Notice to the Consultant describing such prevention.

The Consultant shall give a Notice to the EPC Contractor, of not less than 14 days, of the date after which the EPC Contractor may carry out each of the Tests on Completion in accordance with the Contractor's Agreement.

The Consultant may determine, if the EPC Contractor shall be entitled to Extension of Time in accordance with the Contractor's Agreement and/or payment of Cost, in case the EPC Contractor suffers delay and/or incurs Cost as a result of being prevented from carrying out the Tests on Completion.

## 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 Consultant to make modifications or alterations to the Services (the **"Change of Scope"**) before the issue of the Completion Certificate either by giving an instruction or by requesting the Consultant 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 deliverables or milestones of Services;
- b) omission of any Works from the Scope of the Project; or
- c) 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.

16.1.3 If the Consultant determines at any time that a Change of Scope in accordance with Sub-Clause 16.1.2, 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 Consultant shall submit such proposal, supported with the relevant details including the amount of reduction 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 EPC Contractor of its decision. The Consultant shall not delay any work while awaiting the decision by the Authority.

For the avoidance of doubt, the Parties agree that the Consultant shall not undertake any Change of Scope without a Change of Scope Order being issued by the Authority, save and except any Services necessary for meeting any Emergency.

### 16.2 Procedure for Change of Scope

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

16.2.2 Upon receipt of a Change of Scope Notice, the Consultant shall, with due diligence, provide to the Authority 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 Scheduled Completion Date if the services are required to be carried out during the Construction Period; and
- b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof.

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 Consultant's quotation of costs for the Change of Scope shall be determined on the following principles:

- a) For services of similar nature compared to the services being delivered, the quotation shall be based on the rate for the service inclusive of all remuneration, reimbursable expenses, Materials, equipment, incidentals, overheads and profit derived in accordance with the provisions of Section-20 [Prices and Payments].
- b) For services not similar in nature to the services being delivered, the cost of service shall be derived on the basis of prevailing market rates as determined by the Authority in accordance with Good Industry Practice, in consultation with the Consultant.

16.2.4 Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Consultant to proceed with the Services thereof. In the event that the Parties are unable to agree, the Authority may:

- a) issue a Change of Scope Order requiring the Consultant to proceed with the Services 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 Services, Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Consultant under this Section-16 [Change of Scope].

### **16.3 Payment for Change of Scope**

16.3.1 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 Services 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 10% of the Contract Price.

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 the change of scope is 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 Consultant and considering its reply thereto, award such services to any person as the Authority may deem fit. It is agreed that the Consultant shall provide assistance and cooperation to the person who undertakes the services hereunder, but shall not be responsible for rectification of any Defects in works carried out by other agencies. The Authority may award such services to any person at the discretion of the Authority. The Authority further acknowledges and agrees that it shall not undertake any services under this Sub-Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Consultant.

16.5.2 The provisions of this Agreement, insofar as they relate to Services, Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

## SECTION-17 EXTENSION OF TIME

### 17.1 Extension of Time for Completion

17.1.2 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Consultant shall be entitled to extension of time in the Scheduled Completion date (the “**Time Extension**”) to the extent that completion of any Milestone is or will be delayed by any of the following, namely:

- (a) Delay or failure to issue notice to commence the services;
- (b) Delay in or failure to handover of possession of the site or the necessary facilities/ documents/ data or instructions by the Authority to the Consultant;
- (c) Delay or failure to issue necessary instructions for which the Consultant had applied explicitly in writing;
- (d) Change of Scope, unless an adjustment to the Scheduled Completion Date has been agreed;
- (e) occurrence of a Force Majeure Event;
- (f) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other Contractors/Consultants on the Site; and
- (g) any other cause or delay which entitles the Consultant to Time Extension in accordance with the provisions of this Agreement.

17.1.2 The Consultant shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Sub-Clause 17.1.1, inform the Authority by notice in writing, 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 Consultant 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 Services which are affected by the aforesaid events or circumstances and shall not in any manner affect the Completion Date for and in respect of the Services which are not affected thereby.

17.1.3 In the event of the failure of the Consultant to issue to the Authority a notice in accordance with the provisions of Sub-Clause 17.1.2 above within the time specified therein, the Consultant 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 Consultant to issue notice as specified in this Sub-



Clause 17.1.3, the Authority shall be discharged from all liability in connection therewith.

17.1.4 The Authority shall, on receipt of a claim for Time Extension in accordance with the provisions of Sub-Clause 17.1.2, examine the claim within the time frame specified herein. In the event the Authority any clarifications to examine the claim, the Authority shall seek the same within 15 (fifteen) days from the date of receiving the claim. The Consultant shall, on the receipt of the communication of the Authority requesting for clarification, furnish the same to the Authority within 10 (ten) days thereof. The Authority shall, within a period of 30 (thirty) days from the date of receipt of such clarifications, forward in writing to the Consultant its determination of Time Extension. For the avoidance of doubt, the Parties agree that the Authority shall, in accordance with the provisions of this Agreement, notify the Consultant of the aforesaid Time Extension no later than 60 (sixty) days from the date of receipt of the Consultant's claim for Time Extension.

Provided that when determining each extension of time under this Clause 17.1 [Extension of Time for Completion], the Authority shall review previous determinations and may increase, but shall not decrease, the total Time Extension.

17.1.5 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 Consultant 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 may reasonably require; and
- (c) the Consultant 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 shall examine and determine the same in accordance with the provisions of Sub-Clause 17.1.4 within a period of 60 (sixty) days of the receipt thereof.

## SECTION-18 DEFECTS LIABILITY

### 18.1 Remedy and Rectification of Defects and Deficiencies

18.1.1 The Consultant shall supervise the Defects Liability Period under this Agreement till the expiry of a period **as specified in the SCC** (the “**Defects Liability Period**”) and issue a notice to the EPC Contractor to repair or rectify all Defects and deficiencies observed by the Consultant.

18.1.2 In the event that the EPC Contractor fails to repair or rectify such Defect or deficiency within the period specified in the Contractor’s Agreement, the Authority shall be entitled to get the same repaired, rectified or remedied at the EPC Contractor’s cost so as to make the Project conform to the Specifications and Standards and the provisions of the Contractor’s Agreement. All costs consequent thereon shall, after due consultation with the Authority and the EPC Contractor, be determined by the Consultant.

18.1.3 The Consultant may instruct the EPC Contractor to examine the cause of any Defect in the Works or part thereof before the expiry of the Defects Liability Period.

18.1.4 In the event such Defect is not attributable to the EPC Contractor, the EPC Contractor shall notify this to the Consultant and the Consultant shall, after due consultation with the Authority and the EPC Contractor, determine the costs incurred by the EPC Contractor on such examination and notify the same to the EPC Contractor, with a copy to the Authority, and the EPC Contractor shall be entitled to payment of such costs by the Authority.

## SECTION-19 DAMAGES

### 19.1 Damages to be paid by Consultant

19.1.1 The Consultant shall perform and complete the deliverable for the Services as specified in **Appendix A- Description of Services**, scope of the services and other obligations as per the provisions of this Agreement.

19.1.2 In the event that the Consultant fails to achieve any Milestone within a period of 30 (thirty) days from the date as per updated Works plan approved by the Authority, 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 and until such Milestone is achieved; provided that if the period for any or all Milestones is extended in accordance with the provisions of this Agreement, including any Time Extension, the Damages paid under this Sub-Clause 19.1.2 shall be refunded by the Authority to the Consultant, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Sub-Clause 19.1.2 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 Services as specified in Sub-Clause 17.1.2.

19.1.3 The Authority shall notify the Consultant of its decision to impose Damages in pursuance of the provisions of this Clause 19.1. Provided, however, that no deduction on account of Damages shall be effected by the Authority without taking into consideration the representation, if any, made by the Consultant within 20 (twenty) days of such notice. The Parties expressly agree that the total amount of Damages under Sub-Clause 19.1.2 shall not exceed 5% (five percent) of the Contract Price in accordance with the IDEAS Guidelines.

19.1.4 The Authority shall be entitled to, and it shall be lawful to recover damages as detailed in this clause 19.1 from all payments due, any Performance Security, or any retention money.

## Financial Covenants

## SECTION-20 PRICES AND PAYMENTS

### 20.1 Contract Price

20.1.1 The Authority shall make payments to the Consultant for the Services 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 the completion of the Assignment in accordance with the provisions of this Agreement.

20.1.2 The total payments under this Contract shall not exceed the Contract price.

20.1.3 All payments under this Agreement shall be made in the currency **as specified in the SCC**.

20.1.4 Any change to the Contract Price specified above can be only made if the Parties have agreed to the revised scope of Services under sub clause 16.1 [Change of Scope] and have amended the Appendix A in writing.

20.1.5 The Contract Price excludes all duties, taxes, royalty and fees that may be levied in accordance with the laws and regulations in force in Authority’s Country on the Services provided by the Consultant under this Agreement. Nothing in this Agreement shall relieve the Consultant from its responsibility to pay any tax outside the Authority’s Country.

20.1.6 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 Consultant 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 Consultant from its own resources and shall be reimbursed by the Authority to the Consultant. 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**. For avoidance of doubt, both, the upfront waiver or reimbursement of taxes shall be construed as Tax Exemption.

20.1.7 In case of reimbursement of taxes in accordance with Sub-Clause 20.1.6, the Consultant 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 Reimbursement**”). The Notice for Reimbursement shall include the following:

- a) details of the claim including the nature of tax, demurrage or detention and the amount of reimbursement, which shall be the actual amount paid by the Consultant towards the applicable taxes, duties, demurrage or detention 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 Reimbursement, the Authority shall promptly but no later than 90 days from the receipt of such notice shall make the payment to the Consultant against the Notice for Reimbursement. In case the payments are not made by the Authority against the Notice for Reimbursement, the Consultant shall be entitled to damages at a simple interest rate of 5% (five percent) per annum calculated on the claimed account.

20.1.8 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 20.9 [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.

20.1.9 Unless otherwise specified in this Agreement, the Contract Price covers all the Consultant’s obligations for the Services under this Agreement.

20.1.10 Subject to Applicable Law, the Consultant shall open and maintain a Project specific bank account in India. The bank account shall be used only for the purpose of maintaining the cashflows under this Agreement. All payments under this Agreement shall be made in the currency **as specified in the SCC**.

20.1.11 The Consultant 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 Consultant has agreed to undertake under this Agreement, including those associated with the performance of its obligations including Services during Defects Liability Period under this Agreement and all things necessary for the provision of the Services in a manner satisfactory to the Authority and in accordance with this Agreement.

20.1.12 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 Procedure for Payment**

20.2.1 The payments under this Agreement will be made to the Consultant according to the payment schedule **stated in the SCC**. The Authority shall pay to the Consultant (i) remuneration of Experts deployed under this Agreement in the performance of the Services; and (ii) reimbursable expenses that are actually and reasonably incurred by the Consultant in the performance of the Services under this Agreement.

20.2.2 As soon as practicable and not later than fifteen (15) days after the end of each time interval stipulated in this Agreement in this regard, the Consultant shall submit to the Authority, in duplicate, itemized invoice(s), accompanied by the accompanied by receipts, monthly progress reports or other appropriate supporting documents, of the amounts payable for such an interval under Sub-Clause 20.2.1 above. Each invoice shall show remuneration and reimbursable expenses separately.

20.2.3 The Authority shall cross-check all relevant records before passing the Consultant's bills/invoices. Upon verification of the records by the Authority, payments shall be released to the Consultant.

20.2.4 The payment shall be made to the Consultant after the receipt by the Authority of the deliverable(s) and the invoice(s) with supporting documents for the related lump-sum instalment payment. Only a portion of an invoice not satisfactorily supported may be withheld from the payment. Should any discrepancy exist between actual payment and costs authorized to be incurred by the Consultant, the Authority may add or subtract the difference from subsequent payments.

20.2.5 The Consultant shall not submit any claim for payment of incomplete milestones under the deliverables. In the event that there is no claim for a month or particular milestone in accordance with the provisions of this Clause 20.2, the Consultant shall submit a 'Nil' claim to the Authority.

20.2.6 While claiming payment, the Consultant is also to certify in the bill/invoice that the payment being claimed is strictly in terms of this Agreement and all the Consultant's obligations for claiming that payment has been fulfilled as required.

20.2.7 Payment by the Authority hereunder shall be deemed to be provisional and shall not be construed as the Authority's acceptance, approval, consent or satisfaction with the Services by the Consultant.

20.2.8 The Retention Money withheld in accordance with Clause 11.5 [Retention Money] shall be construed to be payment made to the Consultant for the purpose of this Clause 20.2.

20.2.9 To the extent that the payment to be made to the Consultant 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 or Authority as applicable under the LOC Agreement, for making payment to the account of the Consultant in India, on behalf of the Authority. Exim Bank shall make the payment to the Consultant to the extent of the amounts and Services 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 Consultant. 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 Consultant in accordance with this Agreement. The Consultant 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 Consultant in any manner whatsoever. The payments in accordance with this Sub-Clause 20.2.9 shall be made to the account of the Consultant **as specified in the SCC.**

20.2.10 The Consultant acknowledges that such payments made in accordance with this Clause 20.2 shall be construed as payment made by the Authority to the Consultant for the purpose of this agreement.

20.2.11 The Consultant 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 Consultant does not have any privity with Exim Bank in relation to, or in connection with, this Agreement or the subject matter hereto. The Consultant waives any rights, including as a third party beneficiary , to claim any rights, liabilities against Exim Bank for any matter whatsoever.

### **20.3 Advance Payment**

20.3.1 The Authority on request of the Consultant shall make an advance payment (the “**Advance Payment**”), equal to the amount as **specified in the SCC**, for mobilisation expenses. The Advance Payment shall carry simple interest at the rate **as specified in the SCC** and shall be made in two substantially equal instalments (the “**Advance Payment Instalment**”). Provided that the payment of second instalment of the Advance Payment shall only be released upon submission of Utilization Certificate by the Consultant certified by a Chartered Accountant and submission of advance payment guarantee against claim amount in accordance with 20.3.2.

20.3.2 The Consultant may apply to the Authority for the Advance Payment or instalment thereof in accordance with this



Agreement and within a period **as specified in the SCC**, along with an irrevocable and unconditional guarantee (“**Advance Payment Guarantee**”) from a Bank **as specified under Sub-Clause 11.1.1**, for an amount equivalent to 105% (one hundred and five percent) of such claim amount (Advance Payment Instalment). The Advance Payment Guarantee shall be substantially in the form provided at **Appendix-X**, to remain effective till the complete and full repayment of such instalment and any interest thereon. However, the Advance Payment Guarantee will be progressively reduced on a pro-rata basis to the extent of recovery of Advance Payment. However, at any point of time during the validity of the Conditions of this Agreement, the guarantee amount shall cover the portion of advance payment not recovered including interest thereon.

20.3.3 The Instalments of Advance Payment shall be paid to the Consultant within 20 (twenty) days of the receipt of its respective requests in accordance with the provisions of this Clause 20.3. The payment by the Authority shall be in accordance with Clause 20.2.

20.3.4 The Consultant shall ensure that the Advance Payment Guarantee is valid and enforceable until the advance payment is fully repaid. The Consultant shall extend the validity of the Advance Payment Guarantee promptly but no later than 28 days before the expiry of the Advance Payment Guarantee until the Advance Payment has been repaid. The Consultant shall immediately submit evidence of such extension to the Authority, failing which the Authority shall be entitled for claim under the Guarantee.

20.3.5 The Advance Payment along with Interest shall be recovered through proportionate deductions to be made from the related lump-sum instalment payment in accordance with the provisions of Sub-Clause 20.3. Deductions of Advance Payment and interest thereon shall commence from the lump-sum instalment in which the cumulative payments certified shall have reached the percentage of the Contract Price **as specified in the SCC**. The accrued Interest on advance payment shall be calculated on the basis of “Actual number of days in the period divided by 365”.

20.3.6 Deduction shall be proportionately made from each lump-sum instalment until such time as the Advance Payment has been repaid, provided that the cumulative payments certified shall not exceed 80% (eighty per cent) of the Contract Price. The Advance Payment amount recovered in each payment shall not exceed an amount **as specified in the SCC**. The Parties further agree that no payments in excess of 80% (eighty per cent) of the Contract Price shall be released to the Consultant until the Advance Payment, including interest thereon, has been fully recovered.

20.3.7 If the Advance Payment has not been fully repaid prior to Termination under Clause 24.6 [Termination Payment] and Section-26 [Liability and Indemnity], as the case may be, the whole of the balance then outstanding shall immediately become due and payable by the Consultant to the Authority. In the event of Termination for Consultant's Default, the unrecovered Advance Payment shall be deemed to carry interest at an annual rate in accordance with Sub-Clause 20.3.1 from the date of Advance Payment to the date of recovery thereof. Submission of a Bank guarantee shall in no way relieve the Consultant from any obligation for repayment of the Advance Payment.

#### **20.4 Payment of Damages**

20.4.1 The Consultant may claim Damages due and payable to it in accordance with the provisions of this Agreement. The Authority shall pay to the Consultant the amount due under such claim electronically within 30 (thirty) days of the receipt of the claim under this Clause 20.4, after making adjustments in accordance with the provisions of this Agreement.

#### **20.5 Time of payment**

20.5.1 The Authority shall pay to the Consultant any amount due under any bill/invoice 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 claim for the related lump-sum instalment payment to the Consultant in accordance with the provisions of Clause 20.1 and 20.2.

#### **20.6 Restrictions on Price Adjustment**

20.6.1 The Contract Price shall not be adjusted for any change in the exchange rate or cost of inputs or Extension of Time for Completion under the Agreement.

20.6.2 The Contract Price shall not be adjusted for any change in the duties, taxes etc. specified in Sub-Clause 20.1.5 above, save and except as specified in Clause 20.9 [Change in Law].

#### **20.7 Final Payment**

20.7.1 The final payment under this Clause shall only be made after the final report for the deliverables have been submitted by the Consultant and a final invoice, identified as such, shall have been submitted by the Consultant along with supporting documents and approved as satisfactory by the Authority. Completion certificate/ Final payment shall be issued/made only after ensuring that all facilities/ documents/ sites have been returned to the Authority as specified in this Agreement. The Authority shall give written notice to the Consultant specifying in detail deficiencies in the Services, the final report or final invoice. The Consultant shall promptly make any necessary corrections, and the preceding process shall be repeated. The Services shall be deemed completed and finally accepted by

the Authority.

20.7.2 The Consultant shall submit a final bill on the Authority's acceptance certificate of final deliverables. The Final payment shall be made as per the following calculations after receiving a clear "No Claim Certificate" signed by the Consultant:

- (a) After making necessary adjustment for any payments already made or retained;
- (b) any deduction which may be made under the contract;
- (c) A complete account of all claims the Consultant may have on the Authority.

20.7.3 The Authority shall, pay to the Consultant the amount which is specified as being finally due in the Final Payment claim in accordance with Clause 20.2.

20.7.4 Any amount that the Authority has paid or has caused to be paid under this Clause more than the amounts payable under the provisions of this Contract shall be reimbursed by the Consultant to the Authority within thirty (30) days after receipt by the Consultant of notice thereof.

20.7.5 The Consultant agrees and acknowledges that it does not have any claims or rights against any other authority other than the Authority under this Agreement in relation to any payments under this Agreement.

## **20.8 No Claim Certificate**

20.8.1 Upon submission of the Final Payment claim under Clause 20. above, the Consultant shall give to the Authority, a No Claim Certificate confirming that the total of the Final Payment claim represents full and final settlement of all monies due to the Consultant in respect of this Agreement for all the Services arising out of this Agreement, except for any monies due to either Party on account of any Defect.

## **20.9 Change in Law**

20.9.1 If as a result of Change in Law, the Consultant suffers any additional costs and / or delay in the performance of the Services or in relation to the performance of its other obligations under this Agreement, the Consultant shall, within 15 (fifteen) days from the date it becomes reasonably aware of such addition in costs and / or delay, notify the Authority of such additional costs and / or delay due to Change in Law.

20.9.2 If as a result of Change in Law, the Consultant 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 of such reduction in costs due to Change in Law.

20.13.3 The Authority shall, within 15 (fifteen) days from the date of receipt of notice from the Consultant, 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.

**20.10 Suspension of Payments**

20.10.1 The Authority may, by written notice of suspension to the Consultant, suspend part or all payments to the Consultant hereunder if the Consultant fails to deliver the Services as per the Terms of Reference, including the non-rectification of notified defects in the Services/ deliverables, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension. Such a suspension shall not entitle the Consultant to any extension of time for delivery of Service.

**20.11 The Authority's Claims**

20.11.1 If the Authority considers itself to be entitled to any payment from the Consultant under any Clause of this Agreement, it shall give notice and particulars to the Consultant, 20 (twenty) days before making the recovery from any amount due to the Consultant, and the Authority shall take into consideration the representation, if any, made by the Consultant in this behalf, before making such recovery ,save and except without prejudice to the Consultant's right to raise a Dispute.

## SECTION-21 INSURANCE

### 21.1 Insurance for Services

21.1.1 The Consultant shall take out and maintain, and shall cause any Sub-consultants to take out and maintain, at its (or the Sub-consultants', as the case may be) own cost but on terms and conditions approved by the Authority, insurance against the risks, and for the coverage, as stipulated in the contract and as per the requirements under Applicable Laws and Applicable Laws of Host Country and shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums have been paid. The Consultant shall ensure that such insurances are in place before commencing the Services. Alterations to the terms of insurance shall not be made without the approval of the Authority.

21.1.2 Subject to the provisions of Clause 22.6 [Effect of Force Majeure Event on the Agreement], the Consultant 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 Consultant 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 Consultant of this Agreement during the performance of the Services or the remedying of any Defects therein.

21.1.4 Notwithstanding anything in Sub-Clause 21.1.3, the Authority shall fully indemnify the Consultant 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 performance and delivery of the Services, 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 Consultant, the Authority shall be liable to indemnify the Consultant 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 Consultant shall maintain or effect such third-party insurances as may be required under Applicable Laws and Good Industry Practice.

21.1.6 The Consultant shall provide to the Authority, within 30 days of the Appointed Date, (a) evidence of professional liability insurance maintained by its Personnel(s) to cover the risk of professional negligence in the Services; (b) Consultant's all risk (CAR) insurance policy obtained by the Consultant; and the Authority being named as co-insured in the policies obtained pursuant to this Agreement. The professional liability cover shall be for a sum of not less than percentage of the Contract Price as **specified in the SCC** and shall be maintained until the end of the Defects Liability Period. The permitted deductible limit allowed in any policy shall not exceed the amount **as specified in the SCC**.

**21.2 Notice to the Authority**

21.2.1 No later than 15 (fifteen) days after the date of this Agreement, the Consultant shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Section-21 [Insurance]. Within 15 (fifteen) days of receipt of such notice, the Authority may require the Consultant 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 Consultant 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 Consultant 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 Consultant to the Authority.

21.3.2 The Consultant 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.

**21.4 Remedy for Failure to Insure**

If the Consultant 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 Consultant, 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 Consultant.

**21.5 Waiver of Subrogation**

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

**21.6  
Consultant's  
Waiver**

The Consultant 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 Consultant 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 Consultant 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.

**21.7 Cross  
Liabilities**

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 Consultant and to the Authority as separately insured.

**21.8 Accident or  
Injury to  
Workmen**

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 Consultant or Sub-Consultant save and except as for death or injury resulting from any act, omission or default of the Authority, its agents or servants. The Consultant 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.

**21.9 Insurance  
against accident  
to Workmen**

The Consultant shall effect and maintain during this Agreement such insurances as may be required to insure the Consultant'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 Consultant's Personnel/any person employed by the Consultant shall include the Sub-Consultant and its personnel. Provided further that in respect of any persons employed by any Sub-Consultant, the Consultant's obligations to insure as aforesaid under this Sub-Clause 21.9 shall be discharged if the Sub-Consultant shall have insured against any liability in respect of such persons in such manner that the Authority is indemnified under the policy. The Consultant shall require such Sub-Consultant 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 Consultant 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 or performance of Services shall apply *mutatis mutandis* to the Works/Services undertaken out of the proceeds of insurance.

**21.11  
Compliance with  
Policy Conditions**

The Consultant hereby expressly agrees to fully indemnify the Authority from and against all losses and claims arising from the Consultant'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 or performance of Services 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 Consultant;
- (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 Consultant, Sub-Consultants 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-Consultant 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 Consultant in any proceedings restraining the performance of the contract for reasons other than

- (i) failure of the Consultant 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 Consultant 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 performance of the Services by the Consultant for an aggregate period exceeding 10 (ten) days in an Calendar Year;

(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-Consultant to the extent caused by any Indirect Political Event;

(e) failure of the Authority to permit the Consultant to continue with its Services, with or without modifications, in the event of stoppage of such work after discovery of any geological or archaeological find;

(f) any event listed above from Paragraphs (a) to (e) which leads to event listed in Paragraphs (a) to (g) of Clause 22.2 [Non-Political Event] shall be construed as an Indirect 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 20.9 [Change in Law];

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Consultant or of the Sub-Consultants;

(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 Consultant or any of the Sub-Consultants to perform their respective obligations under this Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Consultant's or any Sub-Consultant'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-Consultant 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 Consultant, 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 Consultant 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 Consultant.

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 Consultant.

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 Construction Period, the Scheduled Completion Date for and in respect of the affected Works or Services shall be extended on a day for day basis for such period as performance of the Consultant's obligations is affected on account of the Force Majeure Event or its subsisting effects, as may be determined by the Authority.

22.6.4 Force Majeure costs for any event which results in any offsetting compensation being payable to the Consultant by or on behalf of its Sub-Consultants shall be reduced by such amounts that are payable to the Consultant by its Sub-Consultants.

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 Services].

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 Services]; and (b) the reasonable cost, as determined by the Authority, of the Plant, Materials or Services procured by the Consultant and transferred to the Authority for use in the Project and only if such Plant, Materials or Services 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 Consultant 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 Consultant shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Authority) of the value of the Services delivered, which shall include:

- a) the amounts payable for performance of any Services for which a price is stated in the Agreement;
- b) the Cost of Plant and Materials ordered for the Works/Services which have been delivered to the Consultant, or of which the

Consultant 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 Consultant shall place the same at the Authority's disposal;

- c) any other Cost or liability which in the circumstances was reasonably incurred by the Consultant in the expectation of completing the Services;
- d) the Cost of removal of Temporary Works and Consultant's Plant and Equipment from the Site and the return of these items to the Consultant's place of business in the Consultant's country (or to any other destination(s) at no greater cost); and
- e) the Cost of repatriation of the Consultant's staff and labour employed wholly in connection with the Works at the date of termination.

## **22.9 Dispute Resolution**

22.9.1 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**

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

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

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 CONSULTANT'S RIGHTS

**23.1 Suspension upon Consultant's Default** Upon occurrence of a Consultant's Default and failure by Consultant 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 delivery of Services or any part thereof, and (b) undertake such Services 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 to the Consultant and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice.

For avoidance of doubt, during the Suspension period the Consultant shall not be entitled to any extension of time or monetary claims whatsoever in any form including but not limited to any claims under the provisions of this Agreement to which the Consultant would otherwise be entitled if the Suspension as under the provisions of this Clause was not in effect.

**23.2 Authority to act on behalf of Consultant** During the period of Suspension hereunder, all rights and liabilities vested in the Consultant in accordance with the provisions of this Agreement shall continue to vest in the Consultant and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Consultant under and in accordance with this Agreement shall be deemed to have been done or taken for and on behalf of the Consultant and the Consultant undertakes to indemnify the Authority for all costs incurred during such period. The Consultant hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 23.1 [Suspension upon Consultant's Default] to use during Suspension, all Intellectual Property belonging to or licenced to the Consultant with respect to the Project and its design, drawings, engineering and other documents and which is used or created by the Consultant 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 Consultant 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 Consultant having cured the Consultant'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 Consultant under this Agreement.

**23.4 Termination** 23.4.1 At any time during the period of Suspension under this Section-23 [Suspension of Consultant's Rights] the Consultant 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 Consultant's Default under Clause 24.1 [Termination for Consultant'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 Consultant's Default.



## SECTION-24 TERMINATION

### 24.1 Termination for Consultant'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 Consultant 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 Consultant shall be deemed to be in default of this Agreement (the **"Consultant'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 Consultant 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 Consultant fails to cure, within 30 (thirty) days, the Consultant's Default for which the whole or part of the Performance Security was appropriated;
- c) the Consultant does not achieve the latest outstanding Milestone due in accordance with the provisions of this Agreement, subject to any Time Extension, and continues to be in default for 45 (forty five) days for the reasons attributable to the Consultant;
- d) the Consultant repudiates or abandons or manifests intention to abandon the Services under this Agreement without the prior written consent of the Authority;
- e) the Consultant fails to proceed with the Services in accordance with the provisions of Clause 13.1 [Obligations prior to Commencement of Services] or stops the delivery of Services for 30 (thirty) days without reflecting the same in the current programme and such stoppage has not been authorised by the Authority;
- f) the Consultant fails to rectify any Defect, 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;
- g) the Consultant fails to provide Services during Defects Liability Period within the time specified in this Agreement or as directed by the Authority;
- h) the Consultant sub-contracts the Services or any part thereof in violation of this Agreement or assigns any part of the Services or transfers or any right or interest therein without

the prior approval of the Authority;

- i) the Consultant creates any Encumbrance in breach of this Agreement;
- j) an execution levied on any of the assets of the Consultant has caused a Material Adverse Effect;
- k) the Consultant is adjudged bankrupt or insolvent, or if a trustee or receiver or interim resolution professional is appointed for the Consultant 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 Consultant 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 Consultant's Default in this Sub Clause will be treated as cured.
- l) the Consultant 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;
- m) a resolution for winding up of the Consultant is passed, or any petition for winding up of the Consultant 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 Consultant 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 Consultant are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Consultant 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 Consultant as at the Appointed Date;

- n) any representation or warranty of the Consultant herein contained which is, as of the date hereof, found to be materially false or the Consultant is at any time hereafter found to be in breach thereof;
- o) the Consultant 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;
- p) the Consultant has failed to fulfil any obligation, for which failure, Termination has been specified in this Agreement; or
- q) the Consultant has failed to make any payment to the Authority as may be recoverable from the Consultant by the Authority under this Agreement, within the period specified in this Agreement;
- r) the Consultant issues a Termination Notice in violation of this Agreement;
- s) the Consultant 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;
- t) Consultant 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 Consultant's Personnel, agents or Sub-Consultants gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (t). However, lawful inducements and rewards to Consultant's Personnel shall not entitle termination.
- u) The Consultant, in the judgment of the Authority has engaged in corrupt, collusive, coercive, fraudulent or obstructive practices, in competing for or in executing the Agreement.
- v) The Consultant fails to comply with the Applicable Guidelines including but not limited to the commitment to achieve the Indian Content declared by the Consultant at the commencement of the Project and selection of the Sub-Consultants 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 Consultant's Default, the Authority may by giving a notice to the Consultant, require the Consultant to make good the failure and to remedy it within a time specified in the Notice ("Notice to

Correct Consultant'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 Consultant's failure;
- (b) specify the time within which the Consultant 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 Consultant shall upon receipt of the Notice to Correct Consultant's Default respond to the Authority within 15 (fifteen) days describing the measures the Consultant 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 Consultant if the Consultant fails to respond to the Notice to Correct Consultant's Default within 15 (fifteen) days.

24.1.3 After termination of this Agreement for Consultant's Default, the Authority may complete the deliverable of Services through any other entity. The Authority and such entity may, for this purpose, use any Materials, Plant and equipment, Consultant's Documents and other design documents made by or on behalf of the Consultant.

## **24.2 Termination for the Authority 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 Consultant 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 in fulfilling its obligations and such default has a proven Material Adverse Effect on the Consultant;
- (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 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 attributable to the Authority / Government Instrumentality and not attributed to the Consultant.
- (e) the Borrower fails to issue the Payment Authorisation in

accordance with this Agreement. The Authority fails to fulfil any other obligation as per the provision of this Agreement.

(f) the Authority is under substantial and proven financial duress likely to have an impact on payments to be made from outside the proceeds of LOC to the Consultant, outside the proceeds of LOC.

(g) the Authority fails to provide reasonable evidence of its financial arrangements pursuant to notice submitted by the Consultant pursuant to the provisions of Clause 9.3.

24.2.2 Without prejudice to any other right or remedy which the Consultant may have under this Agreement, upon occurrence of an Authority Default, the Consultant 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 Consultant within 15 (fifteen) days describing the measures the Authority will take to remedy the failure. The Consultant 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 Consultant under this Clause 24.3. The termination shall take effect 30 (thirty) days from the date of notice provided to the Consultant 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 Consultant's Documents, which shall be returned to the Consultant, except those for which the Consultant has received payment or for which payment is due;

(b) no right to allow the continued use (if any) of any Consultant's Equipment, Temporary Works, access arrangements and/or other of the Consultant's facilities or services; and (c) make arrangements to return the Performance Security to the Consultant 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 Consultant 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 or Services, relevant Consultant's Documents and other design documents;  
(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 Services**

24.5.1 Within a period of 45 (forty-five) days after Termination under Clause 24.1 [Termination for Consultant's Default], Clause 24.2 [Termination for the Authority Default] or Clause 24.3 [Termination for Authority's convenience and failure to achieve Appointed Date], as the case may be, has taken effect, the Authority shall proceed to determine as follows the valuation of unpaid Services (the "**Valuation of Unpaid Services**"):

- (a) value of the completed Services, less payments already made; and
- (b) reasonable value of the partially completed Services as on the date of Termination, only if such Services are acceptable to the Authority.

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 Services shall be communicated by the Authority to the Consultant, 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 Consultant's Default under Clause 24.1 [Termination for Consultant's Default], the Authority shall:

- (a) encash and appropriate the Performance Security and in the event the Consultant 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, if any, towards amounts recoverable from the Consultant; and
- (d) pay to the Consultant, by way of a payment for termination ("Termination Payment"), an amount equivalent to the Valuation of Unpaid Services 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 Advance Payment Guarantee, if any, to the extent of the outstanding Advance Payment, including interest thereon; and
- (c) pay to the Consultant, by way of Termination Payment, an amount equal to:
  - (i) Valuation of Unpaid Services;
  - (ii) the reasonable cost, as determined by the Authority, of the Plant and Materials procured by the Consultant and transferred to the Authority for its use, only if such Plant and Materials are in conformity with the Specifications and Standards; and
  - (iii) 10% (ten per cent) of the cost of the Services 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 Consultant within 60 (Sixty) days of a demand being made by the Consultant to the Authority with the necessary particulars, after the Valuation of Unpaid Services has been communicated by the Authority. 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 Consultant expressly agrees that Termination Payment under this Section-24 [Termination] shall constitute a full and final settlement of all claims of the Consultant 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 Consultant 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 Consultant to the Authority; and

(c) the Authority shall be entitled to restrain the Consultant 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 Consultant, 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**

25.1.1 This Agreement shall not be assigned by the Consultant 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 Consultant acknowledges that assignment shall not relieve the Consultant 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 Consultant shall be held responsible for the same in accordance with the provisions of this Agreement.

## SECTION-26 LIABILITY AND INDEMNITY

### 26.1 General Indemnity

26.1.1 The Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant

26.2.1 Without limiting the generality of Clause 26.1 [General indemnity], the Consultant 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 Consultant to comply with Applicable Laws, Applicable Permits;

(b) payment of taxes required to be made by the Consultant in respect of the income or other taxes of the Sub-Consultants, suppliers and representatives; or

(c) non-payment of amounts due as a result of Materials or services furnished to the Consultant or any of its Sub-Consultants which are payable by the Consultant or any of its Sub-Consultants.

26.2.2 Without limiting the generality of the provisions of this Section-26 [Liability and Indemnity], the Consultant 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 Consultant or by the Sub-Consultants in performing the Consultant'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 Consultant 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 Consultant 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 Consultant is unable to secure such licence within a reasonable time, the Consultant 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**

26.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this 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 Consultant 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 Consultant 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.

#### **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, either Party may refer the dispute in writing to the DB for its decision, with copy to the other Party. 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 proceeding shall not be deemed to be an arbitration and the DB shall not act 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 Consultant shall continue with the performance of the Services 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**.

The place and seat of the arbitration shall be specified in the **SCC**. The law governing the arbitration agreement shall be Indian Law and the arbitration proceedings shall be in 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 Consultant and the Authority agree and undertake to carry out such Award without delay. Unless specifically provided in terms of this Agreement, Consultant 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 Consultant 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 Consultant 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), save and except as otherwise specified in this Agreement. Such payment shall not be governed by Clause 20.6 [Procedure for Payments to Consultant] and shall be paid directly by the Authority to the Consultant.

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 Government Instrumentality of any Document or Drawing submitted by the Consultant 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 Consultant from its obligations, duties and liabilities under this Agreement, Applicable Laws, Applicable Permits; and

(b) the Authority shall not be liable to the Consultant 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 Consultant 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 Appendices 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 Consultant 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 Consultant 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 Consultant shall retain the copyright and other Intellectual Property rights in the Consultant's Documents and other design documents made by (or on behalf of) the Consultant. The Consultant 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 Consultant'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 Consultant's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- (c) in the case of Consultant'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 Consultant:

28.16.2 The Consultant's Documents and other design documents made by (or on behalf of) the Consultant shall not, without the Consultant'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 Consultant 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 Consultant, except as necessary for the purposes of the Agreement.

28.16.4 The Consultant shall ensure and take all steps promptly to protect the copyright and other Intellectual Property Rights in the

Consultant's Documents and other design documents made by (or on behalf of) the Consultant.

**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.

**28.18 Code of Integrity**

28.18.1 Consultants are expected to observe highest standards of ethics in regard to corrupt and fraudulent/prohibited practices as set forth in Public Procurement Act or applicable regulatory framework of the Authority's country and the Guidelines issued by the Government of India vide letter F.No.5/7/2019-IDEAS dated March 31, 2022 and should not indulge in following prohibited practices, either directly or indirectly, at any stage during the Procurement Process or during the execution of this Agreement.

## 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 Services) have been fulfilled:</p> <p>(a) Consultant has delivered to the Authority the Performance Security 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 20.1.6, 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>(d) Release of Advance payment to the Consultant, if the request for Advance Payment has been made by the Consultant within 15 days of fulfilment of the conditions mentioned at (a),(b) and (c) above. If no request is made by the Consultant, this Clause 6.1.1(d) shall not be construed as a condition for achieving the Appointed Date [Ref Sub-Clause 20.2.2].</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>
Eligible Services	7.6.1	All Plant, Material and services used by the

Conditions	Clause	Data
		<p>Consultant under this Agreement shall have at least 75% of their origin in India.</p> <p>Balance Plant, Material and services under the Agreement have to be sourced by the Consultant from Authority's country or a third country not sharing land border with India (except those countries in which the Government of India is engaged in development projects).</p>
Limit for Sub-contract of Services	8.2.1	Not more than 15% (fifteen percent) of the Contract Price.
Services 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-Consultant	8.2.5	<p>a) The appointment of the Sub-Consultant shall be in compliance with the Applicable Guidelines.</p> <p>b) For the work awarded to the Sub-Consultant, the Sub-Consultant 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>
Bank issuing irrevocable and unconditional bank guarantee	11.1.1	The Consultant 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	11.1.1	Until 60 (sixty) days of the expiry of the Defects Liability Period specified in Sub-Clause 18.1.1 or the extended Defects Liability Period under this Agreement.
Release of Performance Security	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 Retention Money	11.5.3	Within 15 (fifteen) days of the date of issue of the Completion Certificate.
Scheduled Completion Date	7.1.1	_____ days from the Appointed Date <i>[To be specified for each project]</i>
Rate of Damages for Delay	19.1.2	@ 0.05% (zero point zero five per cent) of

Conditions	Clause	Data
		the Contract Price for delay for each day
Defects Liability Period	18.1.1	<i>[To be decided for each project]</i>
The Contract Price	20.1.1	USD _____ (United States Dollar _____ only) (in figures and words)
Currency of payment	20.1.3	<i>United States Dollars (USD)</i>
Exemption / Reimbursement of Taxes	20.1.6	<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, demurrage and detention within the timeframe	20.1.7	<i>[To be specified]</i>
Payment Schedule	20.2.1	<i>[To be specified]</i>
Account of the Consultant for Payment	20.2.9	<i>Account Details of the Consultant to be specified</i>
Amount of Advance Payment	20.3.1	<i>Advance Payment percentage to be decided on case to case basis. [Upto 20% as per IDEAS Guidelines]</i>
Interest Rate on Advance Payment	20.3.1	<i>[The interest rate should not be more than the Interest being charged from the borrower under the LOC.]. The interest calculation shall commence from the date of receipt of Advance Payment by the Consultant</i>
Period for requesting Advance Payment	20.3.2	<i>6 months from Appointed Date</i>
Deductions of Advance Payment to commence when cumulative interim payments certified shall have reached	20.3.5	<i>20%</i>
Recovery of Advance Payment from each lump-sum payment shall not exceed	20.3.6	<i>Proportionate amount of Advance Recovery due and payable under such lump-sum installment payment. [To be decided depending on the amount of Advance Payment so that the Advance Payment is recovered by 80% of financial progress under the Agreement. ]</i>
Limit of Insurance / Professional Liability Cover	21.1.6	<i>To be specified</i>
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	24.3.1	<i>240 days</i>



Conditions	Clause	Data
Date within number of days.		
Date of appointment of Dispute Resolution Board (DB)	27.2.1	
Composition of DB	27.2.2	
Place and Seat of Arbitration	27.3.1	
Notices to Parties	27.13.1	<i>a) In case of Consultant,  Attention:  Designation:  Address:  Email:  b) In the case of the Authority,  Attention:  Designation:  Address:  Email:</i>

## **PART-VII: APPENDICES TO THE AGREEMENT**

[Content of this part is indicative and should be updated for each Project]

## **Appendix A: Description of Services**

*[This Appendix shall include the final Terms of Reference (TORs), Approach, Methodology and Work Schedule and Planning of Deliverables, worked out by the Authority and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements; Authority's input, including counterpart personnel assigned by the Authority to work on the Consultant's team; specific tasks that require prior approval by the Authority.]*

### **1. Terms of Reference (TOR):**

*[Insert the text based on Appendix-IX(Terms of Reference) of the RFP and modify it based on Forms submitted in the Consultant's Proposal, as negotiated between the Authority and the Consultant.]*

### **2. Approach, Methodology and Work Plan:**

*[Insert the text based on Forms submitted in the Consultant's Proposal as negotiated between the Authority and the Consultant.]*

### **3. Work Schedule and Planning for Deliveries:**

*[Insert the text based on Forms submitted in the Consultant's Proposal as negotiated between the Authority and the Consultant.]*

## **Appendix B: Description of Experts**

*[This Appendix shall include the table of Key and non-Key experts and other details based on forms submitted in the Consultant's Technical Proposal and finalized by the Authority and the Consultant during the negotiations. Attach the CVs (updated and signed by the respective Experts) demonstrating the qualifications of Experts.]*

## APPENDIX-X: FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT

Beneficiary: \_\_[Name of Authority]\_\_

Consultant: \_\_\_\_\_

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

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

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

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

We have been informed that \_\_\_\_\_ [Name of the Consultant] \_\_\_\_\_ (hereinafter called the "**Consultant**") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ [Name of the Consultant] \_\_\_\_\_ (hereinafter called the "**Contract**"), and the Consultant wishes to receive advance payment under the Contract, for which the Consultant 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 Consultant, 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 Consultant. 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 the

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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.*

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.***